



**OFFICE OF THE LEGISLATIVE AUDITOR**  
STATE OF MINNESOTA

**EVALUATION REPORT**

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# **Fiscal Notes**

**FEBRUARY 2012**

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## OFFICE OF THE LEGISLATIVE AUDITOR

STATE OF MINNESOTA • James Nobles, Legislative Auditor

February 2012

Members of the Legislative Audit Commission:

Fiscal notes are an important part of the legislative process. Legislative committees request fiscal notes to help them determine the likely fiscal impact of proposed legislation, and legislators expect fiscal notes to be timely, reasonable, and objective.

By its nature, the fiscal note process is challenging. Agencies are expected to estimate the impact a bill would have over the course of several years, and these estimates are often prepared with short timelines during the height of the legislative session. Given these challenges and the importance of fiscal notes, you asked the Office of the Legislative Auditor to evaluate the fiscal note process.

We concluded that, for the most part, fiscal notes have been prepared on the basis of plausible assumptions. However, some estimates are questionable or have errors, and agencies need to better explain the assumptions underlying their estimates. We make various recommendations for improvements.

While legislators are always free to consider various sources of information during the budget process, we think the role of fiscal notes should be strengthened. Therefore, with certain exceptions, we recommend that the Legislature require—in statute or legislative rules—the preparation of a fiscal note for each bill before it is considered for passage by a legislative finance committee.

This report was researched and written by Joel Alter (evaluation manager), Julie Trupke-Bastidas, and Dan Jacobson. We received the full cooperation of the Minnesota Department of Management and Budget, as well as state agency fiscal note coordinators, legislative fiscal analysts, and others.

Sincerely,

A handwritten signature in black ink that reads "Jim Nobles". The signature is written in a cursive, flowing style.

James Nobles  
Legislative Auditor



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# Summary

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**Minnesota’s process for estimating the fiscal impact of proposed legislation would benefit from clearer statutory requirements, more detailed explanations of assumptions, and better communication between legislators and agencies.**

## Key Facts and Findings:

- Fiscal notes provide the Legislature with estimates of the financial impacts of proposed legislation and are an important—but sometimes controversial—part of the legislative process. (pp. 1, 3-7)
- Most—but not all—fiscal notes we reviewed appeared to be based on plausible assumptions. However, many did not adequately explain their assumptions or calculations, making it harder for users to assess their reasonableness, and fiscal notes occasionally contained errors. (pp. 48, 52, 54)
- The law that established Minnesota’s fiscal note process lacks some important details. It does not require preparation of fiscal notes before the Legislature acts on bills, and it does not specify which types of impacts must be assessed. (pp. 4, 20)
- In 2011, some legislative committees used alternatives to fiscal notes to obtain estimates of proposed legislation’s impacts. These estimates were not subject to review by the Minnesota Department of Management and Budget (MMB) or readily available to the public. (p. 16)
- Unlike Minnesota, 31 states rely primarily on legislative offices to prepare fiscal notes. Regardless of which branch of government prepares a state’s fiscal notes, expertise and data from affected

agencies (primarily in the executive branch) is usually required. (p. 19)

## Key Recommendations:

- The Legislature should require, with certain exceptions, that bills have fiscal notes before finance committees vote on their passage. (p. 73)
- The Legislature should amend state law so that requests for fiscal notes on not-yet-introduced bill language and the resulting fiscal notes are classified as “not public.” (p. 74) Requests for fiscal notes on introduced bills (and the resulting fiscal notes) would remain available to the public, consistent with existing law.
- MMB should help ensure that agencies clearly explain the estimates in their fiscal notes. (p. 78) MMB should improve its fiscal note instructions to agencies in certain areas, and it should improve its oversight of multi-agency fiscal notes. (pp. 79, 81)
- For large-scale or controversial bills, legislators and affected agencies should communicate more effectively, especially regarding bill language and fiscal note assumptions. (pp. 76, 83)
- Agencies should make stronger efforts in fiscal notes to discuss the likely impact of bills on local entities, such as counties, cities, and school districts. (p. 82)

## Report Summary

“Fiscal notes” are documents that estimate the budgetary impact of proposed legislation (referred to as “bills”). They may be requested by the chairs of the House of Representatives Ways and Means Committee, the Senate Finance Committee, or committees to which a bill has been referred.

A large majority of fiscal notes are prepared by executive branch agencies affected by bills. All fiscal notes must be approved by the executive branch’s budget agency (the Minnesota Department of Management and Budget, or MMB).

**Estimates of future impacts are based on assumptions and calculations that should be clearly explained and not simply asserted.**

MMB has instructed agencies to prepare fiscal notes with dollar estimates of bills’ future impacts, whenever possible. These estimates rely on agencies’ assumptions, so it is important for fiscal notes to be “transparent.” Rather than merely asserting that a bill will have a particular impact, fiscal notes are supposed to discuss the basis for the estimates.

Most fiscal notes appear to be based on plausible assumptions. But many fiscal notes do not adequately explain their estimates or show their calculations, making it harder to assess their reasonableness. MMB should remind agencies about the importance of clearly explaining, justifying, and documenting fiscal note estimates. This is one of several areas in which MMB should provide additional guidance.

Occasionally, fiscal notes contain errors. For example, a 2009 fiscal note did not include the impact of an entire section of a tax bill. More commonly, fiscal notes are based on debatable assumptions. Therefore, discussions of fiscal note estimates should be viewed as a natural part of the legislative budget process.

Agencies have struggled to prepare dollar estimates of potential impacts for certain types of bills. For pension bills, MMB should consider modifications to the fiscal note format so these notes can provide more useful information. For bills proposing large-scale reforms, improved communication between bill authors and agencies would facilitate greater understanding and maybe better estimates—for example, through clarification of bill language or agreement on fiscal note assumptions.

At times, legislators have expressed concern that agencies’ fiscal notes may be biased. In fact, legislative and executive branch budget staff perceive that agency self-interest occasionally affects fiscal note estimates or assumptions. However, fiscal notes rarely contain direct statements by agencies about the merits of the relevant bills. Also, agencies’ fiscal note coordinators cited no instance in recent years (under two gubernatorial administrations) in which agency officials or staff from the Governor’s office have intervened inappropriately in the fiscal note process. There will always be potential for bias in fiscal notes. But concerns about the reasonableness of fiscal notes—including their objectivity—are best addressed when fiscal note assumptions and calculations are transparent and open to scrutiny.

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**Legislators sometimes question whether agencies’ estimates are reasonable, so it is important for fiscal notes to show and explain the basis for these estimates.**

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**Whenever possible, legislative finance committees should consider the estimates of an “official” fiscal note before voting on whether to pass a bill.**

**Fiscal notes are only advisory, but they should play a key role in budget discussions.**

Fiscal notes can provide important context for discussion of bills in committees and floor debates. Although fiscal notes serve only an advisory function in the state budget process, they may affect legislative decisions about whether to hear or pass a bill, or how to fund a bill.

In 2011, there were more instances than in previous years where fiscal notes were not requested before committees acted on bills with a fiscal impact to the state. In the health and human services area, legislators often relied on “informal” estimates of fiscal impacts obtained from the affected agencies. Unlike “official” fiscal notes, informal estimates are not reviewed by MMB and are not posted on legislative Web sites.

Some requests for informal estimates have been made for not-yet-introduced legislation. Legislators have been reluctant to request “official” fiscal notes in such cases because fiscal notes (and their bill language) are not statutorily protected from public disclosure. Information in MMB’s Fiscal Note Tracking System can be viewed by anyone with access to this system. In contrast, statutes governing the Office of the Revisor classify draft bill language submitted to this office as “not public” data. The Legislature should classify as “not public” fiscal note requests and related documents for not-yet-introduced bill language.

However, the need to classify some early-stage documents should be balanced by ensuring that public, official fiscal notes are prepared whenever practical for introduced

bills that are receiving serious legislative consideration. Most states, unlike Minnesota, have language in statutes or legislative rules that specifies circumstances in which fiscal notes are required—for example, before a bill is heard in committee, or before a bill is considered for final passage.

With certain exceptions, the Legislature should require bills to have fiscal notes before finance committees vote on passage of those bills. An omnibus bill—which merges together bills that committees discussed previously—might not need its own fiscal note if fiscal notes were already prepared for its individual provisions. Also, legislative committees should have the option of voting to bypass the requirement for a fiscal note if an agency has not completed the fiscal note in a timely manner. Committees would still be able to determine how, if at all, to use fiscal notes for budgeting purposes.

**Fiscal notes provide limited information on local impacts.**

Local governments—such as counties, cities, and school districts—often administer state programs. State law does not require fiscal notes to address bills’ local impacts, but MMB has instructed state agencies to do so. About 38 percent of fiscal notes indicate that the relevant bills would have local impacts. But fiscal notes generally do not estimate the bills’ dollar impacts on local governments, and some have fairly limited discussions of local impacts. Even if estimates of dollar impacts are not feasible, legislators would benefit from improved agency discussions in fiscal notes of possible local impacts.

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**Minnesota is one of 11 states in which executive branch agencies are primarily responsible for preparing fiscal notes.**

State law also authorizes certain legislative leaders to request “local impact notes,” specifically for the purpose of estimating bills’ local costs. These notes are coordinated by MMB, often with data or input from local officials. But completion of a local impact note usually takes much longer than completion of a fiscal note, and few have been requested. Since these notes were first authorized in 1998, an average of just 3.6 local impact notes have been prepared annually.

**For the most part, agencies have prepared fiscal notes in a timely manner.**

When a legislative committee requests a fiscal note, the committee staff can indicate a date by which the note should be completed. If no date is specified, the “default” due date is five working days after the request, according to MMB policy.

Since 2001, 31 percent of fiscal notes have been completed by their due dates. However, this is not necessarily problematic for cases in which bills have not been scheduled for hearings.

In fact, legislative fiscal analysts and MMB budget staff perceive that the timing of fiscal note completion has, more often than not, met the Legislature’s needs. Still, several changes could improve the timeliness of the fiscal note process. Legislative committees should, when possible, plan their agendas far enough in advance so that agencies have time to prepare fiscal notes, especially in the case of complex bills.

Also, fiscal notes assigned by MMB to multiple agencies have been less timely than single-agency fiscal notes, and MMB should improve its

coordination of this process. To foster more realistic due dates for fiscal notes, MMB should use a default due date longer than five working days while still allowing legislative staff to set earlier due dates for high priority bills.

**Nearly all states’ legislatures rely on fiscal notes, but the agencies assigned to prepare them differ.**

Minnesota’s fiscal note law—enacted in 1974—is brief and needs some clarification. For example, the law does not state that a fiscal note is intended to assess the likely impact of proposed legislation, even though this purpose has been widely understood. Also, the law says fiscal notes shall “cite the effect in dollar amounts,” but it does not indicate whether fiscal notes are to address impacts on state government, local governments, businesses, or individuals.

All states except Hawaii have a fiscal note process. By our estimates, primary responsibility for fiscal notes has been assigned to legislative agencies in 31 states. Executive branch agencies are responsible for fiscal notes in 11 states, including Minnesota. In the remaining seven states, the legislative and executive branches share significant responsibilities for preparing fiscal notes.

It is unclear whether assigning responsibility for preparing or overseeing fiscal notes to legislative staff rather than executive branch agencies would be superior to Minnesota’s current approach. Legislatively prepared fiscal notes would still rely considerably on executive branch data and estimates, and this approach would require the expense of additional legislative staff.

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# Introduction

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When the Legislature considers bills, it needs credible, timely estimates of the proposed legislation’s fiscal impacts. For this purpose, legislative committees often ask state agencies to prepare documents called “fiscal notes.” However, legislators of both major political parties have sometimes criticized individual fiscal notes or the process by which they have been prepared. Also, the absence of fiscal notes for certain spending bills in 2011 became a point of contention in discussions between executive and legislative branch leaders.

In May 2011, the Legislative Audit Commission directed the Office of the Legislative Auditor to evaluate Minnesota’s fiscal note process. Our evaluation addressed the following questions:

- **To what extent have fiscal notes provided legislators with timely and credible information? How have these notes been used in the state’s budget process?**
- **How does Minnesota’s approach to estimating the fiscal impact of bills compare with the approaches of other states?**
- **How could Minnesota’s fiscal note process be improved? Is there a need to change the content of fiscal notes, or the way fiscal notes are developed, overseen, or used?**

State law gives the Minnesota Department of Management and Budget (MMB) responsibility for establishing fiscal note procedures to be used by state agencies. Throughout this report, we use the term “agency” broadly to refer to a variety of executive, judicial, and legislative branch organizations that prepare fiscal notes in accordance with MMB’s direction.<sup>1</sup>

MMB maintains an information system—the Fiscal Note Tracking System—that contains information on all fiscal notes. We obtained data from MMB on all fiscal notes requested from the 2001 through 2011 legislative sessions. We used these data to analyze the use and timeliness of fiscal notes. We also interviewed MMB staff about the agency’s role in approving fiscal notes and overseeing the fiscal note process.

In addition, we reviewed in detail a sample of fiscal notes from the 2009, 2010, and 2011 legislative sessions. We selected a random sample of 50 fiscal notes from this period.<sup>2</sup> Also, we selected about 25 additional fiscal notes from this

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<sup>1</sup> A wide variety of agencies prepare fiscal notes, including cabinet-level agencies, constitutional offices, statewide public pension funds, public higher education systems, regional organizations (such as the Metropolitan Council), and various state boards and commissions.

<sup>2</sup> The sample was stratified based on the type and extent of the fiscal notes’ estimated impact.

period that had been a source of discussion or debate during the legislative process. We examined whether each fiscal note's estimates were "transparent"—that is, based on assumptions and methods that were clearly described and explained. We also considered the reasonableness of the underlying assumptions for each fiscal note, and we examined the notes for readability, objectivity, timeliness, and compliance with state requirements. We often solicited comments on these fiscal notes from legislative and MMB staff and listened to recordings of relevant legislative hearings. We sometimes asked the agencies that authored the fiscal notes to provide supporting documentation or answer questions about the notes.

We used surveys to obtain information and opinions about the fiscal note process from several groups: legislative fiscal analysts, state agency fiscal note coordinators, and MMB budget staff.<sup>3</sup> We solicited input from the chair and ranking minority member of each legislative finance committee. We also conducted interviews with state agency officials, legislators, legislative staff, and local government representatives.

We examined existing research regarding fiscal notes but found it is very limited. We obtained the findings of a 1998 National Conference of State Legislatures survey regarding fiscal notes and a subsequent report.<sup>4</sup> However, because this information was more than a decade old, we contacted officials in all 50 states and the federal government to better understand the roles of the executive and legislative branches in their fiscal note processes. We also reviewed other states' statutes, legislative rules, and guidance related to fiscal notes, and we examined samples of other states' fiscal notes.

As part of our evaluation, we examined "local impact notes," which are distinguished in statute from fiscal notes.<sup>5</sup> Local impact notes are infrequently requested by the Legislature, but they assess the likely impact of bills on local governmental units. Our evaluation did not look at "revenue estimates," which are prepared by the Department of Revenue to estimate the impact of proposed tax-related legislation.<sup>6</sup> We heard relatively few concerns about revenue estimates.

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<sup>3</sup> We sent surveys to 22 House and Senate fiscal analysts in June 2011. We received responses from 10 (45 percent) and individually interviewed several of the non-respondents. We also selected a sample of 29 agencies that prepared fiscal notes in 2011, including the 26 non-legislative agencies with the largest number of fiscal notes prepared and 3 randomly selected agencies that had prepared a smaller number of notes. We surveyed the fiscal note coordinator of each of these agencies in September 2011, and we received responses from 26 (90 percent). Finally, we sent surveys to 15 MMB executive budget officers and budget team leaders in September 2011, and we received responses from all 15 (100 percent).

<sup>4</sup> A summary of the survey findings is presented in Violet Baffour, *The Fiscal Note Process in State Legislatures* (North Carolina General Assembly, Fiscal Research Division, 1999).

<sup>5</sup> Local impact notes are authorized by *Minnesota Statutes* 2011, 3.987. They are coordinated by MMB, but they are not subject to the statutory requirements for fiscal notes specified in *Minnesota Statutes* 2011, 3.98.

<sup>6</sup> Revenue estimates are not overseen by MMB and are not subject to the fiscal note requirements outlined in *Minnesota Statutes* 2011, 3.98.

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# The Fiscal Note Process

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In this chapter, we provide information about what fiscal notes are, and how they are used by the Legislature. We discuss the process for requesting and developing fiscal notes, as well as the number and types of fiscal notes that have been prepared in recent years. We also discuss fiscal note practices of other states and the federal government.

## WHAT IS A FISCAL NOTE?

As stated by one Minnesota legislative office, fiscal notes “put a price tag on proposed legislation.”<sup>1</sup> More specifically:

- **Fiscal notes provide the Legislature with estimates of the financial impacts of proposed legislation.**

Commonly referred to as House or Senate “files” (or generically as “bills”), proposed legislation often has financial implications. For example, bills may propose changes to the eligibility criteria for state programs or services, a consolidation of state agencies, or a change in the amount the state contributes to its employees’ pension funds. These types of proposals—and a wide range of others—have potential financial impacts that need to be analyzed as bills proceed through the legislative process. Fiscal notes are one tool the Legislature uses to obtain that analysis. In simple terms, legislators use fiscal notes to help them understand the potential impacts proposed legislation might have on the state budget.

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**In Minnesota, executive branch agencies prepare most fiscal notes.**

By law, fiscal notes are prepared in response to requests from the chairs of legislative committees that have been assigned jurisdiction over bills introduced in the Senate or House of Representatives.<sup>2</sup> Fiscal notes are generally prepared by the organizations that administer the programs or activities most directly affected by the proposed legislation. While executive branch agency staff prepare most fiscal notes, the Supreme Court, on behalf of the judicial branch, is also subject to the fiscal note law.<sup>3</sup> In addition, legislative agencies—such as the Legislative Coordinating Commission and Office of the Legislative Auditor—must sometimes prepare fiscal notes that pertain to bills affecting the legislative branch. However, unlike the practice in many states (discussed later in this chapter), Minnesota’s legislative agencies do not prepare fiscal notes on behalf of the executive or judicial branch agencies.

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<sup>1</sup> Gary Karger, Minnesota House of Representatives Fiscal Analysis Department, “Fiscal Notes,” *Money Matters*, no. 10.01 (January 2010), 1.

<sup>2</sup> *Minnesota Statutes* 2011, 3.98, subd. 1.

<sup>3</sup> In 1991, the Legislature amended state law to specify that the Supreme Court—including agencies, committees, and commissions it supervises or appoints—is subject to the fiscal note law. See *Laws of Minnesota* 1991, chapter 292, art. 8, sec. 1.

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**State law requires fiscal notes to specify the assumptions underlying their estimates.**

Table 1.1 shows statutory requirements regarding the contents of fiscal notes. Because fiscal notes are estimates of future impacts, one of the most important statutory requirements is that fiscal notes should specify “the assumptions used in determining the cost estimates.” But, to a significant degree, Minnesota’s fiscal note process has relied on implied understandings and administrative guidance rather than explicit provisions in state law. In fact, Minnesota’s fiscal note law—*Minnesota Statutes* 2011, 3.98—provides little guidance as to what financial impacts are to be estimated and included in fiscal notes. The law simply requires that a fiscal note “cite the effect in dollar amounts;” it does not specify what “the effect” refers to.<sup>4</sup> For example, the law does not indicate whether fiscal notes are supposed to address impacts on state government, local governments, businesses, or individuals. To help agencies fulfill the requirements in state law, the commissioner of the Minnesota Department of Management and Budget (MMB) is mandated to “prescribe a uniform procedure” for agencies to use when developing fiscal notes.<sup>5</sup>

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**Table 1.1: Statutory Requirements Regarding the Content of Fiscal Notes**

Fiscal notes, where possible, shall:

- Cite the effect in dollar amounts;
- Cite the statutory provisions affected;
- Estimate the increase or decrease in revenues or expenditures;
- Include the costs which may be absorbed without additional funds;
- Include the assumptions used to determine the cost estimates; and
- Specify any long-range implications.

