LEGISLATIVE OVERSIGHT OF FEDERAL FUNDS

NCSL Webinar 2013
REASONS FOR REVIEW

- Concern over increases in federal deficit
Concern over increases in federal deficit
Concern over increases in state obligations
REASONS FOR REVIEW

- Concern over increases in federal deficit
- Concern over increases in state obligations
- Legislative control of state budget
REASONS FOR REVIEW

- Concern over increases in federal deficit
- Concern over increases in state obligations
- Legislative control of state budget
- Legislative control over policy issues
NATIONAL OVERVIEW
APPROVAL OF FEDERAL FUNDS

States requiring federal funds to be approved before accepted or spent on a state level

- General statutory approval process
- Statutory process for some types
- Approval required but no strict process
- No statutory process

Source: NCSL, Utah Office of Legislative Research and General Counsel
States requiring federal funds to be approved before accepted or spent on a state level

- General statutory approval process
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Source: NCSL, Utah Office of Legislative Research and General Counsel
States requiring federal funds to be approved before accepted or spent on a state level

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Source: NCSL, Utah Office of Legislative Research and General Counsel
States requiring federal funds to be approved before accepted or spent on a state level

- General statutory approval process: 34 states
- Statutory process for some types: 4 states
- Approval required but no strict process: 11 states
- No statutory process: 5 states

Source: NCSL, Utah Office of Legislative Research and General Counsel
Balance of Power

Approval power generally vested in Legislative vs. Executive branch

Source: NCSL, Utah Office of Legislative Research and General Counsel
WHY SHOULD I CARE?

• On average, 40% of total state revenue is federally sourced.

  Top Five: South Dakota (55.2%); Rhode Island (54.7%); Louisiana (54.2%); Arizona (51.7%); Georgia (49.6%)

MEANS OF CONTROL

- MONITORING AND APPROVAL

Knowing commitments in advance
MEANS OF CONTROL

- MONITORING AND APPROVAL
  Knowing commitments in advance

- CONDITIONAL APPROPRIATIONS
  Regulating use of state-appropriated funds
1. Review grant applications
2. Attach intent language to appropriations
3. Prepare contingency plans
Utah Code §63J-5-201

- Primary Review Process During Annual Appropriations
Primary Review Process During Annual Appropriations

- Agencies submit grants to Governor’s budget office

Utah Code §63J-5-201
GRANTS REVIEW
FEDERAL FUNDS

Utah Code § 63J-5-201

• Primary Review Process During Annual Appropriations
  • Agencies submit grants to Governor’s budget office
  • Governor submits “federal funds request summary” to appropriations subcommittees
Utah Code §63J-5-201

- Primary Review Process During Annual Appropriations
  - Agencies submit grants to Governor’s budget office
  - Governor submits “federal funds request summary” to appropriations subcommittees
  - Subcommittees approve and/or deny based on grant detail
Primary Review Process During Annual Appropriations

- Agencies submit grants to Governor’s budget office
- Governor submits “federal funds request summary” to appropriations subcommittees
- Subcommittees approve and/or deny based on grant detail
- Executive committee may change subcommittee’s recommendation

Utah Code §63J-5-201
Primary Review Process During Annual Appropriations

- Agencies submit grants to Governor’s budget office
- Governor submits “federal funds request summary” to appropriations subcommittees
- Subcommittees approve and/or deny based on grant detail
- Executive committee may change subcommittee’s recommendation
- Whole Legislature appropriates

Utah Code §63J-5-201
GRANTS REVIEW
FEDERAL FUNDS

INTERIM PROCESS FOR NEW OR CHANGED GRANTS

- LOW IMPACT GRANT
  - Up to $1 mil from Feds
  - No permanent employees
  - No state match
GRANTS REVIEW
FEDERAL FUNDS

INTERIM PROCESS FOR NEW OR CHANGED GRANTS

- **LOW IMPACT GRANT**
  - Up to $1 mil from Feds
  - No permanent employees
  - No state match

- **MEDIUM IMPACT GRANT**
  - >$1 mil & <$10 mil from Feds
  - < 11 permanent employees
  - Up to $1 mil state match

GOVERNOR

EXEC CTTE
GRANTS REVIEW
FEDERAL FUNDS

INTERIM PROCESS FOR NEW OR CHANGED GRANTS

HIGH IMPACT GRANT

- $10 mil plus from Feds
- > 10 permanent employees
- > $1 mil state match
HIGH IMPACT GRANT

- $10 mil plus from Feds
- >10 permanent employees
- >$1 mil state match

Rules apply to unanticipated grants as well as previously approved grants that grow by more than 25%
LEGISLATIVE CONTROL
Congressional conundrum
LEGISLATIVE CONTROL

- Congressional conundrum
- Contractual conundrum
Intent Language

“It is the intent of the Legislature that...
APPROPRIATIONS CONTROL

Intent Language

“It is the intent of the Legislature that...