SOURCE: *Minnesota Statutes* 2011, 3.98, subd. 2(a).

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Minnesota statutes contain references to two other types of fiscal estimates that are distinct from fiscal notes. First, a “local impact note” is an estimate of the local impact on each type of political subdivision that would result from proposed legislation.<sup>6</sup> The law assigns responsibility for coordinating local impact notes to MMB.<sup>7</sup> We briefly discuss the timeliness and content of local impact notes in chapters 2 and 3, respectively.

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<sup>4</sup> *Minnesota Statutes* 2011, 3.98, subd. 2(a)(1). In addition, the law does not explicitly define a fiscal note as a document that estimates the financial impact of proposed legislation.

<sup>5</sup> *Minnesota Statutes* 2011, 3.98, subd. 4.

<sup>6</sup> *Minnesota Statutes* 2011, 3.987, subd. 1. Local impact notes may be requested by the chair or ranking minority member of the House or Senate Tax Committee, the House Ways and Means Committee, or the Senate Finance Committee.

<sup>7</sup> To prepare local impact notes, MMB often obtains data or input from representatives of local government units or associations. In contrast to fiscal notes, which have a narrative section in which the responsible state agency can discuss a bill’s impact on local governments, local impact notes are stand-alone documents focused on providing, when possible, numeric estimates of a bill’s local impacts.

Second, “revenue estimates” may be requested by the chairs of the House or Senate tax committees. According to law, the Minnesota Department of Revenue shall prepare revenue estimates to determine “the effect on the state’s tax revenues which would result from the passage of a legislative bill establishing, extending, or restricting a tax expenditure.”<sup>8</sup> In addition, the department has historically prepared revenue estimates for the tax committees on other types of tax-related bills, although this is not specifically required by statute. Sometimes the Legislature has also requested that the Department of Revenue prepare fiscal notes for bills that would affect tax revenues; these fiscal notes are subject to MMB’s instructions and review, and they are recorded in MMB’s Fiscal Note Tracking System.<sup>9</sup> Often, however, legislative committees only request revenue estimates, not fiscal notes, for tax-related bills. In such cases, the Department of Revenue’s estimates would not be reviewed by MMB or recorded in MMB’s Fiscal Note Tracking System. As noted in the Introduction, we did not evaluate the Department of Revenue’s revenue estimates, except in cases where these estimates were incorporated into fiscal notes.

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**Fiscal notes are supposed to help legislators assess the likely budgetary impact of proposed legislation.**

## **ROLE OF FISCAL NOTES IN THE BUDGET PROCESS**

Minnesota state government has a biennial budget process. The Governor proposes a two-year budget to the Legislature in each odd-numbered year. The Legislature then enacts tax and spending bills with the intent of ensuring a balanced budget for the biennium.<sup>10</sup> The Governor and Legislature are assisted in this process by forecasts of state revenues and expenditures prepared by MMB. These forecasts are based on current laws, analysis of state and national economic outlooks, and projections for program caseloads, enrollments, and costs.

To the extent it is based on current law, the Governor’s budget is not subject to the fiscal note process and the requirements shown in Table 1.1. However, the Governor’s budget often includes “initiatives” that require a change in current law to be implemented. As those initiatives are introduced in bill form, they—like any other bill proposing a change in law—may be subject to a fiscal note assessment. This is consistent with the fact that:

- **The Legislature uses fiscal notes primarily to assess the incremental impacts of bills that propose changes to state law.**

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<sup>8</sup> *Minnesota Statutes* 2011, 270C.11, subd. 5.

<sup>9</sup> The department’s “revenue estimates” usually do not address administrative expenditures that might result from tax-related legislation. However, if a fiscal note is prepared for a tax-related bill, it would generally include the department’s estimates of the bill’s impact on revenues as well as any impacts on the department’s administrative expenditures. The fiscal note statute (*Minnesota Statutes* 2011, 3.98) says that fiscal notes shall estimate changes in “revenues or expenditures,” and it does not exclude tax revenue impacts from these estimates.

<sup>10</sup> The Minnesota Constitution does not have an explicit requirement for the state to have a balanced budget. But, because the constitution does not authorize state government to borrow money to pay for a deficit at the end of a biennium, the state must have a balanced budget at the end of each biennium. See House of Representatives Research Department, *State Budget Process* (St. Paul, October 2008).

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**Fiscal notes provide advice to the Legislature, but they are not binding.**

However, the Legislature is not obligated by statutes or legislative rules to accept the estimates in fiscal notes. In fact, rules adopted by Minnesota’s House of Representatives and Senate do not use the term “fiscal note,” nor do they discuss the use of fiscal notes in the legislative process. A House rule requires the House Ways and Means Committee to “make available a summary of the estimated fiscal effect on the general fund” of each bill referred to this committee and reported by this committee, but the rule does not indicate the role, if any, of fiscal notes in preparing this summary.<sup>11</sup> The Senate does not have a similar rule. The House and Senate have generally regarded fiscal notes as advisory in nature. As the Speaker of the House said in 2011:

[T]here are times when fiscal notes do not accurately reflect the underlying legislation. In those cases, the Minnesota Legislature will adjust the numbers or legislation. Fiscal notes have been, and will continue to be, advisory to the legislative branch.<sup>12</sup>

Some types of fiscal notes have been more likely than others to affect legislative appropriations or budget assumptions. For example, the state is obligated to make certain health care and K-12 education expenditures, based on statutory eligibility requirements and program enrollments. Fiscal notes for bills that would affect these programs or their funding formulas have typically been used when the Legislature makes assumptions about future expenditures or revenues.<sup>13</sup> In contrast, fiscal notes that estimate costs or savings related to changes in agencies’ administrative activities have been less likely to be used by the Legislature for budget purposes. The Legislature may decide, for instance, that an agency should use its existing budget to pay for a cost identified in a fiscal note (such as the cost of preparing a report required in a bill) rather than receiving an increased appropriation for this purpose.

Although Minnesota’s laws and legislative rules do not prescribe specific roles for fiscal notes,

- **Fiscal notes often provide important information about bills being considered in legislative committees and House and Senate floor debates.**

Committees of the Minnesota Senate and House of Representatives play key roles in determining the fate of introduced legislation. An introduced bill is assigned to a committee, and bills sometimes need approval from multiple committees before they can be heard on the Senate or House floor. Some committees have been established to deal solely with finance-related issues, while some deal only with policy issues and others deal with a mix of finance and policy issues. Typically, legislation with potential expenditure impacts must be approved by at least one finance committee in a specialized subject area (such

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<sup>11</sup> House of Representatives Rule 4.03(i).

<sup>12</sup> Kurt Zellers, Speaker of the House of Representatives, letter to Governor Mark Dayton, April 19, 2011.

<sup>13</sup> When laws are passed that change such programs, the fiscal note provides the basis for adjustments made by the executive branch to its expenditure forecasts.

as the House Education Finance Committee) and then by a finance committee with broader responsibilities (the House Ways and Means Committee or the Senate Finance Committee) before being considered by the full House or Senate.

A written fiscal note—if one has been requested and completed—may help the chair of a legislative finance committee determine whether a bill should receive a committee hearing. If the bill is heard, the fiscal note may help the committee decide whether the bill should be passed, as introduced or as amended. As a bill proceeds toward passage by the full House or Senate, its fiscal note provides information that helps legislators consider the bill in the context of the state’s overall budget constraints.

Several legislators and legislative staff told us there is a need to improve the understanding of fiscal note practices among key participants in the legislative process. For example, they said there has been little or no discussion of fiscal note procedures and purposes in recent orientation sessions for new or returning legislators. Some said that new staff for legislative committees have not understood the process for requesting fiscal notes or have had unrealistic expectations for how quickly fiscal notes can be developed.

In addition, agencies’ fiscal note coordinators expressed to us their mixed perceptions about the Legislature’s use of fiscal notes, as shown in Table 1.2. Most coordinators thought their fiscal notes were usually (or more often) considered credible by legislators in 2011, but some thought legislators were inattentive to the assumptions behind the estimates. Coordinators expressed varying opinions about whether their agencies’ fiscal notes received sufficient consideration in the legislative budget process.

**Some agencies perceive that their fiscal notes have not received sufficient attention from legislators.**

**Table 1.2: Agency Perceptions About Legislative Uses of Fiscal Notes in the 2011 Legislative Session**

	Percentage of Agency Fiscal Note Coordinators Who Said:				
	Always or Almost Always	Usually	Some-times	Rarely or Never	Don't Know
Legislators viewed our agency's fiscal notes as credible. (N=25)	32%	32%	16%	0%	20%
Legislators paid attention to the assumptions stated in the fiscal notes our agency prepared. (N=25)	12	32	36	8	12
Our agency's estimates of the fiscal impacts of proposed legislation received sufficient consideration in the legislative budget process. (N=25)	16	32	24	8	20
For bills that passed, our fiscal notes influenced the amount of funding the Legislature appropriated. (N=24)	13	21	25	17	25

NOTE: Percentages do not sum to 100 due to rounding.

SOURCE: Office of the Legislative Auditor, survey of agency fiscal note coordinators, September 2011.

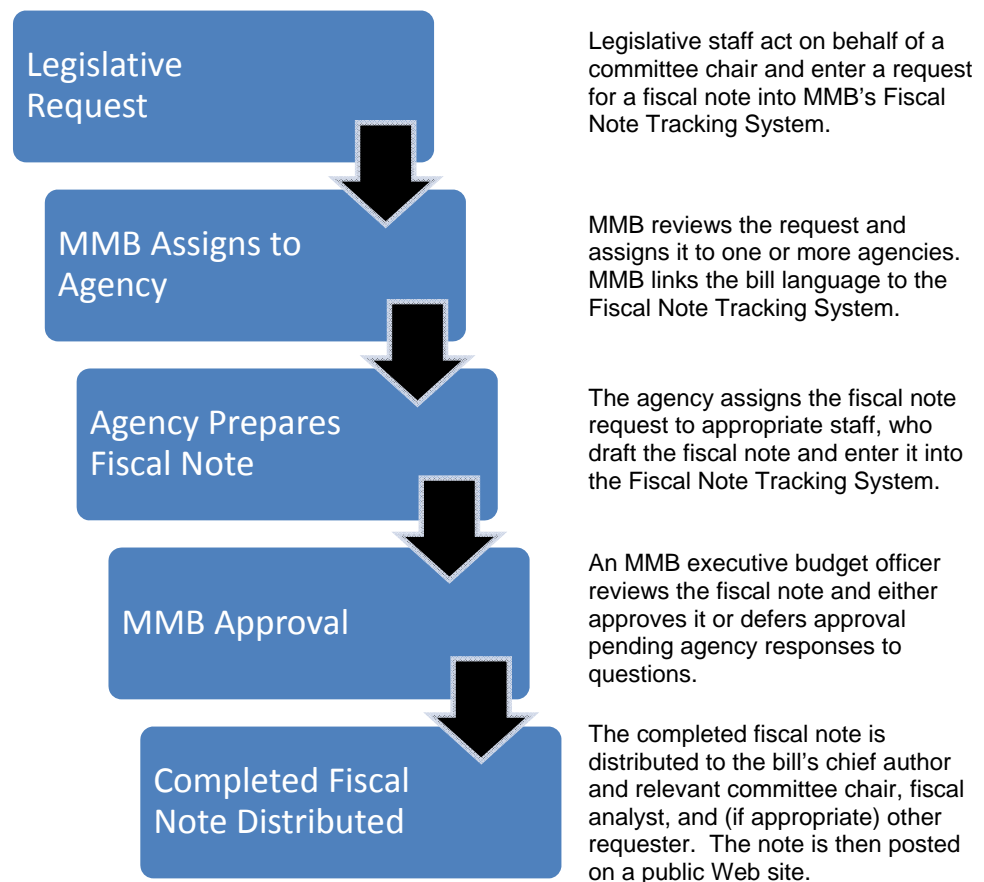
# REQUESTING AND PREPARING A FISCAL NOTE

## Steps in the Process

Figure 1.1 shows Minnesota's process for requesting and developing a fiscal note. State law says fiscal notes are prepared "at the request of the chair of the standing committee to which a bill has been referred, or the chair of the house of representatives Ways and Means Committee, or the chair of the senate Committee on Finance."<sup>14</sup> Fiscal notes may be requested for (1) bills as

**Agencies prepare fiscal notes in response to legislative requests.**

**Figure 1.1: Steps in the Fiscal Note Process**



NOTES: As discussed elsewhere, the process is slightly different for cases in which the fiscal note is assigned to multiple agencies. Also, it is worth noting that the process shown in this figure must be repeated for cases in which a new fiscal note is requested for an updated version of a bill on which a fiscal note has already been completed.

SOURCE: Adapted from Minnesota Department of Management and Budget, *[Fiscal Note] Policies and Procedures* (St. Paul, December 2010), 1-2.

<sup>14</sup> *Minnesota Statutes* 2011, 3.98, subd. 1.

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**The Minnesota Department of Management and Budget oversees the state's fiscal note process.**

introduced, (2) amended versions of bills, or (3) individual bill amendments. In addition, fiscal notes may be requested for bill language that has not yet been introduced in the House or Senate.<sup>15</sup> All fiscal note requests are entered into a centralized electronic information system (MMB's Fiscal Note Tracking System), usually by a nonpartisan legislative fiscal analyst or the administrator of a legislative finance committee.<sup>16</sup> MMB developed this information system in 1987. The system sets a due date of five working days from the request date unless the requester enters a different date.

MMB staff retrieve each legislative request for a fiscal note and assign it to one or more executive, judicial, or legislative agencies. Each hour, the Fiscal Note Tracking System sends e-mail notifications to the state agencies for which new fiscal note requests have been received. Each agency has a "fiscal note coordinator," and this person typically receives these requests and assigns them to appropriate staff within the agency. Using the Fiscal Note Tracking System, agency staff can obtain the relevant bill language online or from MMB.<sup>17</sup>

Agency staff may enter information into this online system at any time, using a fiscal note form developed by MMB. Anyone with authorized system access can view information entered into this system, even for fiscal notes that are not yet complete. When an agency has entered information and completed its internal review of the fiscal note, the agency electronically "signs off" on the note. MMB says that agencies have "primary responsibility" for the accuracy and completeness of their fiscal notes, but MMB budget officers also review each fiscal note for reasonableness, completeness, and conformity with relevant policies and procedures.<sup>18</sup> To approve a fiscal note, the MMB budget officer assigned to that agency electronically signs off on the note.<sup>19</sup> For a fiscal note assigned to multiple agencies, (1) each agency's portion of the fiscal note is approved by its assigned MMB executive budget officer and (2) the MMB budget officer for the designated "lead agency" also reviews the portions of the note drafted by each agency—to identify inconsistencies, conflicts, or omissions. The completed fiscal note for a bill may be revised—for example, to correct an error—but this requires MMB action to electronically remove the previous sign-offs of MMB and agency representatives. If a bill for which a fiscal note was

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<sup>15</sup> In the Fiscal Note Tracking System, fiscal notes are assigned numbers corresponding to their bill numbers. If legislators request fiscal notes for bills not yet introduced, MMB assigns these fiscal notes numbers between 9000 and 9999.

<sup>16</sup> Legislative fiscal analysts work with legislative committees and individual legislators to analyze spending requests, develop and analyze budget options, draft legislation to implement legislative budget decisions, track legislative decisions, and provide analysis for legislative oversight of enacted budgets.

<sup>17</sup> Individuals must receive authorization from MMB to access the Fiscal Note Tracking System. Authorized users—as approved individually by MMB—may include legislative staff, MMB budget staff, agency staff, and MMB administrative staff.

<sup>18</sup> Minnesota Department of Management and Budget, [*Fiscal Note Tracking System*] *Technical Manual* (also called "System Instructions") (St. Paul, December 2010), 32.

<sup>19</sup> When bills would affect state government functions administered by MMB, MMB prepares the fiscal note. Typically, MMB staff other than the agency's budget staff prepare MMB's fiscal notes, although budget staff review and approve MMB's fiscal notes.

previously prepared has been amended, the committee chair may request a new fiscal note based on the amended version of the bill.

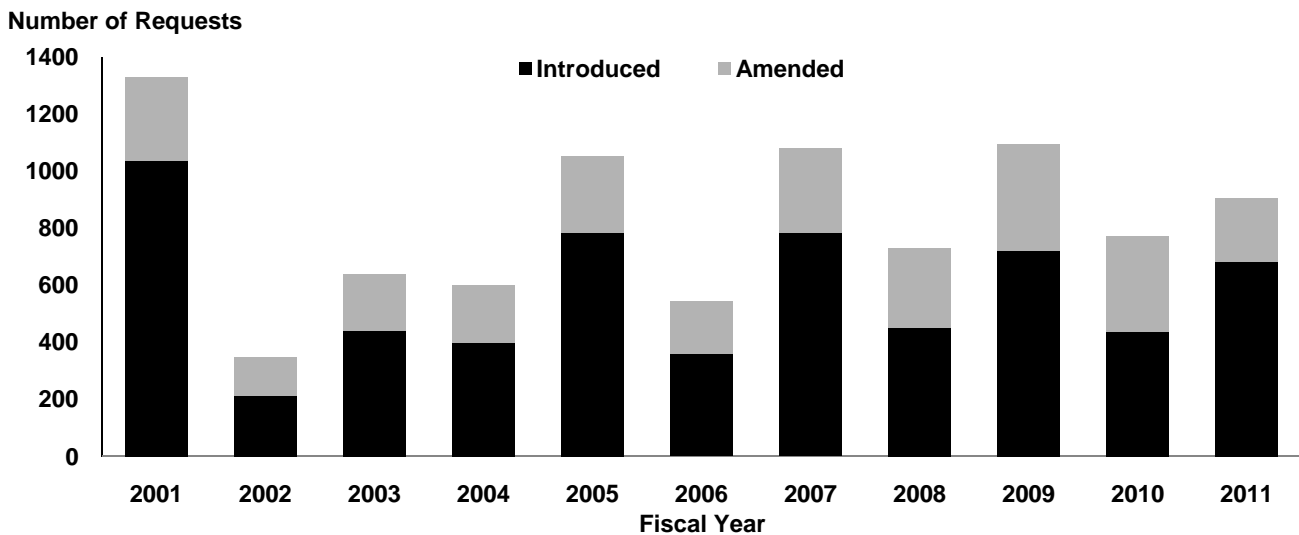
## Numbers and Types of Fiscal Notes

We examined trends in the number and type of fiscal notes requested and completed over the past 11 years. Our analysis of MMB’s Fiscal Note Tracking System data counted each request for a fiscal note on a different version of a bill as a separate fiscal note request. As discussed above, fiscal note requests can be made for (1) bills as originally introduced, (2) bills as amended, or (3) proposed amendments, which can be stand-alone language or a proposed revision to the latest version of a bill.<sup>20</sup> Fiscal note estimates are not updated when a bill is modified unless legislative staff make an additional request for a fiscal note based on the revised bill language.<sup>21</sup> We found that:

- **From 2001 to 2011, Minnesota’s total number of requests for fiscal notes averaged 1,016 in the years when biennial budgets were approved, and 599 in other years.**

The Legislature approves biennial budgets in odd-numbered years, often called “budget years.” Figure 1.2 shows that more fiscal notes were requested in each

**Figure 1.2: Fiscal Note Requests by Bill Version, Fiscal Years 2001-11**



NOTES: “Introduced” is the original bill version submitted to the first committee in which it is discussed. “Amended” includes engrossed versions (the bill language with adopted amendments incorporated) and bill amendments (proposed changes to the bill language that have not yet been voted on for adoption into a bill). We counted fiscal notes requested for different versions of a bill as separate fiscal notes. We classified fiscal notes prepared for bill language that was not yet introduced with the introduced versions of bills.