- Penalties for violating intent language
- Threat of reduced appropriations / retaliation by Legislature
- Direct enforceability is likely limited
  - Intent language < Statute
Intent language rules:

- Language must be directly connected to the appropriation
Intent language rules:

- Language must be directly connected to the appropriation

- Appropriate uses for intent language:
  - Specify the use of the appropriation for a specific program or purpose
<table>
<thead>
<tr>
<th>1000</th>
<th>ITEM 92</th>
<th>To Department of Workforce Services - Operations and Policy</th>
</tr>
</thead>
<tbody>
<tr>
<td>1001</td>
<td></td>
<td>From General Fund</td>
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<tr>
<td>1002</td>
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<td>From Federal Funds</td>
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<tr>
<td>1003</td>
<td></td>
<td>From Federal Funds - American Recovery and Reinvestment Act</td>
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<tr>
<td>1004</td>
<td></td>
<td>From Dedicated Credits Revenue</td>
</tr>
<tr>
<td>1005</td>
<td></td>
<td>From General Fund Restricted - Special Administrative Expense Account</td>
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<tr>
<td>1006</td>
<td></td>
<td>From Unemployment Compensation Trust</td>
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<tr>
<td>1007</td>
<td></td>
<td>From Revenue Transfers - Medicaid</td>
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<tr>
<td>1008</td>
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<td>Schedule of Programs:</td>
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<td></td>
<td>1009</td>
<td>Information Technology</td>
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<td></td>
<td>1010</td>
<td>Workforce Development</td>
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<td>1011</td>
<td>Eligibility Services</td>
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<td></td>
<td>1012</td>
<td>Facilities and Pass-Through</td>
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<tr>
<td></td>
<td>1013</td>
<td>Other Assistance</td>
</tr>
</tbody>
</table>

|       |        | 1014 | It is the intent of the Legislature that the Reed Act funds |
|       |        |      | appropriated for FY 2013 to the Department of Workforce     |
|       |        |      | Services be used for workforce development and labor        |
|       |        |      | exchange activities.                                        |
Intent language rules:

- Language must be directly connected to the appropriation

Appropriate uses for intent language:

- Specify the use of the appropriation for a specific program or purpose
- Designate appropriated funds as non-lapsing
ITEM 33    To Department of Transportation - Safe Sidewalk Construction

The Legislature intends that the funds appropriated from the Transportation Fund for pedestrian safety projects be used specifically to correct pedestrian hazards on State highways.

The Legislature also intends that local authorities be encouraged to participate in the construction of pedestrian safety devices. The appropriated funds are to be used according to the criteria set forth in Section 72-8-104, Utah code Annotated, 1953. The funds appropriated for sidewalk construction shall not lapse. If local governments cannot use their allocation of Sidewalk Safety Funds in two years, these funds will be available for other governmental entities which are prepared to use the resources. It is the intent of the Legislature that local participation in the Sidewalk Construction Program is on a 75% state and 25% local match basis.
Intent language rules:

- Language must be directly connected to the appropriation
- Appropriate uses for intent language:
  - Specify the use of the appropriation for a specific program or purpose (within the scope of the appropriation)
  - Designate specific appropriated funds as non-lapsing
  - Authorize or direct the expenditure of contingent revenues or internal service funds
To Department of Human Services - Division of Child and Family Services

From General Fund, One-time
(2,260,400)
From Federal Funds
1,652,000

Schedule of Programs:
Out-of-Home Care
(2,136,800)
Minor Grants
365,000
Adoption Assistance
1,163,400

Under Section 63J-1-603 of the Utah Code the Legislature intends that any remaining funds provided by item 16, Chapter 4 of the Laws of Utah 2011 for the Division of Child and Family Services not lapse at the close of Fiscal Year 2012. It is further the intent of the Legislature that nonlapsing funds are to be used only for one-time costs associated with Adoption Assistance, Out of Home Care, Service Delivery, In-home Services, and SAFE Management Information System modernization. If nonlapsing funds are to be used for ongoing programs, the division must first receive specific approval from the Social Services Appropriations Subcommittee in FY 2013 at either an interim meeting or during the 2013 General Session.
Intent language rules:

- Language must be directly connected to the appropriation

- Appropriate uses for intent language:
  - Specify the use of the appropriation for a specific program or purpose (within the scope of the appropriation)
  - Designate specific appropriated funds as non-lapsing
  - Authorize or direct the expenditure of contingent revenues or internal service funds
  - Direct a government entity to perform a non-binding study and report to the Legislature
ITEM 90  To Department of Health - Medicaid Optional Services

<table>
<thead>
<tr>
<th>Source of Funding</th>
<th>Amount</th>
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<tbody>
<tr>
<td>From General Fund</td>
<td>18,614,900</td>
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<tr>
<td>From Federal Funds</td>
<td>16,889,900</td>
</tr>
<tr>
<td>From Federal Funds - American Recovery and Reinvestment Act</td>
<td>74,000,000</td>
</tr>
<tr>
<td>From General Fund Restricted - Nursing Care Facilities Account</td>
<td>1,197,000</td>
</tr>
<tr>
<td>From Transfers - Medicaid - Department of Human Services</td>
<td>6,790,700</td>
</tr>
</tbody>
</table>