SOURCE: Office of the Legislative Auditor, analysis of Minnesota Department of Management and Budget data.

<sup>20</sup> In our analysis, we classified fiscal notes prepared for bill language that was not yet introduced with the introduced versions of bills.

<sup>21</sup> In some instances when the fiscal estimate has not yet been completed for the original request, legislative staff rescind a request for a version of a fiscal note when bill language has been revised.

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**Most fiscal notes have been based on bills as they were originally introduced, but fiscal notes can also be prepared for amended versions of bills or proposed amendments.**

budget year than in the non-budget year that followed. Among budget years, the total number of requests for fiscal notes was somewhat lower in 2003 and 2011, years when the state faced significant budget challenges.

In each year, the majority of fiscal note requests were made for the introduced versions of bills, as shown in Figure 1.2. Specifically, about 69 percent of fiscal notes were requested for bills as originally introduced, 19 percent for bills as amended, and 12 percent for bill amendments. When examining the number of fiscal note requests for a given bill, 84 percent of bills had a single fiscal note request. The most fiscal notes requested for a single bill was seven, reflecting requests submitted for different versions of the bill as it progressed through the legislative process.

From 2001 to 2011, about 83 percent of legislative fiscal note requests resulted in a completed fiscal note. Most of the remaining requests were withdrawn or made late in the legislative session, and work on these notes was not completed by the responsible agencies or MMB. Of the completed notes, about 61 percent were prepared by a single agency, and 39 percent were prepared by more than one agency.<sup>22</sup> For notes prepared by multiple agencies, the average number of agencies was around three.

Over the past decade, the number of completed fiscal note requests has been about evenly split between the House and Senate. About 41 percent of all fiscal notes were related to one of two topics: (1) health and human services or (2) early/K-12 education. However, in the last two legislative budget years (2009 and 2011), the topic areas with the most fiscal notes varied between the House and the Senate, as shown in Table 1.3. In particular, the Senate had substantially more fiscal notes than the House in the areas of education and health and human services, while the House had more fiscal notes than the Senate in public safety/judiciary and transportation.

The number of fiscal notes prepared by agencies—when counting each agency assigned to a fiscal note separately—varied widely by agency.<sup>23</sup> As shown in Table 1.4, the departments of Education and Human Services prepared more than 400 fiscal notes each in the three-year period 2009 through 2011. Twelve agencies each prepared between 100 and 399 fiscal notes and eleven prepared between 50 and 99 notes apiece during this same time frame. On the other hand, the average number of fiscal notes prepared by 57 other agencies was eight fiscal notes over the three years.

Among the completed notes, we found that:

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<sup>22</sup> For the analyses in this section, we counted all fiscal notes, including those prepared for companion bills (i.e., bills identical to those introduced in the other house). When we excluded companion bills, we found the results in all instances were similar except for the percentage of fiscal notes prepared by a single agency. When excluding companion bills, 51 percent of notes were prepared by a single agency and 49 percent were prepared by more than one agency.

<sup>23</sup> Our analysis for this section is based only on completed fiscal notes. We did not include cases in which an agency finished its portion of a fiscal note that was never completed by all assigned agencies and signed off on by MMB.

**Table 1.3: Topic Areas of Fiscal Notes by Legislative Body, Fiscal Years 2009 and 2011**

	2009				2011			
	House	Senate	Total	% of Total	House	Senate	Total	% of Total
Agriculture, Veterans Affairs	9	16	25	3%	16	1	17	2%
Capital Investment	2	0	2	<1	3	2	5	1
Commerce and Labor/Consumer Protection	0	1	1	<1	4	23	27	4
Early/K-12 Education	68	93	161	20	50	94	144	19
Economic Growth/Development and Jobs <sup>a</sup>	0	16	16	2	24	19	43	6
Energy, Utilities, Communications	24	3	27	3	0	17	17	2
Environment and Natural Resources	33	37	70	9	20	25	45	6
Finance/Ways and Means	14	19	33	4	29	24	53	7
Government Operations/Local Government/State Government	39	45	84	10	43	47	90	12
Health and Human Services	27	122	149	18	23	47	70	9
Higher Education <sup>a</sup>	11	6	17	2	4	7	11	1
Public Safety/Judiciary	55	34	89	11	72	24	96	13
Taxes	11	6	17	2	19	15	34	5
Transportation	68	51	119	15	56	42	98	13
Other <sup>b</sup>	8	—	8	1	2	—	2	<1
Total	369	449	818	100%	365	387	752	100%

NOTES: Percentages may not sum to 100 due to rounding. Topic areas that had no fiscal notes in either year for both the House and Senate are not included. We counted fiscal notes requested for different versions of a bill as separate fiscal notes and included only completed fiscal notes.

<sup>a</sup> In 2009, the House committee on higher education also included workforce development, but we counted fiscal notes for that committee only under "Higher Education."

<sup>b</sup> For the House, "other" includes cultural and outdoor resources finance, housing policy and public health finance, and redistricting.

SOURCE: Office of the Legislative Auditor, analysis of Minnesota Department of Management and Budget's Fiscal Note Tracking System data.

- **Seventy-five percent of fiscal notes completed from 2001 through 2011 estimated that the relevant bills would result in some state-level fiscal impact.**

State-level fiscal impacts may be in the form of revenue gains, revenue losses, costs, savings, or some combination of these in any of the fiscal years estimated for the fiscal note. Since 2001, a large portion of fiscal notes (71 percent) declared that legislation would have costs or savings, and fewer (30 percent) stated that legislation would affect revenues. Over the past 11 years, 13 percent of fiscal notes each estimated a net fiscal cost (combining both the impact on expenditures and revenues) to the state of at least \$10 million over a four- to five-year period.<sup>24</sup>

<sup>24</sup> Additionally, 34 percent of fiscal notes estimated that the legislation would have no net fiscal impact, 41 percent each estimated a net cost of less than \$10 million, 8 percent each estimated a net savings of less than \$10 million, and 4 percent each estimated a net savings of \$10 million or more.

**Table 1.4: Fiscal Notes Prepared by Agencies, Fiscal Years 2009-11**

Agencies Completing:	Total 2009-11	2009	2010	2011
<b>More than 400 Fiscal Notes</b>				
Education	458	173	122	163
Human Services	433	174	164	95
<b>Between 100 and 399 Fiscal Notes</b>				
Public Safety	359	135	80	144
Minnesota Management and Budget	277	106	97	74
Supreme Court	236	109	45	82
Transportation	232	87	79	66
Revenue	189	77	33	79
Natural Resources	188	59	61	68
Health	173	79	56	38
Commerce	168	50	67	51
Corrections	166	80	28	58
Administration	136	54	32	50
Public Defense Board	125	59	25	41
Sentencing Guidelines Commission	123	58	20	45
<b>Between 50 and 99 Fiscal Notes</b>				
Legislature	95	33	29	33
Employment and Economic Development	85	21	35	29
Labor and Industry	80	20	20	40
Pollution Control Agency	77	29	18	30
University of Minnesota	74	21	30	23
Metropolitan Council	71	28	25	18
Secretary of State	65	19	18	28
State Colleges and Universities	64	22	24	18
Attorney General	63	28	19	16
Public Utilities Commission	54	18	20	16
Agriculture	53	19	16	18
<b>Less than 50 Fiscal Notes</b>				
Average of 57 Other Agencies <sup>a</sup>	8	3	2	3

NOTES: We counted each agency assigned to a fiscal note and notes requested for different versions of a bill as separate fiscal notes. We included only completed fiscal notes.

<sup>a</sup> "Average of Other Agencies" includes the average number of fiscal notes prepared by agencies that had at least one fiscal note request from 2009-11.

SOURCE: Office of the Legislative Auditor, analysis of Minnesota Department of Management and Budget Fiscal Note Tracking System data.

About one-quarter of fiscal notes declared that the pertinent legislation would not have a revenue or expenditure impact. Also, in 83 percent of multi-agency fiscal notes, at least one of the agencies assigned to the fiscal note estimated that the legislation would not have a fiscal impact on its state-funded activities.<sup>25</sup>

<sup>25</sup> More than 60 percent of the agency fiscal note coordinators we surveyed said their agencies were asked to prepare fiscal notes during 2011 in some cases where, in their view, it should have been obvious that the bills would have no impact on their agencies' expenditures or revenues. We did not ask agencies to specify whether, in their judgment, these cases reflected unnecessary legislative requests for fiscal notes, inappropriate assignment of fiscal notes by MMB to their agencies, or both.

**The departments of Education and Human Services prepared the largest number of fiscal notes in the past three years.**

Legislative fiscal analysts told us a small number of the requested fiscal notes might be unnecessary. However, some legislative staff said they have requested fiscal notes on behalf of committee chairs if the staff perceived any possibility that a bill might have a fiscal impact. By doing this, staff hoped to prevent delays that might have occurred in a committee if a bill's potential costs had not been estimated. Also, some committee chairs have requested fiscal notes for bills they thought were unlikely to have a fiscal impact so they could have statements from the affected agencies that verified this.

On the other hand, agency staff said that they have not always been asked to prepare fiscal notes for bills that would have fiscal implications for their agencies. In our survey of agency fiscal note coordinators, 19 percent said there were instances in 2011 in which fiscal notes were *not* requested for bills where, in the coordinator's view, it should have been obvious that the bill would affect the agency's expenditures or revenues. As noted earlier, state law specifies that fiscal note requests can only be initiated at the request of a legislative committee chair.

## Variation in Legislative Committee Practices

We also found that:

- **Legislative finance committees have varied somewhat in their practices for requesting and using fiscal notes.**

First, committee chairs differ in the latitude they give to legislative fiscal analysts to request fiscal notes on the chair's behalf. In some cases, fiscal analysts only request fiscal notes for bills when the committee chair or committee administrator indicates that the bill is likely to receive a hearing. In other cases, as discussed above, fiscal analysts said they have been expected to request fiscal notes for all bills in their committee's areas of jurisdiction that might have fiscal impacts.

Second, the House of Representatives finance committee that handles K-12 education bills has traditionally relied more on fiscal estimates prepared by House nonpartisan staff than on formally requested, agency-prepared fiscal notes. In particular, House staff have the ability to compute estimates of changes to K-12 education funding formulas, so fiscal notes are rarely requested for House bills proposing such changes. In contrast, fiscal analysts for the counterpart committee in the Senate have usually requested fiscal notes for such bills, even though Senate staff often conduct their own analyses of bill impacts. Between 2001 and 2011, the Senate requested 164 percent more fiscal notes on education-related bills than the House. This difference in House and Senate practices reflects different traditions, not any difference in the laws or legislative rules pertaining to fiscal notes. Although estimates prepared outside the fiscal note process by House staff are not subject to MMB approval, MMB staff told us the staff estimates are widely perceived to be credible and that this process has worked well.

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**For bills that would affect education formulas, the House of Representatives relies largely on fiscal estimates prepared by its own staff, while the Senate tends to request agency-prepared fiscal notes.**

Third, one committee chair made extensive use in the two-year period 2009 through 2010 of a new option that allowed legislators to request fiscal notes on bill language before a bill has been formally introduced in the House or Senate; most committee chairs have not. Legislators with ideas for bills sometimes want to get an early estimate of what a bill might cost, which may help them decide whether to introduce the bill. Starting in 2009, MMB provided a formal mechanism within the Fiscal Note Tracking System by which the legislative branch could request fiscal notes on bills drafted but not yet introduced. In 2009 and 2010, the Senate Health and Human Services Finance Committee chair made 113 requests for fiscal notes on bills not yet introduced.<sup>26</sup> This represented 78 percent of all requests for fiscal notes on not-yet-introduced bills in the House and Senate during that two-year period. In 2011, following turnover in the leadership of all House and Senate committees, the total number of legislative requests for fiscal notes on bills drafted but not yet introduced dropped from 82 the previous year to 43, and no single House or Senate committee chair in 2011 had more than 9 such requests.

Finally, legislative committees have varied in their use of “informal” alternatives to fiscal notes, which we discuss in the next section.

## Requests for “Informal” Fiscal Estimates

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**Late in a legislative session, legislators sometimes use less formal alternatives to fiscal notes.**

The legislative branch sometimes uses less formal alternatives to fiscal notes to estimate fiscal impacts, especially late in a legislative session. In the closing days or even weeks of a session, legislative committees and leaders often forgo the formal fiscal note process. At that point, bills may change frequently as they go through multiple committees (including conference committees), and time constraints increase as adjournment approaches. Fiscal notes may still be requested during the late stages of the session, and fiscal notes prepared earlier in the session may still provide important guidance. However, the development of official fiscal notes through the multi-stage process described earlier often gives way to less formal communications regarding the possible fiscal impacts of bills. When agencies or legislative staff estimate the impact of a bill (or proposed amendments to the bill) late in the session, this information might be communicated to individual legislators or legislative staff without producing a written, public document.

Some legislative committees have bypassed the fiscal note process altogether by instead asking agencies to prepare “informal” estimates of bill impacts.<sup>27</sup> Of particular significance, some committee chairs have preferred to request fiscal estimates informally so that early ideas for possible bills will not be disclosed to others through MMB’s Fiscal Note Tracking System.<sup>28</sup> Also, committee chairs

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<sup>26</sup> Most of this committee’s requests related to possible changes in health care programs.

<sup>27</sup> The process by which legislators ask agencies informally for fiscal estimates or advice on bill language is sometimes referred to as “technical assistance.”

<sup>28</sup> This system contains official requests for fiscal notes, including the language on which the fiscal note was prepared. It also contains any drafts of fiscal note language entered into the system by the responsible agency. Any individual with authority to access MMB’s Fiscal Note Tracking System can view this information.

sometimes prefer to informally request fiscal estimates on possible legislation when they are still deciding what to propose or understand what a given proposal might cost. Table 1.5 shows that most—but not all—state agencies we surveyed said they would probably be willing to prepare informal estimates, if asked. In fact, nearly 40 percent of the agencies we surveyed said they prepared informal estimates for legislators at some time during 2011. However, several large, cabinet-level agencies said in our survey they would probably not be willing to prepare informal estimates.

**Table 1.5: Reported Willingness of Agencies to Prepare “Informal” Estimates of Fiscal Impacts**

Survey question:  
Would your agency provide an informal estimate of fiscal impacts in the following circumstances:

	Yes	Probably	Probably Not	No	Don't Know
At the request of a <i>committee chair</i> , who provides your agency with a description of a possible bill but has not yet drafted the bill's language? (N=25)	28%	48%	8%	12%	4%
At the request of a <i>legislator (not a committee chair)</i> , who provides your agency with a description of a possible bill but has not yet drafted the bill's language? (N=25)	16	48	16	12	8

SOURCE: Office of the Legislative Auditor, survey of agency fiscal note coordinators, September 2011.

**In 2011, human services committees relied on informal agency estimates—rather than fiscal notes—to assess the impact of some key proposals.**

Informal estimates have sometimes been used in the past as a *precursor* to bill introductions and requests for official fiscal notes, but:

- **In 2011, legislators increasingly requested informal estimates instead of requesting fiscal notes.**

Most notably, House and Senate committees passed their respective “omnibus” health and human services bills in 2011 without having requested fiscal notes for a number of the individual proposals that comprised the larger omnibus bills. (An omnibus bill is a large appropriations or tax bill that includes provisions related to one area of state government, such as health and human services.) In addition, the Senate requested a fiscal note for its entire omnibus health and human services bill only one day before the bill was discussed and passed by the full body; the House did not request a fiscal note on its omnibus bill.<sup>29</sup> According to MMB and legislative staff, the degree to which the 2011 Legislature relied on informal estimates throughout the legislative process to document the fiscal impact of major human services bills passed by the House

<sup>29</sup> The Senate requested a fiscal note for the omnibus health and human services bill on March 29, 2011, with an initial due date of March 30 (the date the Senate passed the bill). On April 1, the Senate revised its request for this fiscal note, changing the requested due date to April 4, 2011. DHS completed this fiscal note on April 19, 2011.

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**Unlike fiscal notes, informal estimates of bills' fiscal impacts are not reviewed by the state's budget office and are not readily available to the public.**

and Senate was unprecedented.<sup>30</sup> The Department of Human Services shared its informal estimates with the requesting legislators but felt obligated not to disclose these estimates (or the bill language on which they were based) to others.<sup>31</sup> Documents supporting these informal estimates were not posted on a public Web site, and interest groups expressed frustration at their inability to scrutinize the estimates. In further contrast to fiscal note practices, informal fiscal estimates prepared by agency staff for legislators were not approved by MMB and were often not even reviewed by the agency's fiscal note coordinators. We think there is an important place in the legislative process for informal estimates of fiscal impacts, and such estimates allowed the Department of Human Services and legislative committees to agree on the likely fiscal impacts of certain—but not all—2011 legislative proposals in the absence of formal fiscal notes. However, to foster greater transparency, Chapter 4 recommends that statutes or legislative rules require bills to have fiscal notes before being passed by a legislative finance committee.

In addition, the 2011 House and Senate state government finance committees' omnibus bills relied on some estimates of significant new revenues that were not supported by fiscal notes or other clearly documented evidence. For example, bills passed by these committees (and later by the full House and Senate) assumed \$133 million in new revenues from an approach called "tax analytics" to identify possible sources of uncollected tax revenues. These assumed revenues may have been based partly on testimony from private vendors. However, Department of Revenue staff said their attempts to get more information from the vendors were unsuccessful, and the basis of the savings assumed in the bills was not clear. A letter from the commissioners of MMB and the Department of Revenue said: "[A]dopting hypothetical estimates of private contractors as part of an actual budget has never been an accepted approach and such hypothetical estimates cannot seriously be used as the basis of budget proposals."<sup>32</sup> Although we note in Chapter 3 that a Department of Revenue fiscal note on the tax analytics proposal was not sufficiently explanatory, we also believe that the Legislature's use of fiscal assumptions based on inadequately documented private estimates raises serious questions.<sup>33</sup>

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<sup>30</sup> As suggested earlier, use of informal fiscal estimates for bills in health and human services and other areas of the state budget has often occurred in the late stages of past legislative sessions—for example, when bills are changing frequently and there is not enough time for "official" fiscal notes to be prepared. Typically, however, formally requested fiscal notes developed earlier in the sessions have provided a basis for many of the informal estimates prepared later.

<sup>31</sup> Some department staff told us they assumed they would later (that is, after bills were introduced in the House or Senate) receive "official" requests for fiscal notes on many of the legislative initiatives for which the department prepared informal estimates. In many cases, however, this did not occur before bills were heard in committees, if at all.

<sup>32</sup> Jim Schowalter, Commissioner, Minnesota Department of Management and Budget, and Myron Frans, Commissioner, Department of Revenue, letter to Representative Kurt Zellers, Speaker of the House of Representatives, and Amy Koch, Senate Majority Leader, April 12, 2011.

<sup>33</sup> Faced with sharply different revenue-raising assumptions in the tax analytics fiscal note and the bills that had passed the House and Senate, the Governor and Legislature eventually reached agreement in the 2011 special session on an amount of revenue that would be assumed to be generated by a variety of tax compliance efforts, including but not limited to tax analytics.

## PUBLIC AVAILABILITY OF FISCAL NOTES

State law says that copies of a bill’s fiscal note shall be provided to (1) the House Ways and Means Committee chair, (2) the Senate Finance Committee chair, (3) the chair of the standing committee to which the bill has been referred, (4) the chief author of the bill, and (5) the MMB commissioner.<sup>34</sup> The law does not address how fiscal notes are to be made available to the general public. We found that:

- **Most estimates of the fiscal impacts of current bills are now available to the public through the Legislature’s Web site.**

For fiscal notes from 2011 and later, people looking up information on a specific House or Senate bill on the Minnesota Legislature’s Web site will find a direct link from that bill’s Web page to the bill’s fiscal note (if one exists). Fiscal notes from prior years have been—and are still—available by searching a database on the MMB Web site, but the location of this database may be challenging for some people to find.<sup>35</sup> In our view, establishing links to fiscal notes from the Legislature’s Web site has been a significant improvement to the public’s access to fiscal notes.<sup>36</sup>

Presently, local impact notes are available only through the MMB Web site.<sup>37</sup> As described earlier, a local impact note focuses exclusively on the impact of a bill on local governmental units. There are few local impact notes prepared each year, but it would be useful if people checking on the status of a bill on the Legislature’s Web site could immediately determine if a local impact note has been prepared. Chapter 4 offers a recommendation to help ensure this.

## FISCAL NOTE PRACTICES ELSEWHERE

We also examined information on fiscal note practices in other jurisdictions. We contacted each state to obtain information about its practices. In addition to our contacts with individuals in those states, we reviewed state laws, legislative rules, and other documents about individual states’ fiscal note processes. We also interviewed staff with the federal Congressional Budget Office. We found that:

- **Nearly all states and the federal government have a formal process for estimating the fiscal impact of proposed legislation, but the responsible agencies and their processes vary.**

<sup>34</sup> *Minnesota Statutes* 2011, 3.98, subd. 4.

<sup>35</sup> See [http://www.mmb.state.mn.us/cgi-bin/fnts\\_session.pl](http://www.mmb.state.mn.us/cgi-bin/fnts_session.pl). This site is within the budget portion of MMB’s Web site. Users can search the site for fiscal notes on bills introduced since 1997.

<sup>36</sup> The House and Senate Web sites for individual bills also have links to help people find any revenue estimates prepared for the bills. These links take the user to a Department of Revenue index, where the user can see if there is a revenue estimate (from 1999 forward) for a specific bill. The link to this index requires somewhat more searching than what is required to find fiscal notes, but it is useful to be able to reach the revenue estimate from the Legislature’s Web site.

<sup>37</sup> See <http://www.mmb.state.mn.us/budget-impact>.

**“Local impact notes”—which focus on the likely impact of bills on local governments—have not been posted on the Legislature’s Web site.**

## Other States

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**Except for Hawaii, all states have a formal fiscal note process.**

We categorized each state based on which agencies—legislative, executive, both, or neither—are primarily responsible for the fiscal notes used by the state’s legislature. To make this judgment, we gave considerable weight to provisions in statutes or legislative rules that assigned formal responsibility for fiscal notes to a particular organization. For many states, this designation was clear. For instance, Louisiana state law assigns responsibility for preparing fiscal notes to that state’s Legislative Fiscal Office and Legislative Auditor, and Kansas law clearly says that the executive branch’s budget director shall prepare fiscal notes. In some other cases, the categorization of states was less clear cut. For example, executive branch agencies in Wisconsin initially prepare fiscal notes, but a staff office of the Wisconsin Legislature subsequently prepares fiscal notes for bills referred to that legislature’s Joint Commission on Finance. For our analysis, we categorized Wisconsin’s executive and legislative branches as *both* playing key roles in the preparation of fiscal notes.

Appendix A provides an overview of the types of organizations responsible for fiscal notes in each of the 50 states. Only one state—Hawaii—does not have a formal fiscal note process. We found that:

- **A majority of states have assigned fiscal note responsibility to legislative agencies, but executive branch agencies usually play important roles in the preparation of states’ fiscal notes.**

We estimated that the primary responsibility for fiscal notes has been assigned to one or more legislative agencies in 31 states. In 11 states—including Minnesota—executive branch agencies are primarily responsible for fiscal notes. The remaining seven states have processes in which the legislative and executive branches share significant responsibilities for preparing estimates on the fiscal impact of legislation.

States’ legislatures often assign their own staff to prepare the fiscal note documents used in the legislative process, but those fiscal notes depend to a large degree on information provided by executive branch agencies. For example, the director of one legislative office said his state’s appropriations committee staff “are officially responsible to develop the fiscal notes, but in practice they pretty much rely on what the [executive branch staff] tell them.” Legislative offices that prepare fiscal notes often solicit estimates from executive agencies, although they may solicit information from other sources, too.

The legal basis for the fiscal note process in states varies widely. Some states’ statutes and legislative rules do not directly discuss fiscal notes at all. For instance, Vermont’s Legislative Fiscal Office is not required in law or rule to prepare fiscal notes. However, staff from that office told us the Vermont House of Representatives has requested fiscal notes on all bills emerging from the House Ways and Means Committee, and the office prepares notes for selected Senate bills, too. In contrast, many states have fairly detailed provisions regarding fiscal notes in their statutes or legislative rules. We found that:

- **Unlike Minnesota, most states have statutes or legislative rules that specify the circumstances in which fiscal notes are required.**

Minnesota law says only that fiscal notes shall be prepared on bills *when requested* by legislative committee chairs. Most states' laws or legislative rules indicate whether fiscal notes are required for all bills or just certain ones. Furthermore, many legislatures have adopted provisions that address whether fiscal notes must be completed by a certain point in the legislative process—for example, following a bill's introduction, before a bill is heard or acted on by a committee, or by a specified date. Examples of these more specific provisions in other states include the following:

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**Many states require completion of fiscal notes by a specified point in the legislative process.**

**Arkansas:** “Any bill filed in the House of Representatives or Senate that will impose a new or increased cost obligation for education in grades kindergarten through twelve (K-12) on the State of Arkansas or any local school district shall have a fiscal impact statement attached to it prepared and filed with the chair of the committee to which the bill is referred...[a]t least three (3) days before the bill may be called up for final action in the committee during a regular session of the General Assembly....”<sup>38</sup>

**Montana:** “All bills reported out of a committee of the legislature having an effect on the revenues, expenditures, or fiscal liability of the state or of a county or municipality, except appropriation measures carrying specific dollar amounts, shall include a fiscal note incorporating an estimate of such effect.”<sup>39</sup>

**Nebraska:** “The Legislative Fiscal Analyst shall review each bill and make an estimate of the anticipated change in state, county, or municipal expenditures or revenue under the provisions of the bill.... The fiscal note shall be delivered by the Legislative Fiscal Analyst to the Clerk at least twenty-four hours prior to the public hearing on the bill or, in the event the bill is referred directly to General File, twenty-four hours prior to the first consideration of the bill on General File.”<sup>40</sup>

**Pennsylvania:** “(a) *Senate*.—No bill requiring the expenditure of Commonwealth funds may be given third consideration unless it has been referred to the Appropriations Committee and a fiscal note has been attached thereto.”<sup>41</sup>

**Tennessee:** “Fiscal notes shall be provided for all general bills or resolutions increasing or decreasing state or local revenues,

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<sup>38</sup> *Arkansas Code* 2011, title 10, chap. 2, sec. 127(b).

<sup>39</sup> *Montana Code Annotated* 2011, title 5, chap. 4, sec. 201.

<sup>40</sup> Clerk of the Legislature, *Rules of the Nebraska Unicameral Legislature*, One Hundred Second Legislature, First Session, adopted January 12, 2011, Rule 5, secs. 7(a) and 7(d).

<sup>41</sup> *Pennsylvania Code* 2011, title 101, section 9.64.

making sum-sufficient appropriations, or increasing or decreasing existing appropriations or the fiscal liability of the state or of the local governments of the state. Not more than ten (10) days following the introduction of any such bill or resolution, the fiscal review committee shall furnish to the chief clerk of the house or houses of introduction a statement of analysis of the fiscal effect of such bill or resolution and shall prepare and distribute copies of the statement to members of the general assembly.”<sup>42</sup>

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**States vary as to whether they require updates to fiscal notes when bills are amended.**

Occasionally, the laws or rules of states address whether fiscal notes must be prepared or updated as bills are amended. For example, Maine requires that “any amendment introduced that would affect the fiscal impact of the original bill must also include a fiscal note.”<sup>43</sup> In contrast, Kansas law says, “Fiscal notes are required for original bills only and not for amendments.”<sup>44</sup>

While states such as those in the examples above require bills to have fiscal notes before they can be heard or acted upon,

- **Only one state, to our knowledge, has a statutory provision that requires its legislature to adhere to the estimates of fiscal notes.**

That provision—in Virginia—is quite narrow in its focus. Specifically, for any bill that would have an impact on the adult or juvenile populations in state correctional facilities, Virginia law requires the Legislature to make a one-year appropriation equal to the highest annual estimated impact over the next six years.<sup>45</sup> The appropriation is based on estimates in the “fiscal impact statements” prepared by the Virginia Sentencing Commission, a judicial branch agency.

We are not aware of similar provisions in other states’ statutes or legislative rules, including those in Minnesota. Thus, although fiscal notes are widely recognized to be an important part of the legislative process, they typically do not diminish the authority of state legislatures to judge how much money is needed by an agency or a new initiative, or to determine how to judge whether a state’s overall spending and revenues will remain in balance in the future.

Finally, our review of states’ statutes and legislative rules indicated that:

- **In a majority of states—but not Minnesota—laws or legislative rules specifically require fiscal notes to address financial impacts on local governmental units.**

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<sup>42</sup> *Tennessee Code* 2011, title 3, chap. 2, sec. 107.

<sup>43</sup> 125<sup>th</sup> Maine Legislature, “Joint Rules,” revised December 17, 2010, Rule 312.

<sup>44</sup> *Kansas Statutes* 2011, chapter 75, section 3715a.

<sup>45</sup> *Code of Virginia* 2011, sec. 30-19.1:4(H). If the commission did not have sufficient information to make an estimate, the commission was directed by the Legislature in 2009 to assign a minimum fiscal impact of \$50,000 to the bill in question.

We identified at least 30 states in which fiscal notes are supposed to address impacts affecting some or all political subdivisions—such as counties, cities, school districts, townships, or others.<sup>46</sup> Minnesota laws and legislative rules do not address whether fiscal notes should address local costs. However, MMB’s instructions suggest that state agencies’ fiscal notes should “describe the fiscal impact to the local government unit(s), including any estimates received from the local government organization.”<sup>47</sup> Also, as noted earlier, Minnesota law establishes a process—separate from the fiscal note process—by which certain legislative committee chairs may request local impact notes.

## Federal Government

The executive and legislative branches both play important roles in the development of the federal budget. However,

- **Since 1974, the United States Congress has relied largely on a legislative agency (the Congressional Budget Office, or CBO) to prepare fiscal estimates of proposed legislation.**

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**The Congressional Budget Office prepares fiscal estimates for nearly all bills passed by committees of the United States Congress.**

In response to concern about presidential priorities and the executive branch’s long-dominant role in the federal budget process, Congress passed a law in 1974 that strengthened its own budgetary role.<sup>48</sup> As part of this law, Congress created the CBO to provide an independent source of budget and economic information.<sup>49</sup> The CBO serves both the House and Senate and today has about 250 staff.

CBO provides fiscal estimates for nearly all bills passed by congressional committees.<sup>50</sup> The estimates must be available before a bill is considered on the Senate or House floor. CBO estimates the federal cost of proposed legislation for at least five future years. For bills that would establish federal mandates affecting state, local, or tribal governments or the private sector, CBO estimates fiscal impacts over a ten-year period. CBO’s fiscal estimates also incorporate information on bills’ tax revenue impacts, which are developed by staff from Congress’ Joint Committee on Taxation.

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<sup>46</sup> In practice, states’ methods of assessing and reporting local impacts vary. Some merely indicate (yes or no) that a bill would have a local impact, while others present dollar estimates or narrative discussions.

<sup>47</sup> Minnesota Department of Management and Budget, *[Fiscal Note] Policies and Procedures* (St. Paul, December 2010), 17. The instructions also state that: “State agencies are expected to cooperate with local government organizations in estimating the local fiscal impact of proposed state legislation” (p. 10).

<sup>48</sup> Dan L. Crippen, “Informing Legislators About the Budget: The History and Role of the U.S. Congressional Budget Office,” speech to parliamentary officials of the Organization for Economic Cooperation and Development, Washington DC, June 7, 2002. The 1974 act provided for Congress’ adoption of a concurrent budget resolution, which would set forth budget policies independent of the President. The act also created new budget committees in the House and Senate.

<sup>49</sup> *Congressional Budget and Impoundment Control Act of 1974*, Public Law 93-344.

<sup>50</sup> Although CBO gives priority to the work of budget committees, it also analyzes bills passed by other committees.

CBO's fiscal estimates identify a specific dollar impact in each future year, although narrative sections of the documents it prepares may discuss other scenarios.<sup>51</sup> CBO's estimates are based only on the direct effects of legislation, which may include direct behavioral responses.<sup>52</sup> For example, if analyzing the impact of a gas tax increase, CBO would consider the effect the price increase would have on consumer demand for gasoline. Federal law requires executive branch agencies to provide CBO with information it needs to perform its duties.

Both the CBO and the executive branch's Office of Management and Budget (OMB) estimate the fiscal impact of congressional legislation. A federal law enacted in 2010 authorizes OMB to initiate a "sequestration" process (to withhold budget resources) if OMB's estimates or the estimates adopted by Congress show that expenditures will exceed revenues, in aggregate, for specified programs.<sup>53</sup> Congress relies largely on the estimates prepared by CBO, but sometimes Congress has instructed CBO to use OMB's estimates, or it has negotiated with the President on what fiscal estimates to adopt.<sup>54</sup>

Overall, there are significant differences among the budgetary and fiscal note processes used by the federal government and various states. However, lawmakers in these settings face the common challenge of trying to obtain credible information about the likely financial impacts of proposed legislation.

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<sup>51</sup> CBO staff told us that CBO rarely states that it is unable to make an estimate.

<sup>52</sup> CBO's estimates would not try to assess a bill's macroeconomic impacts (such as its impact on economic growth) or its impacts on the Federal Reserve's monetary policies; such considerations are viewed as more subjective and debatable.

<sup>53</sup> *The Statutory Pay-As-You-Go Act of 2010*, Public Law 111-139. Under this law, both CBO and OMB are required to keep "scorecards" on the fiscal impacts of legislation. The law specifies circumstances in which OMB will use CBO's estimates for enforcement purposes.

<sup>54</sup> Adam Fletcher and Trenton Hamilton, *Scoring and Revenue Estimation*, Briefing Paper 5 (Cambridge, MA: Harvard Law School, March 16, 2008, as updated by Brian Callanan and Mona Lewandoski), 3-5.



# Timeliness

**Before legislators act on proposed legislation, they should have information about its likely fiscal impact.**

For fiscal notes to be useful, they must be available while legislation is being considered by the Legislature. One of the reasons for this evaluation was concern among legislators about the timely completion of fiscal notes. In this chapter, we discuss the timeliness of fiscal notes over the past decade. We begin by examining the timeliness of legislative fiscal note requests. Next, we discuss the time taken to complete fiscal notes, including factors that affect the completion time. We conclude with a review of the timeliness of local impact notes, which describe the fiscal impact of legislation on local governments.

## FISCAL NOTE REQUESTS

Ideally, fiscal notes are available when committees are making budget decisions about the legislation for which the fiscal note was requested. This requires that requests for fiscal notes be made sufficiently in advance to allow agencies enough time to complete the notes. This section discusses the timeliness of the fiscal note requests and the time given to agencies to complete the notes.

### Timeliness of Requests

Legislative staff, including fiscal analysts and some committee administrators, make requests on behalf of committee chairs for fiscal notes on proposed legislation. Fiscal notes are often requested when a bill is referred to a legislative finance committee. The vast majority of fiscal note requests are made when the Legislature is “in session.” The length and timing of the legislative session depends on whether it is the odd-numbered “budget year,” when the Legislature establishes the two-year state budget, or the even-numbered “non-budget year.” In budget years, the regular legislative session starts on the first Tuesday after the first Monday in January and may extend until late May.<sup>1</sup> In non-budget years, the legislative session schedule is set by the House and Senate and is generally shorter than in budget years, usually not beginning until February or later.<sup>2</sup>

The fiscal note workload tends to be concentrated within each year’s legislative session. To understand the timeliness of fiscal notes, we first examined when legislative staff make fiscal note requests. We found that:

<sup>1</sup> *Minnesota Statutes* 2011, 3.011. In years where January 1 is on a Monday, the session starts on Wednesday, January 3. According to *Minnesota Constitution*, art. IV, sec. 12, the Legislature cannot meet in a regular session after the first Monday following the third Saturday in May of any year.

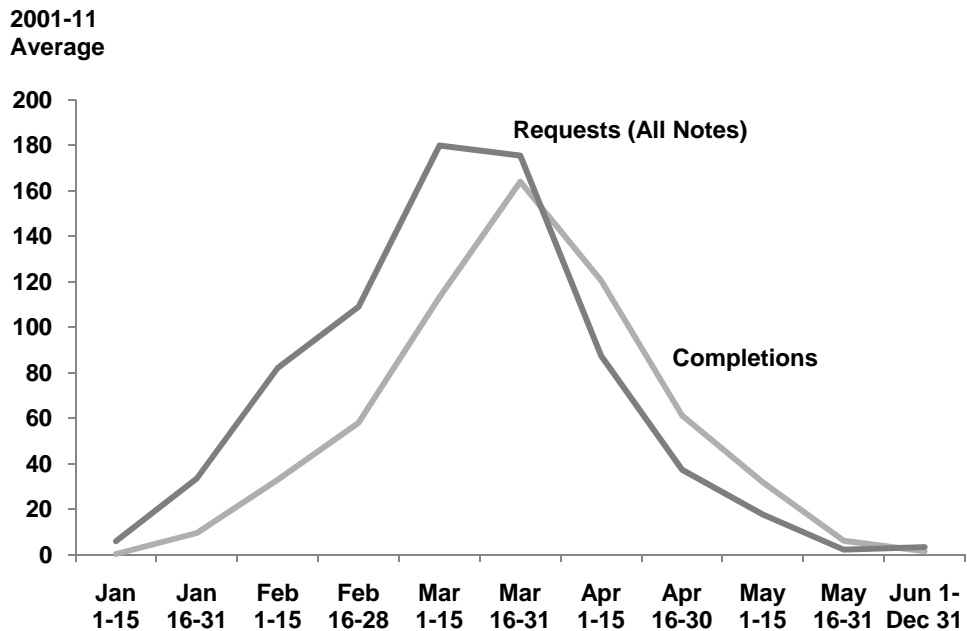
<sup>2</sup> According to *Minnesota Constitution*, art. IV, sec. 12, the Legislature can meet over two years for a total not to exceed 120 “legislative days.” Legislative days are those when either house of the Legislature is called to order (*Minnesota Statutes* 2011, 3.012).