Schedule of Programs:

- Pharmacy: (4,938,800)
- Home and Community Based Waiver Services: 11,357,100
- Clawback Payments: 5,800,000
- Hospice Care Services: 1,197,000
- Other Optional Services: 104,077,200

The Legislature intends that the Department of Health fund the cost of covering emergency dental services for adults on Medicaid within existing appropriations up to $250,000 General Fund for FY 2013 as an offset for current emergency room expenditures. If existing appropriations prove to be insufficient, the Legislature intends that the Department of Health request funding in future years to cover the costs of providing these services. The Department shall report to the Office of the Legislative Fiscal Analyst by January 1, 2013 on the net cost of providing these services. The report shall include recommendations if the services should be continued.
Dangers of intent language

Limited enforceability

Easy target for “under the radar” legislation
Intent language rules:
Intent language rules:

Prohibited intent language:
Intent language rules:

- Prohibited intent language:
  - Enacts, amends, or repeals substantive law
  - Contradicts existing law
  - Creates a new program
  - Issues or requires the issuance of a contract or request for proposal
  - Awards a contract not specifically authorized by statute
  - Violates separation of powers provisions (e.g. Micromanages executive branch)
All General Funds appropriated to the Executive Director Operations line item are contingent upon expenditures from *Federal Funds - American Recovery and Reinvestment Act* (H.R. 1, 111th United States Congress) not exceeding amounts appropriated from *Federal Funds - American Recovery and Reinvestment Act* in all appropriation bills passed for FY 2010. If expenditures in the Executive Director Operations line item from *Federal Funds - American Recovery and Reinvestment Act* exceed amounts appropriated to the Executive Director Operations line item from *Federal Funds - American Recovery and Reinvestment Act* in FY 2010, the Division of Finance shall reduce the General Fund allocations to the Executive Director Operations line item by one dollar for every one dollar in *Federal Funds - American Recovery and Reinvestment Act* expenditures that exceed *Federal Funds - American Recovery and Reinvestment Act* appropriations.
WHY INTENT LANGUAGE WORKS IN UTAH
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- We’re nice
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- Legislature and legislative leadership enforce it
- Clear, mandatory process
- Centralized financial entity
BUDGET CONTINGENCIES

- Potential shortfall in revenues due to federal government cuts
BUDGET CONTINGENCIES

- Potential shortfall in revenues due to federal government cuts
- Contingency plan for state financing in the case of losses in federal funds
State Contingency Plans

Direct, informal poll of state legislatures

- Making contingencies: 36 states
- No contingencies yet: 14 states

Source: Utah Office of Legislative Research and General Counsel
NATIONAL OVERVIEW
BUDGET CONTINGENCIES

NCSL Survey
State planned responses to decreasing federal funds

- Detailed planning
- Prepared impact estimates
- Planned for cutbacks
- Saving money
- Thought about it

Source: NCSL, Utah Office of Legislative Research and General Counsel
Executive branch agencies file yearly report:

2011 HB 138
Executive branch agencies file yearly report:

- Total federal money received
- Total federal money appropriated by Legislature
- % of budget that is federal money
- Budget plans for federal cuts at the 5% and 25% levels
- Filed with state finance department
BUDGET CONTINGENCIES

Executive branch agencies file yearly report:
- Total federal money received
- Total federal money appropriated by Legislature
- % of budget that is federal money
- Budget plans for federal cuts at the 5% and 25% levels
- Filed with state finance department

State finance department:
- Prepares summary report showing grand totals
- List of non-compliant agencies
BUDGET CONTINGENCIES

2011 HB 138

- Report to Legislature’s Executive Appropriations Committee
BUDGET CONTINGENCIES

2011 HB 138

- Report to Legislature’s Executive Appropriations Committee

- Committee may:
  - Call agencies to explain plans
  - Recommend changes in legislative appropriations to the agency
CONTINGENCY THROUGH RISK MANAGEMENT

- INCREASE EXISTING RESERVE THRESHOLDS
  - Size of rainy day funds can cover revenue volatility
  - Can factor grant risk into revenue error rates
  - 2012 SB 280

This bill:
- modifies the limits on the General Fund Budget Reserve Account;
- modifies the limits on the Education Budget Reserve Account;
FINANCIAL READY UTAH

- Rainy Day Funds Caps (2013 HB195)
- Federal Funds Commission (2013 SB70)
- Local Government Contingency Planning (2013 HB205)
- Local Government Rainy Day Funds (2013 SB158)
- Legislative Federal Funds Forecast (2013 SJ R7)
- Gubernatorial Federal Funds Assessment (2013 SB2013)
QUESTIONS?

- Jonathan Ball, Legislative Fiscal Analyst
- Eric Weeks, Deputy General Counsel

Utah State Legislature