- **Most fiscal notes are requested by the legislative branch during a relatively narrow time window in the middle weeks of a legislative session.**

As shown in Figure 2.1, the peak of fiscal note requests was in March, which is typically the middle of the legislative session. In particular, 48 percent of legislative fiscal note requests over the past 11 years were made during March. Another 5 percent were requested in January, 26 percent in February, 17 percent in April, and around 3 percent in May.<sup>3</sup> Figure 2.1 also shows when fiscal notes were completed. As shown, the peak period of completion was the last two weeks of March.

**Agencies prepare most fiscal notes during a short period of each legislative session.**

**Figure 2.1: Number of Fiscal Note Requests and Completions by Half-Month, 2001-11**



NOTES: We counted fiscal notes requested for different versions of a bill as separate fiscal notes. In cases where a fiscal note was also requested for a companion bill, we only included the record associated with the first request.

SOURCE: Office of the Legislative Auditor, analysis of Minnesota Department of Management and Budget's Fiscal Note Tracking System data.

To understand whether the timing of legislative requests for fiscal notes facilitated the distribution of this information prior to key legislative decisions in the 2011 budget process, we surveyed fiscal note coordinators from a sample of 26 agencies. We found that:

<sup>3</sup> Percentages do not sum to 100 due to rounding. Toward the end of the session, fiscal notes are less likely to be completed than they are earlier in the session. From 2001 to 2011, less than 1 percent of fiscal notes were requested from June through December.

- **While a majority of agency officials said that legislative requests for fiscal notes were usually timely, some agency and legislative staff expressed concern about the timing of fiscal note requests.**

Agency officials expressed mixed views about the timeliness of legislative requests for fiscal notes in 2011. Specifically, 12 percent of agency fiscal note coordinators said that requests were “always or almost always” timely and 46 percent said requests were “usually” timely. However, about one-quarter of agency fiscal note coordinators said that requests were “sometimes” timely, and 8 percent said that requests were “rarely or never” well-timed.

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**Timely requests for fiscal notes depend on good communication between committee chairs and their legislative fiscal analysts.**

Several legislative fiscal analysts told us that the decisions about what bills would be heard in a committee meeting are sometimes made only a day or two in advance. The lack of advance notice makes it challenging for agencies to have fiscal notes completed in that timeframe. Additionally, legislative and agency staff said that, in some instances, hearings have been held before the due date that was legislatively assigned to a fiscal note, or bills have been passed by finance committees without having a formal request for a fiscal note. On the other hand, one agency fiscal note coordinator said: “Fiscal note requesters that I have dealt with try to get me the information to get started on complicated notes before they are formally assigned so that we are more likely to be able to meet the deadlines.”

Legislative fiscal analysts said that the practice of setting agendas for committee meetings on short notice has become more common in recent years. However, a committee administrator noted that it can be challenging to set schedules in advance when there is uncertainty about whether certain fiscal notes will be completed before the meetings.

Timely requests for fiscal notes rely on good communication between the finance committee chairs and the legislative fiscal analysts. This enables the fiscal analysts to request fiscal notes soon after the committee schedules are determined or to request updated fiscal notes—if the chair wishes—after bills have been revised. Additionally, because some agencies rely on legislative fiscal analysts to help them prioritize fiscal note requests, it is useful when fiscal analysts know the likelihood that certain bills will be scheduled for upcoming hearings. In Chapter 4, we recommend that legislative committees strive to provide agencies with advance notice of committee hearings during which fiscal notes may be discussed.

## Due Dates

Minnesota’s law and legislative rules have no provisions that address the amount of time it should take to prepare a fiscal note. Neither has the Minnesota Department of Management and Budget (MMB) established a specific number of days in which fiscal notes must be completed. However, MMB’s fiscal note manual suggests that a fiscal note is “generally” due “within five working days.”<sup>4</sup>

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<sup>4</sup> Minnesota Department of Management and Budget, *[Fiscal Note] Policies and Procedures* (St. Paul, December 2010), 7.

Similarly, legislative fiscal staff have advised legislators to make fiscal note requests at least seven calendar days in advance of when they would like the note.<sup>5</sup>

Among other states for which we obtained information, three to seven days was the most common amount of time allowed for completion of fiscal notes.<sup>6</sup> The longest time period we saw was New Jersey, which allows 20 days for agencies to develop a fiscal note and 5 days for the state budget director to concur with the agency's estimate or offer an alternative.

Below, we examine the amount of time Minnesota agencies were given to complete fiscal notes. We also discuss whether the "default" due date established by MMB provides a reasonable amount of time to complete a fiscal note.

### Assigned Due Dates

**Unless otherwise specified, fiscal notes are supposed to be completed within five working days.**

When legislative staff make a request for a fiscal note in MMB's Fiscal Note Tracking System, they can select the date by which the fiscal note should be completed. Unless the fiscal note requester specifies a particular due date, the system will assign the fiscal note the "default" due date. MMB has set the "default" due date in the system at five working days from the date of the request.<sup>7</sup> Some legislative fiscal analysts told us they do not usually modify the default due date when making a fiscal note request, even if no hearing for a bill is scheduled or is likely to occur.

We examined the fiscal note due dates established in the Fiscal Note Tracking System and found that:

- **Typically, fiscal notes are assigned due dates that are within five working days of the date of the request.**

From 2001 to 2011, 58 percent of fiscal notes were assigned the default due date of five working days from the time of the initial request. When legislative staff, on behalf of committees, request fiscal notes to be completed in five working days, the affected agencies actually have less than this amount of time to complete their portion of the work if the fiscal note is to be completed by the due date. Part of the time between the date of a fiscal note's request and its completion date is used by MMB to (1) determine which agency or agencies should be assigned responsibility for drafting the fiscal note and (2) review the drafted fiscal note and sign off on it. MMB usually takes portions of one or two days for these purposes.

<sup>5</sup> Gary Karger, Minnesota House of Representatives Fiscal Analysis Department, "Fiscal Notes," *Money Matters*, no. 10.01 (January 2010), 2.

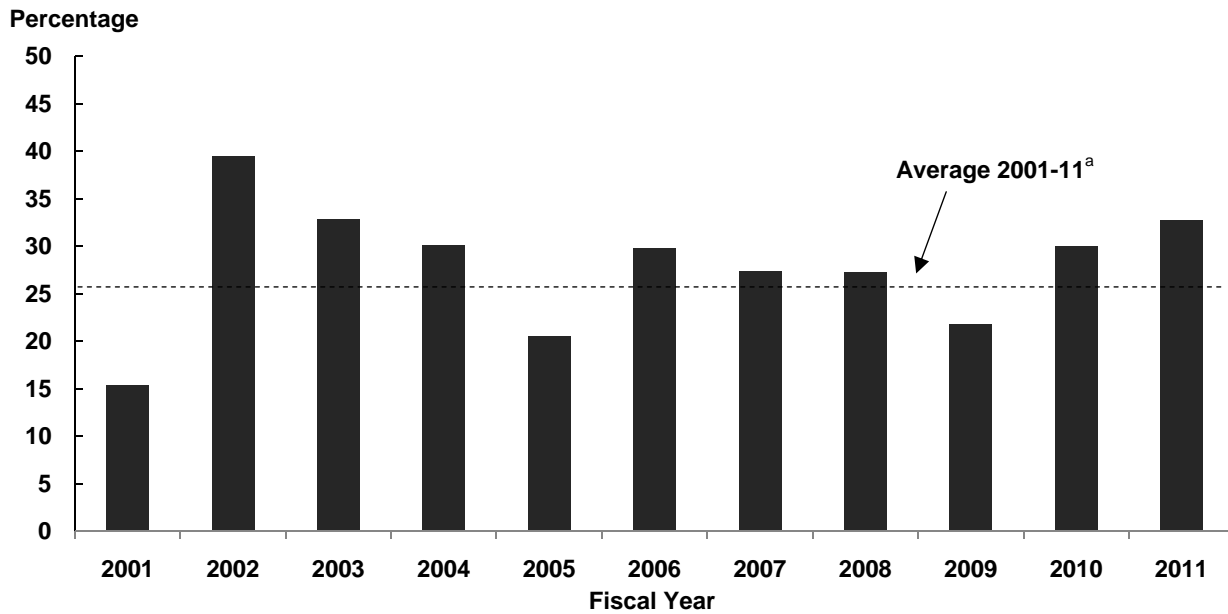
<sup>6</sup> For more than half the states, we did not find specific policies on when fiscal notes should be completed.

<sup>7</sup> Working days exclude weekends and state holidays.

In addition, 14 percent of fiscal notes from 2001 to 2011 were assigned a due date that was four working days from the time of the request, and 26 percent had due dates of three working days or less. Fiscal notes with due dates within three working days are designated as “urgent” requests.<sup>8</sup> For the most part, as the legislative session progressed, an increasing proportion of fiscal note requests were urgent requests.<sup>9</sup>

Over the past 11 years, the percentage of urgent fiscal note requests (that is, with due dates within three working days) has fluctuated. As shown in Figure 2.2, the percentage of urgent requests increased from 22 percent in 2009 to 30 and 33 percent in 2010 and 2011, respectively. The session with the highest proportion of urgent requests was in 2002, when 39 percent of fiscal note requests had due dates within three working days.

**Figure 2.2: Percentage of Fiscal Note Requests Designated as “Urgent,” Fiscal Years 2001-11**



NOTES: Due dates set in the Minnesota Department of Management and Budget’s Fiscal Note Tracking System at three working days or less from the request date are considered “urgent” requests. We counted fiscal notes requested for different versions of a bill as separate fiscal notes. For bills with companions, we only counted the version of the fiscal note prepared for the house that initiated the first fiscal note request, except when a note had a different status (i.e., completed, in process at the agency, or waiting for Minnesota Department of Management and Budget sign-off) than its companion. Working days included Monday through Friday, excluding state holidays. We excluded 19 records with inaccurate dates.

<sup>a</sup> The overall average of fiscal notes from 2001-11.

SOURCE: Office of the Legislative Auditor, analysis of Minnesota Department of Management and Budget’s Fiscal Note Tracking System data.

<sup>8</sup> MMB’s Fiscal Note Tracking System automatically designates fiscal note requests as “urgent” when the due date is three working days or less. Such requests appear in red text in this system.

<sup>9</sup> The percentage of urgent requests from 2001 through 2011 was 13.7 in January, 14.4 in February, 25.2 in March, 43.1 in April, and 78.4 in May.

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**Legislative staff sometimes convey to agencies which fiscal note requests should receive the highest priority.**

Agency fiscal note coordinators told us that the legislatively specified due date is the most important factor affecting the priority the agency gives the note. In some cases, particularly for those agencies with a large number of fiscal note requests, legislative fiscal analysts and agencies communicate informally to reach an understanding of which fiscal notes should be considered most urgent and which have lower priorities. For example, the Department of Human Services often receives multiple requests for fiscal notes at about the same time, all with the default due date. In these instances, Department of Human Services staff contact the legislative fiscal analysts to determine which notes they should focus on completing first.

### **Length of Default Due Date**

A majority of fiscal note requests are assigned the default due date (five working days). We asked agency fiscal note coordinators and MMB budget staff whether the default is a reasonable amount of time to complete a fiscal note. We found that:

- **Many staff responsible for overseeing and preparing fiscal notes question the reasonableness of the “default” fiscal note deadline of five working days from the original request.**

About 64 percent of agencies’ fiscal note coordinators said that a default deadline of five working days is reasonable. However, many of the officials who said it is not reasonable are from agencies that received the largest number of fiscal note requests.<sup>10</sup> Additionally, 73 percent of MMB budget staff said that the default deadline is not reasonable; they suggested that more generous timelines would better accommodate fiscal notes on complex legislation or bills unlikely to be heard. In the next section, we demonstrate that it has been a significant challenge for agencies to meet the assigned due dates. As a result, we recommend in Chapter 4 that MMB revise the default due date to more realistically reflect the time it takes to complete fiscal notes and encourage a stronger legislative role in designating fiscal notes that are needed on a faster timeline.

## **TIMELINESS OF COMPLETION OF FISCAL NOTES**

Once a fiscal note is requested, MMB and agencies affected by the legislation have a role in ensuring that the fiscal note is completed. We begin this section with a discussion of the extent to which fiscal notes have been completed by the due dates and perceptions of legislative and MMB staff about the timeliness of fiscal notes. Then, we examine factors that have affected completion time.

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<sup>10</sup> Some agency staff expressed concern that the five-day deadline is overused—for example, in cases where the fiscal note is expected to be very complex or where it appears unlikely that the bill in question will be heard in committee.

## Completion by Due Date

As one measure of timeliness, we examined whether fiscal notes were completed by the dates specified in MMB’s Fiscal Note Tracking System. We found that:

- **Most fiscal notes were not completed by the designated due date.**

Over the past decade, 31 percent of fiscal notes were completed by the assigned due date (see Table 2.1). As noted earlier, nearly all fiscal notes had a due date of five working days or less from the date the fiscal note was requested. Overall, the median time to complete a fiscal note was six working days. The average time to complete a fiscal note was 8.5 working days. A slightly higher percentage of urgent fiscal notes (35 percent)—those with due dates within three working days—than other fiscal notes (30 percent) were completed by the due date.

Since 2001, 31 percent of fiscal notes have been completed by their due dates.

**Table 2.1: Percentage of Fiscal Notes Completed by Due Date, Fiscal Years 2001-11**

	<i>N</i>	Percentage of Fiscal Notes Completed:	
		By Due Date	Within Five Working Days
2011	584	37%	49%
2010	531	35	51
2009	660	26	34
2008	493	27	41
2007	678	31	44
2006	358	31	48
2005	750	32	41
2004	435	36	48
2003	436	33	45
2002	256	38	58
2001	876	25	31
Total/Average	6,057	31%	43%

NOTES: We counted fiscal notes requested for different versions of a bill as separate fiscal notes. For bills with companions, we only counted the version of the fiscal note prepared for the house that initiated the first fiscal note request except when a note had a different status in the process (i.e., completed, in process at the agency, or waiting for Minnesota Department of Management and Budget sign-off) than its companion. Work days included Monday through Friday, excluding state holidays. We excluded records with inaccurate dates, uncompleted fiscal notes, and notes that had been completed and were later revised.

SOURCE: Office of the Legislative Auditor, analysis of Minnesota Department of Management and Budget’s Fiscal Note Tracking System data.

As shown in Table 2.1, among the past 11 years, 2001 and 2009 had the lowest percentage of fiscal notes completed by the due date (25 and 26 percent, respectively).<sup>11</sup> After the low rate in 2009, the percentage of fiscal notes completed by the due date rose to 35 percent in 2010 and 37 percent in 2011.

<sup>11</sup> In neither of these years was the percentage of urgent requests relatively high (as presented earlier in Figure 2.2).

## Completion for Use in Legislative Process

Although many fiscal notes were not completed by their due date, timeliness is mainly an issue when fiscal notes are not available for legislators to consider when making key decisions about legislation.

As another measure of timeliness, we determined through interviews and surveys the extent to which timeliness of fiscal notes was considered a problem in recent years. We found that:

- **Legislative fiscal analysts and MMB budget staff perceived that agencies have, more often than not, prepared fiscal notes in a timely manner.**

Most legislative fiscal analysts who responded to our survey said the timeliness of completed fiscal notes was “sometimes” (or less frequently) a problem during the past three years. The House and Senate chief fiscal analysts said that timely completion of fiscal notes by agencies has, for the most part, not been a problem. Fiscal staff said that fiscal notes that were not completed by their assigned due dates usually did not slow the legislative process, especially in cases where the bills had not yet been scheduled for hearings.

Similarly, MMB budget staff said that most single-agency fiscal notes were developed in a timely manner. In our survey of MMB budget staff, 86 percent said timeliness was “sometimes” (or less often) a problem for single-agency notes in the 2009-10 legislative sessions and 73 percent said the same for the 2011 session.<sup>12</sup>

However, legislators have expressed some concerns about timeliness. Even if timeliness of fiscal note completion has not typically been a problem, delays in completion of individual fiscal notes on important bills have occasionally been a source of legislative frustration. Also, concerns about the timeliness of human services fiscal notes partly prompted the 2010 Legislature to require a review of the Department of Human Services’ (DHS) fiscal note process (completed in 2011).<sup>13</sup> This requirement followed a year (2009) in which DHS was assigned a large workload of fiscal notes, some of which addressed complex health care proposals.<sup>14</sup>

Furthermore, MMB budget staff and legislative fiscal analysts identified certain types of fiscal notes for which timeliness was a concern. For example, more than half of MMB budget staff and more than a third of legislative fiscal analysts said

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**Legislative fiscal analysts said that, for the most part, the timeliness of fiscal notes has not been a problem.**

<sup>12</sup> Seven percent of MMB staff said the timeliness of single-agency fiscal notes was “often” a problem in the 2009-10 sessions, and 13 percent said the same for the 2011 session. No respondents said timeliness was “always or almost always” a problem.

<sup>13</sup> *Laws of Minnesota* 2010, First Special Session, chapter 1, art. 19, sec. 20. See: Minnesota Department of Management and Budget, Management Analysis and Development, *The Human Services Fiscal Note Process* (St. Paul, January 2011).

<sup>14</sup> In 2009, DHS was assigned 298 fiscal note requests. The average number of requests for DHS in budget years from 2001 to 2011 (excluding 2009) was 240.

that multi-agency fiscal notes “often” (or more) had what they considered to be timeliness problems in 2009 to 2011. Also, several MMB budget officers noted that agencies sometimes were slower in preparing fiscal notes when the bills were contentious or pertained to initiatives that were not high priorities of the agencies.

## Factors Affecting Completion Time

Through our analysis of fiscal note data and survey responses, we considered reasons that some fiscal notes have taken longer than others to complete. We found that:

- **The timely completion of fiscal notes depends on various factors, including some within the legislative branch’s control.**

Table 2.2 shows several factors that can affect timeliness.<sup>15</sup> We discuss each of these factors below.<sup>16</sup>

**Table 2.2: Factors That Can Affect the Timeliness of Fiscal Note Completion**

Factor	Primary Responsibility for This Factor Rests With:		
	Legislative Branch	Department of Management and Budget	Agencies
Agency’s overall fiscal note workload at a given time	X		
Designated urgency of fiscal note requests	X		
Coordination of fiscal notes among multiple agencies		X	X
Efficiency of processes for drafting, reviewing, or signing off on fiscal notes		X	X
Clarity of the bill language	X		
Complexity of bill provisions or fiscal estimates	X		

SOURCE: Office of the Legislative Auditor.

<sup>15</sup> One of the factors we explored in examining delays in fiscal notes was the degree to which the MMB review of fiscal notes contributed to delays. For about 4 percent of the fiscal notes, the time between when the agency signed off on a fiscal note and the MMB budget staff completed the review of the note was more than five working days. The timeliness of MMB’s reviews was affected by the various factors discussed in this section.

<sup>16</sup> In our analysis of average and median times to complete fiscal notes, we excluded cases in which official “revisions” to completed fiscal notes occurred. Sometimes agencies revise already-completed fiscal notes, either at their own initiative or that of the legislative requester. Typically, this is done to address an error that was not detected before the note was completed. When the error is subsequently corrected, the Fiscal Note Tracking System overwrites the original completion date with the date the revision was made, which lengthens the apparent completion time for the fiscal note, potentially by weeks or even months. Because the original completion date is overwritten, it is difficult to determine whether the original fiscal note was completed within a reasonable time.

## Volume of Fiscal Notes

As noted earlier, the Legislature adopts the two-year state budget in odd-numbered years, often called “budget years.” From 2001 to 2010, more bills have been introduced in both the House and Senate in budget years than in non-budget years. In addition, the number of fiscal notes requested in budget years was 66 percent larger than the number requested during non-budget years.<sup>17</sup> These types of year-to-year differences provided an opportunity for us to examine the impact that the volume of fiscal notes has on timeliness. We found that:

- **It has taken longer for fiscal notes to be completed in years when the volume of fiscal notes has been larger.**

From 2001 to 2011, it took longer, on average, for fiscal notes to be completed in budget years (odd-numbered years) than during non-budget years (even-numbered years). Specifically, the average time to complete fiscal notes in budget years was 9.2 working days compared with 7.1 working days in non-budget years.<sup>18</sup> Figure 2.3 graphically shows the relationship between the length of time to complete fiscal notes and the number of fiscal notes.<sup>19</sup> Since 2001, the average working days to complete a note in each budget year was higher than the average completion time in the following year. In addition, the years with the most fiscal note requests (2001, 2005, 2007, 2009) were the years with the longest average time of completion.

At peak times during a legislative session, some agencies are assigned responsibility for a large number of fiscal notes in a short timeframe. One agency official described receiving “multiple fiscal note requests on the same day late in the day.” Agency staff may be juggling work on multiple fiscal note requests at the same time as other responsibilities. As one agency fiscal note coordinator commented: “The staff who distribute, review and coordinate [fiscal notes] all have other full-time responsibilities including attending and testifying at legislative hearings; this is in addition to their normal required duties which already require 8+ [hours] to complete.”

Several of the agencies that took the longest to complete fiscal notes in the past five years were among the agencies with the highest number of fiscal note requests.<sup>20</sup> When agencies receive many fiscal note requests within the same

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**In years when the Legislature requests more fiscal notes, it takes agencies somewhat longer, on average, to prepare them.**

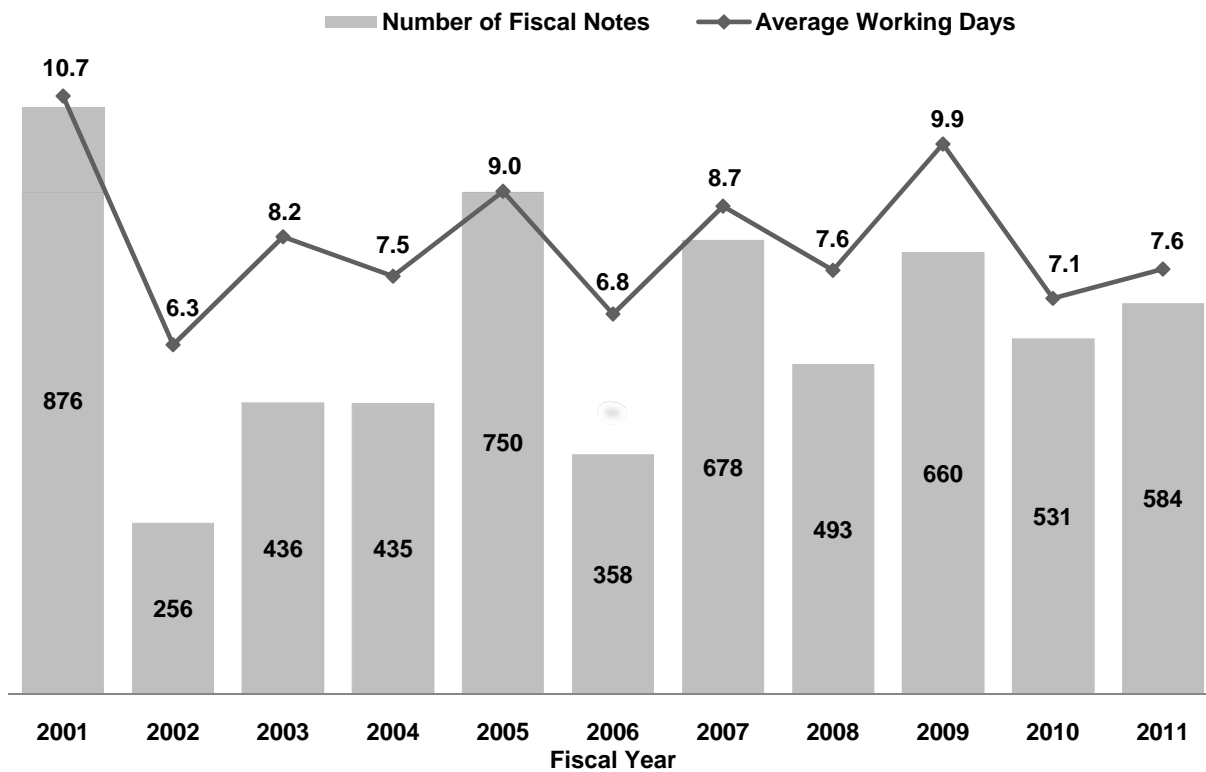
<sup>17</sup> When analyzing only fiscal note requests that were completed, the total number of fiscal notes in budget years from 2001 to 2010 was 64 percent larger than in non-budget years.

<sup>18</sup> The median working days to complete a fiscal note was seven in budget years and six in non-budget years.

<sup>19</sup> Pearson’s correlation coefficient (a measure of the relationship between variables) for the number of fiscal notes and average length of time is 0.9, indicating a strong relationship.

<sup>20</sup> Five agencies had among the longest average times to complete fiscal notes in at least four of the past five years. The agencies included the departments of Human Services, Education, and Revenue, the Supreme Court, and the Lottery. Of these, all but the Lottery had among the largest number of fiscal note requests in that timeframe.

**Figure 2.3: Time to Complete Fiscal Notes, Fiscal Years 2001-11**



NOTES: We counted fiscal notes requested for different versions of a bill as separate fiscal notes. For bills with companions, we only counted the version of the fiscal note prepared for the house that initiated the first fiscal note request, except when a note had a different status (i.e., completed, in process at the agency, or waiting for Minnesota Department of Management and Budget sign-off) than its companion. Working days included Monday through Friday, excluding state holidays. We excluded records with inaccurate dates, uncompleted fiscal notes, and notes that had been completed and later revised.

SOURCE: Office of the Legislative Auditor, analysis of Minnesota Department of Management and Budget’s Fiscal Note Tracking System data.

timeframe, agency staff typically communicate with legislative fiscal analysts to identify which notes are a priority and then focus on completing those fiscal notes first. Other notes are set aside and may not be completed for several weeks, if at all.

**Urgency of Fiscal Note Requests**

Fiscal note requests with due dates within three working days are classified in the Fiscal Note Tracking System as “urgent” requests. When legislative staff make an urgent request for a fiscal note, they expect that the note will be completed sooner than other fiscal notes. We compared the length of time to complete urgent fiscal notes with notes that had longer due dates and found:

- **On average, urgent fiscal notes have been completed more quickly than other fiscal notes.**

From 2001 to 2011, the average time to complete “urgent” fiscal notes was 5.0 working days. In contrast, fiscal notes with due dates longer than three working days took an average of 9.7 working days.<sup>21</sup> Urgent requests are often submitted for bills that have a hearing scheduled in a committee—in other words, a firm deadline. Other fiscal note requests, on the other hand, may not yet have a set date when the related bills will be discussed.

In each of the past three years, the average and median lengths of time to complete urgent requests were at least three days shorter than non-urgent fiscal notes. Table 2.3 shows that there were more urgent fiscal notes completed in 2011 than 2009, but the average number of working days to complete such requests was slightly shorter in 2011. In particular, the 193 urgent fiscal notes in 2011 took an average of 5.2 working days and the 145 urgent requests in 2009 took an average of 5.9 working days.

**When legislative staff indicate an urgent need for a fiscal note, it tends to be completed more quickly than other fiscal notes.**

**Table 2.3: Working Days to Complete Fiscal Notes by Type of Note, Fiscal Years 2009-11**

	<i>N</i>			Average Working Days		
	2009	2010	2011	2009	2010	2011
<b>Single Agency Notes</b>						
Urgent <sup>a</sup>	71	83	102	4.5	3.6	4.4
Non-urgent <sup>b</sup>	<u>274</u>	<u>212</u>	<u>210</u>	<u>9.6</u>	<u>6.7</u>	<u>7.3</u>
Total/Average (Single Agency Notes)	345	295	312	8.6	5.8	6.3
<b>Multi-Agency Notes</b>						
Urgent <sup>a</sup>	74	74	91	7.2	4.9	6.0
Non-urgent <sup>b</sup>	<u>241</u>	<u>162</u>	<u>181</u>	<u>12.5</u>	<u>10.4</u>	<u>10.6</u>
Total/Average (Multi-Agency Notes)	315	236	272	11.3	8.7	9.1
<b>All Notes</b>						
Urgent <sup>a</sup>	145	157	193	5.9	4.2	5.2
Non-urgent <sup>b</sup>	<u>515</u>	<u>374</u>	<u>391</u>	<u>11.0</u>	<u>8.3</u>	<u>8.8</u>
<b>Total/Average (All Notes)</b>	660	531	584	9.9	7.1	7.6

NOTES: We counted fiscal notes requested for different versions of a bill as separate fiscal notes. For bills with companions, we only counted the version of the fiscal note prepared for the house that initiated the first fiscal note request except when a note had a different status in the process (i.e., completed, in process at the agency, or waiting for Minnesota Department of Management and Budget sign-off) than its companion. Work days included Monday through Friday, excluding state holidays. We excluded records with inaccurate dates, uncompleted fiscal notes, and notes that had been completed and were later revised.

<sup>a</sup> Urgent fiscal notes are those where the due date in the Fiscal Note Tracking System is within three working days of the request date.

<sup>b</sup> Non-urgent fiscal notes are those where the due date in the Fiscal Note Tracking System is more than three working days from the request date.

SOURCE: Office of the Legislative Auditor, analysis of Minnesota Department of Management and Budget’s Fiscal Note Tracking System data.

<sup>21</sup> The median time to complete urgent fiscal notes was three working days and non-urgent notes was seven working days.

## Coordination of Fiscal Notes Among Multiple Agencies

As described in Chapter 1, fiscal notes assigned to multiple agencies require that each agency complete its portion of the note before the note is considered completed. Additionally, each agency's portion of the fiscal note is reviewed by an MMB budget staff person, and then the entire note is reviewed by an MMB budget officer for consistency.<sup>22</sup> We compared the timeliness of multi-agency and single-agency notes and found that:

- **On average, multi-agency fiscal notes have taken longer to complete than notes prepared by a single agency.**

Since 2001, multi-agency notes took an average of 9.9 working days to complete; single-agency notes took an average of 7.6 working days.<sup>23</sup> A multi-agency fiscal note can be delayed when any one of the responsible agencies does not complete its portion of the note. If an agency gives a multi-agency note low priority—for example, because the bill would have little or no impact on that agency—waiting for that agency to complete its work can delay completion of the entire note.

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**However, fiscal notes assigned to multiple agencies present special timeliness challenges.**

Table 2.3 shows that, in the past three years, multi-agency notes that were declared by legislative staff to be “urgent” (due within three days) took less time than those that were not urgent (due after more than three days). Urgent multi-agency notes also took less time to prepare, on average, than non-urgent single-agency notes. For example, in 2011, multi-agency notes that were urgent took 6.0 working days while single-agency notes that were not urgent took 7.3 working days to complete.

For the most part, the additional step for multi-agency notes (in which a lead MMB budget officer reviews the note) does not appear to contribute to the lengthier completion time of multi-agency notes. For 85 percent of the multi-agency fiscal notes in the past 11 years, the lead MMB budget staff review was completed on the same day that MMB signed off on the final agency portion of the note. However, in a small portion of cases (about 3 percent), the review of the fiscal note by the lead MMB staff person took three or more days.<sup>24</sup>

On a rare occasion, a multi-agency note may be delayed, in part, because MMB assigns the fiscal note to an additional agency several days or even weeks after it initially assigns other agencies. MMB said that sometimes fiscal analysts or agencies will inform MMB about other agencies that should be assigned to a fiscal note. Since 2001, MMB's assignment of fiscal notes to all agencies took more than five working days for about 3 percent of completed multi-agency fiscal notes. The majority of multi-agency fiscal notes (90 percent) were assigned to all agencies within a day of the initial legislative request.

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<sup>22</sup> Also, multi-agency fiscal notes sometimes involve effort by MMB at the beginning of the process to coordinate the work of the various agencies and ensure consistency.

<sup>23</sup> The median time to complete multi-agency notes was seven working days and single-agency notes was six working days.

<sup>24</sup> Lead MMB staff may also spend this time contacting an agency with questions or requesting that the agency make a change to the fiscal note.

## Efficiency of Agencies' Internal Fiscal Note Processes

Agencies have developed their own internal processes for preparing fiscal notes. The timely completion of a fiscal note may depend on how quickly an agency assigns the request to the appropriate staff, as well as how many staff are involved in preparing and reviewing the draft.

Occasionally, internal processes within an agency lengthen the time it takes to complete a fiscal note. For example, the courts use a committee of judges and administrative staff to assess the impact of proposed legislation on a variety of court operations. The court fiscal note coordinator told us that obtaining data, discussing it with the group, and writing the fiscal note often takes at least ten days. Also, a 2011 external review of the Department of Human Services' fiscal note process suggested a need to streamline the agency's internal process for reviewing and signing off on fiscal notes.<sup>25</sup>

Another example is the Department of Revenue, where the staff who prepare fiscal notes are separate from those who estimate the revenue impacts of tax bills. Department staff told us that, for fiscal notes on bills with a revenue impact, they usually do not sign off on a fiscal note until a revenue analysis for the bill has been completed—but revenue impacts are not usually examined until a bill is scheduled to be heard in a tax committee.

## Clarity of Bill Language

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**Unclear bill language sometimes delays the completion of a fiscal note.**

Most agency fiscal note coordinators told us that the majority of fiscal note requests they receive are for bills with sufficiently clear language.<sup>26</sup> However, some agencies identified unclear bill language as an important problem that can contribute to a longer completion time. For example, one agency fiscal note coordinator said: “Most of the time, the clarity of the fiscal note request is murky at best.” Another said:

[I]n order to develop an analysis of the fiscal impact of a proposal we need to have well-defined terms in a bill so that we are able to answer the question “What does this bill do and how would we implement it?” To write a successful proposal, that often requires a bill drafter to have a good understanding of the program itself and the operational side of the agency's programs. In our experience, most legislative staff do not understand the agency at that level....

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<sup>25</sup> Minnesota Department of Management and Budget, Management Analysis and Development, *The Human Services Fiscal Note Process* (St. Paul, January 2011). The unit of MMB that conducted this analysis provides fee-for-service management consulting to state agencies and is not involved in MMB's ongoing processes for preparing or reviewing fiscal notes. Department of Human Services staff told us that, since the 2009 session, different program areas within the department have used management tools to identify and eliminate extra steps in their internal fiscal note procedures.

<sup>26</sup> In response to our survey question about whether bill language, for the purpose of making fiscal estimates, was sufficiently clear, around 70 percent of agency fiscal note coordinators stated that language was clear for most or all fiscal notes in 2009 to 2011.

If a bill is not sufficiently specific, agencies may struggle to estimate its fiscal impact. Agencies are sometimes unable to complete the fiscal note until they have talked with the bill author or legislative staff about the bill's intent, or to discuss possible changes to the bill's language. As an example, a fiscal note prepared by the Department of Human Services (DHS) in 2010 for a bill that would create an alternative MinnesotaCare benefit for certain populations was delayed due to missing and unclear bill language.<sup>27</sup> DHS staff met with the bill author several times and provided technical assistance to point out sections of the bill that needed more specificity and language changes. More than two months after the initial fiscal note was requested, the bill was revised and DHS completed the fiscal estimate.

### Complexity of Bills

**Some fiscal notes are relatively simple to prepare, while others involve complex calculations or multiple assumptions about how a proposal would be implemented.**

Fiscal notes that require complex calculations may take longer to prepare than others. Proposals for large-scale reforms or reorganizations—such as new methods of health care purchasing or consolidation of agency administrative functions—are more difficult to estimate than bills that only involve new administrative expenditures. A report by MMB's Management Analysis and Development unit noted that the Department of Human Services' fiscal notes are "uniquely complex," partly reflecting the interactions among various programs the department administers.<sup>28</sup>

For certain bills, agencies may need time to gather information from other sources that are not within the agency, such as an actuary or legal consultant, similar agencies in other states, or other Minnesota state agencies. An example is a fiscal note for a bill proposed in 2011 to consolidate six back-office functions of agencies (such as human resources), transferring their responsibility to the Department of Administration.<sup>29</sup> The fiscal note took more than three weeks to prepare, in part because it was a complex proposal without a clear precedent in Minnesota state government. Among the sources the Department of Administration consulted in making its fiscal note estimate were financial officers from other Minnesota state agencies, state agencies from Iowa, and a report prepared for a different Minnesota state agency.<sup>30</sup>

In Chapter 4, we offer suggestions to both agencies and the Legislature to improve communication, particularly in cases of fiscal notes for bills with unclear language or that involve complex issues. Better communication about

<sup>27</sup> H.F. 3036, 2010 Leg., 86<sup>th</sup> Sess. (MN). For example, DHS said the bill did not specify what would occur when enrollees reported income increases that moved them from a standard benefit amount to a defined contribution amount. Also, the language describing the base contribution per enrollee was not sufficiently clear to provide a fiscal estimate.

<sup>28</sup> Minnesota Department of Management and Budget, Management Analysis and Development, *The Human Services Fiscal Note Process*, 11.

<sup>29</sup> H.F. 418, 2011 Leg., 87<sup>th</sup> Sess. (MN).

<sup>30</sup> There was also delay because MMB did not immediately designate the Department of Administration as the "lead agency" for this fiscal note. The Department of Administration originally completed within four working days an estimate of the impact of the bill on its own agency operations. However, MMB then asked Administration to work with other state agencies to prepare an estimate of the statewide impact of the bill.

such notes may help improve timeliness or at least ensure that fiscal note requesters are aware of the reasons for delays when notes require more time than expected.

## LOCAL IMPACT NOTES

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**State law authorizes certain legislative leaders to request estimates of bills' impacts on local governments.**

As noted in Chapter 1, local impact notes are estimates of the fiscal impact of proposed legislation on local units of government. Local notes may be requested by the chair or ranking minority member of the House or Senate Tax Committee, the House Ways and Means Committee, or the Senate Finance Committee. The process for completing a local impact note is different from a fiscal note. Specifically, the Minnesota Department of Management and Budget coordinates the preparation of local impact notes, often soliciting input from local officials. In this section, we examine the length of time it has taken to complete local impact notes.

When MMB receives a request for a local impact note, a budget officer determines which local entities, if any, to contact for information or cost estimates. Based on the content of the legislation, the MMB budget officer may analyze data available at MMB or request information from a sample of local government entities or from statewide associations representing local governments. Once the local entities have sent MMB their estimates, the MMB budget officer prepares the local impact statement, which is then posted on the MMB Web site and sent to the requester.

We examined the local note request dates and completion dates for the past three years. We found that:

- **It has typically taken significantly longer to complete local impact notes than fiscal notes.**

Only a small number of local impact notes were requested from 2009 to 2011, as shown in Table 2.4. The local impact notes took, on average, 27.0 working days compared with 8.3 working days for fiscal notes during this timeframe. In the past three years, the length of time to complete a local impact note ranged from 4 to 51 working days. However, the local impact note that took only four days was completed quickly because MMB had already gathered relevant data for a similar request in the previous session that never resulted in a completed note.

One factor affecting the completion of local impact notes is the time it takes for MMB to receive information from local organizations or governments. Typically, local entities are given more time to provide MMB with information or estimates than state agencies have to prepare fiscal notes. For example, MMB told us that it usually asks local governments or organizations to respond to requests for information on local impact notes within seven to ten working days; for most fiscal notes, state agencies are asked to complete their estimates in less than five working days.

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**Table 2.4: Average Working Days to Complete Local Impact Notes and Fiscal Notes, Fiscal Years 2009-11**


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**Completion of a local impact note often takes several weeks.**

	<i>N</i>	Average Working Days
<b>Local Impact Notes<sup>a</sup></b>		
2011	6	24.7
2010	3	25.0
2009	<u>4</u>	<u>32.0</u>
Total/Average (Local Notes, 2009-11)	13	27.0
<b>Fiscal Notes<sup>b</sup></b>		
2011	584	7.6
2010	531	7.1
2009	<u>660</u>	<u>9.9</u>
Total/Average (Fiscal Notes, 2009-11)	1,775	8.3

NOTE: Working days included Monday through Friday, excluding state holidays.

<sup>a</sup> The working days to complete a fiscal note is the number of work days between the date on the completed local impact statement and the date of the request letter sent to the Minnesota Department of Management and Budget.

<sup>b</sup> We counted fiscal notes requested for different versions of a bill as separate fiscal notes. For bills with companions, we only counted the version of the fiscal note prepared for the house that initiated the first fiscal note request, except when a note had a different status (i.e., completed, in process at the agency, or waiting for Minnesota Department of Management and Budget sign-off) than its companion. We excluded records with inaccurate dates, uncompleted fiscal notes, and notes that had been completed and were later revised.

SOURCES: Office of the Legislative Auditor, analysis of Minnesota Department of Management and Budget's Fiscal Note Tracking System and local impact note data.

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Another factor affecting MMB's completion of local impact notes is the timing of when the bills are considered by legislative committees. MMB budget staff told us that, due to other priorities within the MMB Budget Division, completing local note requests may receive lower priority—especially when legislative staff do not indicate that the local impact analysis is needed sooner.<sup>31</sup> MMB staff also said they prefer to release a local impact note based on the version of a bill that will be voted on in committee. Before MMB releases a local impact note, it sometimes updates information it previously gathered for one version of a bill to reflect the most recent bill language, which takes additional time.

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<sup>31</sup> For example, MMB staff told us that competing priorities within the department's Budget Division (such as urgent budget requests from the Legislature and the Governor, and other session-related activities, including fiscal note requests) contributed to delays in completing a local impact note for H.F. 1033, 2011 Leg., 87<sup>th</sup> Sess. (MN), discussed further in Chapter 3.



# Adequacy of Fiscal Notes' Content

**Fiscal notes often provide useful and reasonable information, but many could be more explanatory.**

Fiscal notes have been a part of Minnesota's legislative process for nearly 40 years. Still, it is important to consider whether fiscal notes provide credible, objective information in an understandable way. In this chapter, we evaluate the content of fiscal notes by examining (1) the format in which they are prepared, (2) the extent to which their estimates are "transparent" to readers, (3) the accuracy and reasonableness of fiscal notes' assumptions and calculations, (4) the manner in which fiscal notes address local impacts, and (5) the oversight of fiscal notes by the Minnesota Department of Management and Budget (MMB).

Overall, we concluded that Minnesota's fiscal notes often provide useful and reasonable information. However, fiscal notes rely on assumptions that deserve close scrutiny, and they sometimes contain errors. To help ensure credibility, it is essential that fiscal notes be as clear, transparent, and explanatory as possible.

## FORMAT

As a first step in evaluating the overall adequacy of Minnesota's fiscal notes, we considered the adequacy of Minnesota's standard fiscal note format. We reviewed fiscal notes from Minnesota and other states, solicited opinions on Minnesota's approach from legislative and executive branch officials, and considered the requirements of state law. We determined that:

- **Fiscal notes have employed a mostly satisfactory format for helping Minnesota legislators weigh the likely impact of proposed legislation.**

Minnesota law says: "The commissioner of management and budget shall prescribe a uniform procedure to govern the departments and agencies of the state in complying with the requirements of [the fiscal note law]."<sup>1</sup> Table 3.1 shows an example of a simple fiscal note, based on the standard format developed by MMB.

We think Minnesota's fiscal notes have some strong features. First, it is helpful that the first page of a fiscal note has a single table that summarizes in dollar terms (where possible) the bill's estimated state expenditure and revenue impacts. Where appropriate, this page aggregates information from multiple agencies. Other parts of the fiscal note may discuss alternative assumptions, but agencies are instructed to prepare the front-page table using the "most likely

<sup>1</sup> *Minnesota Statutes* 2011, 3.98, subd. 4.

**Table 3.1: Example of the Standard Fiscal Note Format**

<b>Fiscal Note – 2009-10 Session</b>		<b>Fiscal Impact</b>		<b>Yes</b>	<b>No</b>
<b>Bill #:</b> H0900-1E	<b>Complete Date:</b> 04/02/09	State		X	
<b>Chief Author:</b> JUHNKE, AL		Local			X
<b>Title:</b> PESTICIDE RAILROAD APPLICATION REGUL		Fee/Departmental Earnings			X
<b>Agency Name:</b> Agriculture Dept		Tax Revenue			X

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

Dollars (in thousands)	FY09	FY10	FY11	FY12	FY13
<b>Expenditures</b>					
Agriculture Fund		20	20	20	20
<b>Less Agency Can Absorb</b>					
–No Impact–					
<b>Net Expenditures</b>					
Agriculture Fund		20	20	20	20
<b>Revenues</b>					
Agriculture Fund		0	0	0	0
<b>Net Cost &lt;Savings&gt;</b>					
Agriculture Fund		20	20	20	20
<b>Total Cost &lt;Savings&gt; to the State</b>		20	20	20	20

	FY09	FY10	FY11	FY12	FY13
<b>Full-Time Equivalents</b>					
Agriculture Fund		0.10	0.10	0.10	0.10
<b>Total FTE</b>		0.10	0.10	0.10	0.10

(continued on next page)

scenario.”<sup>2</sup> In our view, the first page of a fiscal note correctly provides a “bottom line” estimate for busy legislators to consider. The main table on the first page focuses entirely on direct impacts affecting *state* revenues or expenditures, and this enhances the relevance of fiscal notes for use in the state budget process. Among 43 states for which we reviewed examples of fiscal notes, we observed that 60 percent summarized fiscal estimates in tabular form on the first or second page of the fiscal note, while the others did not.

Second, it is useful that Minnesota’s fiscal notes provide estimates for at least four upcoming years. Fiscal notes prepared in odd-numbered years include fiscal estimates for five years, while fiscal notes prepared in even-numbered years have estimates for four years. In addition, Minnesota’s standard fiscal note format has

<sup>2</sup> Minnesota Department of Management and Budget, *[Fiscal Note] Policies and Procedures* (St. Paul, December 2010), 8.

**Table 3.1: Example of the Standard Fiscal Note Format (continued)****Bill Description**

This bill requires the commissioner of agriculture to offer annual railroad ("RR") employee safety training opportunities. Bill prohibits use of Restricted Use Pesticides in or onto RR locomotives, track repair equipment, or on-track housing units. Bill requires a RR with more than 50 MN employees to have at least one of those employees licensed as a MN noncommercial Pesticide Applicator. Bill requires RR or its hired applicator to report any pesticide misuse to MDA within four (4) hours.

**Assumptions**

MDA will be able to license RR employees as Noncommercial applicators in routine fashion. Outreach/training opportunities will be identified to MDA by MN RR companies, and MDA will deliver information to as many of those companies as possible via: 1) web-based safety fact sheets; 2) availability to offer pesticide safety information at RR sponsored employee right-to-know training sessions, either in-person, via web-based communications, or other electronic means; 3) MDA produced, printed, and distributed safety posters or brochures/fact sheets.

**Expenditure and/or Revenue Formula**

Pesticide Regulatory Account:

0.1 FTE staff outreach – time, travel, expenses:	\$10,000
Production and distribution of educational materials, per the above:	\$10,000
Revenue from increased licenses issued:	negligible

**Long-Term Fiscal Considerations**

Requires annual expenditure of staff effort and production/distribution of materials

**Local Government Costs**

None known or anticipated

**References/Sources**

MDA Pesticide & Fertilizer Management Division, Licensing & Certification Unit

Agency Contact Name: GREG BUZICKY (651-201-6580)

FN Coord Signature: STEVE ERNEST

Date: 04/02/09 Phone: 201-6580

**EBO Comments**

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: MIKE ROELOFS

Date: 04/02/09 Phone: 201-8023

SOURCE: Minnesota Department of Management and Budget.

a section in which agencies can discuss a bill's longer term fiscal implications. A few states' fiscal notes have shorter timeframes than Minnesota, providing as little as one or two years of estimates.<sup>3</sup> In our view, such short timeframes would not adequately estimate the impact of legislation that will be implemented over a period of years, or for which the cost savings are not expected immediately. We think a four- or five-year timeframe is usually appropriate.

Third, Minnesota's fiscal notes provide ample opportunity for agencies to explain or justify their estimates. The standard format includes sections in which agencies can describe the bill, present the assumptions and calculations used to make the fiscal estimates, and discuss the bill's local government fiscal impacts and long-term fiscal implications, if any. Some agency officials told us that

<sup>3</sup> In our review of other states' fiscal notes, there were several states in which at least one fiscal note we examined showed only one or two years of estimated impacts. The longest standard timeframes we saw were several states with fiscal notes that showed five or six years of impacts.

legislators focus too much attention on the first page of a fiscal note, without considering the discussions and explanations in the subsequent pages.<sup>4</sup> But for careful and critical readers of fiscal notes—whether they are legislators, legislative fiscal analysts, lobbyists, or others—these narrative sections are important. Some states have a very abbreviated fiscal note format that provides little or no explanation of the basis for the estimates provided.

**The standard fiscal note format incorporates the components required by state law.**

Fourth, we observed that MMB’s standard fiscal note format incorporates the components required by state law, although agencies’ compliance with these requirements varies somewhat. Table 3.2 summarizes the extent to which fiscal notes we reviewed complied with statutory requirements. We think the Legislature should consider amending the requirement that fiscal notes “cite the statutory provisions affected,” and we offer this recommendation in Chapter 4. Compliance with this requirement has been mixed, at best, and we think a statutory requirement for a concise narrative summary of the pertinent bill would be a preferable substitute. For the most part, the compliance issues noted in Table 3.2 are minor and could be addressed through clarifications in MMB’s instructions to agencies.

**Table 3.2: Agency Compliance with Statutory Fiscal Note Requirements**

Requirement	Compliance
Cite the effect in dollar amounts	Fiscal notes always show effects in dollars, except: (1) fiscal notes often show blanks rather than “\$0” in cases with no estimated impact, and (2) on rare occasions, agencies state that they were unable to make an estimate.
Show the increase or decrease in revenues or expenditures	Fiscal notes comply with this requirement, except in those rare cases where the agency states that it is not feasible to provide dollar estimates of future impacts.
Cite the statutory provisions affected	Fiscal notes nearly always have narrative descriptions of the bills, but a majority lack specific statutory citations.
Indicate costs that may be absorbed without additional funds	The fiscal note format includes a place for agencies to show “Absorbed Costs,” but this is used inconsistently (see discussion later in Chapter 3).
Show the assumptions used in making the estimates	Agencies nearly always list assumptions in their fiscal notes, but sometimes the explanations for these assumptions are insufficient (see discussion later in Chapter 3).
Specify long-range implications	In the fiscal note section called “Long-Term Fiscal Considerations,” agencies sometimes say “None” or “Not Applicable” rather than indicating whether the fiscal effects of the legislation would be ongoing or permanent.

SOURCE: Office of the Legislative Auditor, based on review of a sample of fiscal notes.

We did hear some concerns about the fiscal note format. About one-fourth of the agency fiscal note coordinators and MMB budget staff said that the format of Minnesota’s fiscal notes should be significantly revised. Some MMB staff and

<sup>4</sup> In our survey of agencies’ fiscal note coordinators, 44 percent said that legislators “sometimes,” “rarely,” or “never” paid attention to the assumptions stated inside the fiscal note (N=25).

legislative fiscal analysts said they would prefer a format that allows agencies to present a range of estimates for a given year, rather than a single estimate (as MMB now requires in the table on the fiscal note's first page).<sup>5</sup>

In at least one subject area, we think an alternative fiscal note format may be needed, as we recommend in Chapter 4. We found that:

- **The standard fiscal note format is inadequate for addressing the impacts of some pension bills.**

**For legislation related to public pensions, fiscal notes do not always effectively convey the bills' fiscal impacts.**

Fiscal notes may create a misleading picture of a pension bill's long-range fiscal impact because they emphasize the direct costs to the state over only a four-year period. This short-term perspective can be problematic, particularly for bills that affect the unfunded liability of multiple pension funds. For example, a 2011 bill proposed to transfer "non-security personnel" from the Minnesota State Retirement System's Correctional Employees Retirement Plan to the system's General Plan.<sup>6</sup> An actuarial assessment indicated that the bill would reduce the state's required contributions for both plans together by \$3 million annually, but these savings would not necessarily be achieved in the short-term period covered by the fiscal note.<sup>7</sup> The bill would have substantially increased the burden on the Correctional Plan, primarily because the existing unfunded liability in the plan would have been spread over a much smaller group of employees. The fiscal note assumed that the Legislature would increase employer contributions for the Correctional Plan to address this increased burden, and it therefore estimated that this proposal would result in net costs to the state of \$1.2 million in the fiscal year 2012-13 biennium. The fiscal note—especially the summary table on the first page—did not clearly convey potential savings over the longer term. Legislative staff told us that the fiscal note's conclusion that the bill would result in net costs—not net savings—was a key factor in the bill's failure to progress in the legislative process.

In addition, the table on the front page of a fiscal note sometimes does not effectively summarize the fiscal impact of pension bills involving statewide pension funds for local governments. The front page is designed to summarize the fiscal impact on state government. However, the front page of fiscal notes for some pension bills includes the costs to the statewide pension funds for local governments, even though these funds are largely financed by local governments. At the same time, fiscal notes exclude the direct costs and savings to local governments. As a result, the front pages of these fiscal notes do not provide an accurate summary of the fiscal impact on state government alone nor of the

<sup>5</sup> Agencies can discuss a range of assumptions or estimates in the narrative portion of a fiscal note, if they wish. MMB instructs agencies to base estimates in the first page's table on the "most likely scenario."

<sup>6</sup> H.F. 1072, 2011 Leg., 87<sup>th</sup> Sess. (MN).

<sup>7</sup> The actuary for the Minnesota State Retirement System (MSRS) estimated that the net result of the bill would be to decrease the total annual required contribution for employees and the state by \$5.6 million. Based on current employee contribution rates, transferring "non-security" employees from the MSRS Correctional Employees Retirement Plan to the General Plan would reduce employee contributions by \$2.6 million per year. As a result, the bill would have reduced the state's annual required contributions by about \$3 million.

overall fiscal impact on state and local governments combined. For example, the table for a 2011 bill that reduced state and local employer pension contributions by increasing employee contributions included both savings and costs for state government and a portion of the fiscal impact on local governments.<sup>8</sup> Specifically, the front page included annual costs of \$47 million to the Teachers Retirement Association (TRA) and Public Employees Retirement Association (PERA) pension funds, but it excluded \$286 million in savings to local governments.<sup>9</sup> Had the table focused on the fiscal impact for state government, the overall savings would have been about \$64 million per year rather than the \$17 million reported. Alternatively, the overall savings shown in this table would have been \$303 million per year had all state and local government costs and savings been included.

## TRANSPARENCY

Fiscal notes rely on assumptions and calculations that may be subject to debate. Thus, it is important that fiscal notes be sufficiently “transparent” so that readers can understand the basis for fiscal notes’ estimates. Since 2001, state law has specifically required that fiscal notes “include the assumptions used in determining the cost estimates.”<sup>10</sup> We found that:

- **Fiscal notes typically list assumptions that agencies used to develop their estimates, but many fiscal notes do not—in our view—sufficiently explain these assumptions or show how the fiscal estimates were computed.**

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**Fiscal notes should be written in a way that general readers, not just experts, can understand.**

We recognize that judgments about what constitutes an appropriate amount of explanatory detail in a fiscal note may vary. On the one hand, MMB has instructed agencies to write “concise” fiscal notes.<sup>11</sup> One legislative fiscal analyst told us that fiscal notes presume a certain understanding of the programs involved, and that this approach meets the needs of staff with specialized expertise (such as fiscal analysts). On the other hand, MMB has instructed agencies to write their fiscal notes “to communicate to a general audience.”<sup>12</sup> MMB’s instructions state: “A fiscal note should help the Legislature make an intelligent, informed decision based on the best facts available.”<sup>13</sup> MMB suggests that fiscal notes provide details about assumptions, such as: the number of people to be served; unit or average costs; the timing of spending or staff changes; dollar estimates for each “object of expenditure;” salary levels for proposed staff; assumptions about fringe benefits; and separate break-outs for

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<sup>8</sup> S.F. 813, 2011 Leg., 87<sup>th</sup> Sess. (MN).

<sup>9</sup> The estimated costs were due to the bill’s negative impact on turnover gain, which occurs when employees leave their jobs and obtain refunds for their pension contributions, leaving the employer contributions with the pension funds.

<sup>10</sup> *Laws of Minnesota* 2001, First Special Session, chapter 10, art. 2, sec. 12.

<sup>11</sup> Minnesota Department of Management and Budget, *[Fiscal Note] Policies and Procedures* (St. Paul, December 2010), 8.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

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**Most fiscal notes could have better explanations, particularly about the assumptions used to make estimates.**

administrative, contract, and grant costs.<sup>14</sup> In our view, fiscal notes with a sufficient level of detail and clear explanations help legislators and the general public to thoughtfully review the basis for agency estimates. If key assumptions are not adequately explained, readers may question the credibility or objectivity of the estimates.

Because MMB's standard fiscal note template has a section called "Assumptions" and another for showing calculations (called "Expenditure and Revenue Formula"), fiscal notes usually discuss, to some extent, how the estimates were derived.<sup>15</sup> Some, in fact, are very thorough. For example, a 2010 bill proposed to repeal the exemption of clothing purchases from the state's sales and use tax, reduce this tax rate, and make payments of state aid to school districts and charter schools that were previously deferred.<sup>16</sup> This was a complicated proposal for "paying back" school districts and charter schools over ten years—rather than in a single year, as required by existing law—amounts that had been deferred in fiscal year 2010. The fiscal note prepared by the departments of Revenue and Education provided a succinct, clear discussion of revenue and expenditure assumptions. Likewise, we saw other fiscal notes that clearly showed the calculations used to make the estimates in the notes' summary tables.

However, a lack of adequate explanation was the most common problem we observed in fiscal notes. In our reviews of a sample of fiscal notes from 2009-2011, we concluded that a majority of the notes should have provided better explanation or been more transparent than they were. The following examples represent a limited subset of the fiscal notes we reviewed that had inadequate explanations:

- A 2011 bill proposed to consolidate state agencies' "back-office" administrative functions, including accounting, financial reporting, procurement, fleet services, human resources, and payroll.<sup>17</sup> The Department of Administration's fiscal note assumed that 75 full-time equivalent employees would have to be hired for a three-year period to staff "inter-agency teams." The bill had no specific requirement for such teams, but the department—after consulting with agencies' chief financial officers—adopted this assumption. Despite the large impact of this assumption, the fiscal note provided almost no explanation of the rationale for the teams.

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<sup>14</sup> *Ibid.*, 16.

<sup>15</sup> State law requires agencies to state the assumptions underlying their fiscal estimates, but occasionally agencies do not comply. Of the 15 fiscal notes we randomly selected for review that estimated no fiscal impact, 3 were single-agency fiscal notes that provided no assumptions or explanations to indicate how the agencies reached this conclusion. We also reviewed some multi-agency notes in which at least one of the agencies provided no explanation for its estimate that the relevant bill would have no impact.

<sup>16</sup> S.F. 2980, 2010 Leg., 86<sup>th</sup> Sess. (MN).

<sup>17</sup> H.F. 418, 2011 Leg., 87<sup>th</sup> Sess. (MN).

- A 2011 bill would have required the Department of Revenue to issue a request for proposals for a system of “tax analytics and business intelligence tools” to enhance the state’s ability to collect taxes owed.<sup>18</sup> Proponents thought the bill would increase state revenues by more than \$100 million annually, based partly on experience in other states. In a very brief fiscal note, the department said it was unable to estimate possible revenue gains without knowing what prospective vendors would propose. The fiscal note—even with no dollar estimate of the bill’s revenue impact—would have been more informative if it had better explained the reasons an accurate estimate could not be made, the department’s concerns about estimates made to legislators by private vendors, or how other states’ experiences with tax analytics might (or might not) be applicable to Minnesota.<sup>19</sup>
- Two 2011 bills proposed to reduce the size of the state workforce by 15 percent by 2015.<sup>20</sup> The key assumption for estimating potential savings was how much of the reduction could be obtained through the lowest cost method (attrition) versus higher cost methods (layoffs and incentives). The fiscal notes assumed that 40 percent of the reduction could be achieved through attrition, but they did not explain the basis for this assumption.
- A 2011 bill would have required the Department of Corrections to post information online about a larger group of predatory offenders than only the “Level III” offenders for whom information was already posted online.<sup>21</sup> The department’s fiscal note asserted that the expanded requirement would necessitate an additional four full-time staff “to coordinate and maintain timely and accurate information,” but the note did not discuss existing staffing levels nor specific tasks the new staff would perform.
- A 2009 bill would have required the Department of Transportation to conduct a pilot program for a “design-build” contracting approach involving local construction projects.<sup>22</sup> The department estimated that the main cost of this bill would have been \$150,000 for a consultant to develop training materials, but the fiscal note had no information on the basis for this estimate (such as the estimated number of hours and cost per hour).

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<sup>18</sup> H.F. 174, 2011 Leg., 87<sup>th</sup> Sess. (MN).

<sup>19</sup> A fiscal note on a different bill related to tax analytics (S.F. 907, 2011 Leg., 87<sup>th</sup> Sess. [MN]) also provided no cost or revenue estimates in its front-page table, but it discussed the Department of Revenue’s concerns with estimates made by vendors and explained why experiences in other states might not apply to Minnesota.

<sup>20</sup> H.F. 4, 2011 Leg., 87<sup>th</sup> Sess. (MN) and H.F. 577, 2011 Leg., 87<sup>th</sup> Sess. (MN).

<sup>21</sup> H.F. 151, 2011 Leg., 87<sup>th</sup> Sess. (MN).

<sup>22</sup> H.F. 1547, 2009 Leg., 86<sup>th</sup> Sess. (MN). “Design-build” is a method of contracting for street or highway construction in which the same contractor designs and constructs the project.

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**The Minnesota Department of Management and Budget (MMB) has expressed concerns about the transparency of some fiscal notes.**

- A 2011 bill proposed changes to the state's Uniform Commercial Code.<sup>23</sup> A one-sentence fiscal note by the Office of the Secretary of State declared simply that the bill would have no fiscal impact on the office. There was no explanation of what changes the bill proposed and why these would have no state costs.<sup>24</sup>
- A 2011 bill proposed to prohibit the Minnesota Department of Transportation from collecting tolls on Interstate 35W.<sup>25</sup> The fiscal note presented year-by-year forecasts of toll revenue, enforcement expenses, and service contract expenses. However, it provided no supporting documentation for these estimates, such as assumptions regarding the number of drivers using toll lanes.

At times, others have expressed concern about the transparency of Minnesota's fiscal notes, too. Notably, MMB staff raised this issue—in a recent report to the Legislature, as a part of their reviews of individual fiscal notes, and in their comments to us. For example:

- A 2011 report on human services fiscal notes prepared by MMB's Management Analysis and Development unit said the Department of Human Services (DHS) should strengthen its fiscal note narratives "to explain how staff reached their conclusions."<sup>26</sup> It said DHS should cite precedents where applicable, discuss relevant federal funding and statutory implications, and explain costs that may not be understood by non-DHS staff. The report said, "Clearer, more explanatory narratives will add transparency to the process and help dispel perceptions of department bias."<sup>27</sup>
- A 2009 bill, known as the "False Claims Act," was intended to provide the state with additional tools to identify and prosecute fraudulent claims for payment submitted to the state.<sup>28</sup> The Office of the Attorney General's portion of the fiscal note said the bill would require the office to hire nine additional staff and incur additional investigation and litigation costs of \$1.25 million annually. MMB attached a comment to

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<sup>23</sup> H.F. 444, 2011 Leg., 87<sup>th</sup> Sess. (MN).

<sup>24</sup> MMB's Fiscal Note Tracking System allows agencies to click on a "No Impact" button to automatically enter a statement in a fiscal note that says, "This bill version has no fiscal effect on our agency." However, agencies using this feature also have the option to add further text explaining why the proposed legislation would have no impact.

<sup>25</sup> H.F. 597, 2011 Leg., 87<sup>th</sup> Sess. (MN). The bill proposed prohibiting tolls on highways or highway lanes except for those that had tolls imposed on or before July 1, 2006. The effect of the bill would have been to eliminate tolls on Interstate 35W.

<sup>26</sup> Minnesota Department of Management and Budget, Management Analysis and Development, *The Human Services Fiscal Note Process* (St. Paul, January 2011), 15. The unit of MMB that conducted this analysis provides fee-for-service management consulting to state agencies and is not involved in MMB's ongoing processes for preparing or reviewing fiscal notes. DHS officials told us they have taken steps to address some of this report's recommendations.

<sup>27</sup> *Ibid.*

<sup>28</sup> H.F. 8, 2009 Leg., 86<sup>th</sup> Sess. (MN).

the fiscal note that said the Attorney General’s “assumptions about the level of staffing are not clear,” and “it is unclear what the attorney general is assuming in terms of increased caseload driving the \$1.25 million per year in costs.”

- In a 2011 survey of MMB staff we conducted for this evaluation of fiscal notes, an MMB budget officer offered the following comments: “Because agencies do have a lot on their plates, they often gloss over a summary of their assumptions and methodologies.... [W]hen read by a lay-person, [fiscal notes] are difficult to understand because [of] the jargon and because the agency often assumes a level of understanding of a program or proposal that doesn’t exist at a legislative level.”

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**Clearer explanation—even if it makes some fiscal notes longer—might facilitate constructive discussions about agencies’ estimates.**

We recognize that adding more explanation, defining technical terms, and showing more calculations in fiscal notes may make them longer. Minnesota is already among the states with longer and more explanatory fiscal notes. Also, there is no guarantee that these discussions will receive legislators’ attention. But, to facilitate constructive discussions about fiscal estimates, we think fiscal notes need better discussions of their assumptions and calculations—especially in cases where the bills are complex or controversial. In Chapter 4, we urge MMB and agencies to take additional steps to make fiscal notes more transparent and explanatory, while still aiming to keep fiscal notes reasonably concise.

## REASONABLENESS AND ACCURACY

Typically, it is not possible to prove that a fiscal note’s estimates are correct or incorrect at the time it is prepared. Because fiscal notes make estimates of future impacts, definitive conclusions about the validity of these estimates might only become clear after the bills are implemented.

But after-the-fact reviews of fiscal notes’ accuracy have significant limitations, too. Many bills with fiscal notes never become law. When a bill does pass, the version of the bill signed into law may differ from the version on which its fiscal note was developed. Also, it can be challenging to disentangle the impact of one bill from other agency expenditures or from other factors that affect an agency’s spending. In addition, determining the accuracy of fiscal notes after the fact requires waiting for a sufficient period of time—probably years—for a law’s fiscal impacts to become clear.

We systematically reviewed a sample of fiscal notes that were prepared in 2009 through 2011. Rather than trying to assess the actual fiscal impacts of the bills that passed, we reviewed the fiscal notes themselves and sometimes the agencies’ supporting documentation. We considered whether the estimates appeared to be logical, well supported, objective, complete, realistic, and accurately computed. Also, we often discussed these fiscal notes with the legislative branch’s nonpartisan fiscal analysts. Based on our review, we concluded that:

- **Most fiscal notes seemed to offer plausible estimates of bills’ impacts, but the inadequate transparency and explanation of some notes prevented a more definitive conclusion.**

**Though not always well explained, most fiscal notes appear to be based on plausible assumptions.**

As discussed below, we did not find clear evidence of errors or unreasonable assumptions in most of the fiscal notes we examined. Many fiscal notes are relatively straightforward—for example, with estimates of small or no impact, or with fairly simple calculations. However, our ability to detect errors was limited by the amount of information reported in the fiscal note itself and, in some cases, by the amount of supporting documentation the agency had retained.<sup>29</sup>

Furthermore, our assessment of whether a fiscal note's assumptions were logical or realistic depended partly on the extent to which the fiscal note discussed—rather than simply listed—its assumptions. As described previously, many fiscal notes were not sufficiently explanatory, in our view.

Our conclusion that most fiscal notes seemed fairly reasonable was consistent with the views we heard from legislative fiscal analysts (the staff who work with legislative finance committees and often review fiscal notes). Fiscal analysts specialize in particular subject areas, which helps them evaluate fiscal notes even if the notes are technical in nature or are not explained well to general readers. In interviews and surveys, fiscal analysts told us that, with occasional exceptions, they have not perceived fiscal notes to be seriously flawed. A majority of legislative fiscal analysts we surveyed said the reasonableness of fiscal notes' assumptions was “rarely or never” a problem during recent legislative sessions.<sup>30</sup>

Although we did not see pervasive problems with the reasonableness of fiscal notes' estimates, there is room for improvement. In the next two sections below, we highlight examples of fiscal notes with estimates that, in our judgment, were incorrect or questionable. We then discuss two specific issues that have prompted legislative concerns: (1) the extent to which fiscal notes have been able to estimate potential cost savings and (2) the objectivity of fiscal notes.

## Errors

Although it is often not possible to evaluate the accuracy of a fiscal note until a bill becomes law, fiscal notes may contain mistakes or oversights that should be immediately apparent. As we reviewed a sample of fiscal notes, we looked for any instances in which the notes contained obvious errors—for example, math errors, omissions, estimates that were inconsistent with the calculations shown, or misrepresentation of information on the fiscal note's first page.<sup>31</sup> We detected errors in about 20 percent of our sample of fiscal notes. Most were relatively minor. For example, one fiscal note overstated its estimated personnel costs by

<sup>29</sup> For some of the fiscal notes we reviewed, we requested supporting documentation from the agencies that developed the notes. However, MMB's fiscal note instructions only ask agencies to retain fiscal note working papers for two years, so documentation on some of the fiscal notes we examined was no longer available.

<sup>30</sup> Among fiscal analysts who responded to our survey, 36 percent said the reasonableness of assumptions was “sometimes” a problem with 2011 fiscal notes; 64 percent said it was “rarely or never” a problem. For 2009-10 fiscal notes, 27 percent said reasonableness was “sometimes” a problem; 73 percent said it was “rarely or never” a problem. None of the respondents said reasonableness was “often” (or more) a problem in these years.

<sup>31</sup> The ability to detect such errors depends partly on the reviewers' knowledge of the subject area and the data underlying the estimate, as well as the fiscal note's clarity in explaining its estimates. Due to our limited knowledge in some topic areas, there may have been errors we did not detect.

\$5,000 in its first two versions; this was corrected in the third fiscal note prepared for this bill. However, we also found that:

- **In a small minority of cases, fiscal notes contained errors that, if uncorrected, would significantly affect their overall accuracy.**

The following examples show what we considered to be the largest errors in the sample of fiscal notes we reviewed. The errors in these cases were large enough that they might have affected some legislators' perceptions of the bills' merits:

**Occasionally, fiscal notes contained mistakes or omissions, or misrepresented the estimated impact of bills.**

- For a 2009 tax bill, the Department of Revenue was asked to prepare a fiscal note for four sections of the bill.<sup>32</sup> One of these sections would have repealed the state's individual income tax refund for persons who contributed to political campaigns. The fiscal note discussed the assumptions on which the department based its estimates of this repeal's impact. However, the fiscal note did not include the department's estimate of the dollar impact of the repeal, either by itself or as part of the aggregate effect shown for the relevant four sections of the bill. Consequently, readers of the fiscal note were not alerted to potential savings of \$4.3 to \$6.4 million annually.<sup>33</sup>
- A 2011 bill proposed that the Department of Revenue prepare a report on possible resumption of income tax reciprocity between Minnesota and Wisconsin. The department's fiscal note initially said that preparation of the report would require a peak of 22 additional full-time equivalent (FTE) employees.<sup>34</sup> When the fiscal note was publicly distributed, legislative staff questioned this estimate. The department then revised the fiscal note, estimating that a peak of 4.75 FTEs would be needed. Part of this revision corrected for instances in which part-time staff had been erroneously computed as full-time staff in the department's original fiscal note.<sup>35</sup> The error affected the estimates of the number of staff needed to prepare the report; it did not affect the dollar impacts estimated by the department.
- A 2011 bill proposed to transfer "non-security personnel" from the Minnesota State Retirement System's Correctional Employees Retirement Plan to the system's General Plan.<sup>36</sup> MMB—in its portion of the fiscal note for this bill—miscalculated the health insurance savings attributable to reducing the number of early retirees eligible for state-paid premiums until age 65. Using the same assumptions as MMB regarding the number of affected employees and the average cost of health

<sup>32</sup> H.F. 1136, 2009 Leg., 86<sup>th</sup> Sess. (MN).

<sup>33</sup> In addition, the fiscal note did not discuss administrative cost savings the department would experience if it no longer administered the program.

<sup>34</sup> The fiscal note was prepared in response to S.F. 122, 2011 Leg., 87<sup>th</sup> Sess. (MN) and H.F. 701, 2011 Leg., 87<sup>th</sup> Sess. (MN).

<sup>35</sup> In addition, as the department revised the fiscal note, it determined that changes in tax forms would allow some data entry tasks to be done more efficiently than previously assumed.

<sup>36</sup> H.F. 1072, 2011 Leg., 87<sup>th</sup> Sess. (MN).

insurance, we estimated that the savings would have been \$2.5 million rather than the \$3.7 million MMB estimated.<sup>37</sup>

- A 2009 bill proposed to modify an existing program that allows state employees to donate vacation hours to sick employees.<sup>38</sup> The fiscal note based some of its cost estimates on the assumption that newly eligible beneficiaries would use sick leave donations for a total of 880,000 hours a year, even though the note estimated that only an additional 34,800 hours would be donated.<sup>39</sup>
- A 2011 bill was amended to include language that, according to the Metropolitan Council, would likely have resulted in the cancellation of state funding for the Central Corridor Light Rail Transit project.<sup>40</sup> The fiscal note's tables showed this would result in an estimated loss to the state of \$478 million in federal revenue in fiscal year 2012. However, because the state would have subsequently transferred these federal dollars to this project, and because such transfers are considered state expenditures, the fiscal note should have also showed offsetting savings to the state. These savings would have resulted from the state's non-expenditure of the lost federal funds. The Metropolitan Council's narrative portion of the fiscal note provided a useful discussion of the lost federal funds, noting that local governments might be responsible for any settlements or legal fees related to financial commitments already made to the project. However, because of the way the federal funding impact was shown in the fiscal note's tables, a reader might have erroneously concluded that passage of this bill would result in a \$478 million net cost to the state.

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**If errors in fiscal notes are brought to the agencies' attention, revised versions can be prepared.**

Such examples serve as a reminder that fiscal notes prepared by agencies and reviewed by MMB may contain errors. If errors are brought to the agencies' attention—as in the case of the fiscal note for the tax reciprocity report mentioned above—the agencies can prepare revised estimates.

## Questionable Estimates

While large mistakes appear to be infrequent, many fiscal notes are based on assumptions about which there is room for debate. In a broad sense, all estimates of future fiscal impacts are debatable. Impacts can be affected by various factors,

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<sup>37</sup> There were two main reasons our estimate was lower than MMB's. First, MMB's estimates were high because it included the state's health insurance costs for all early retirees who retired during calendar year 2011 as a savings for fiscal years 2013 through 2015, even though the bill would only have affected those retiring after June 30, 2011. Second, MMB's estimates were high because they included the full annual cost of health insurance as a savings for those retiring in a given year even though most retirements would be spread out over the year.

<sup>38</sup> H.F. 691, 2009 Leg., 86<sup>th</sup> Sess. (MN).

<sup>39</sup> This error affected a portion of the fiscal note that estimated the amount of vacation and sick leave program recipients would be able to accrue while receiving donated time from other employees.

<sup>40</sup> H.F. 1232, 2011 Leg., 87<sup>th</sup> Sess. (MN).

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**Fiscal notes are required to state the assumptions on which their estimates are based.**

some of which might be hard to foresee. Still, certain fiscal note estimates are more straightforward and less open to dispute than others. For instance, education bills often propose changes in statutory formulas for allocating state education aids. Legislative staff told us there is usually widespread agreement on the basis for such estimates, leaving little discretion to the estimating agency. In contrast, we observed that:

- **Some fiscal notes' estimates have been based on what appear to be unreasonable, weakly supported, or internally inconsistent assumptions.**

In our survey of MMB budget staff, 86 percent said that the reasonableness of the assumptions used by agencies in their draft fiscal notes was at least "sometimes" a problem in the 2009-10 legislative sessions; 73 percent said reasonableness was at least "sometimes" a problem in the 2011 session.<sup>41</sup> Among the fiscal notes and local impact notes we reviewed, the following are some examples of questionable assumptions:

- A 2011 bill would have required felony offenders with 180 days or less remaining on their sentences to be housed in local jails and workhouses rather than state prisons.<sup>42</sup> A Department of Corrections fiscal note estimated that this bill would save the state a total of \$14.5 million in fiscal years 2012 through 2015. In response to a legislative request, MMB then prepared a separate local impact note to assess the bill's potential effect on local governments. That note estimated that the additional costs to counties over this four-year period would have totaled \$33.6 million, far exceeding the estimated state savings. However, the local costs were computed using the *average* jail cost per day rather than the *marginal* cost per day (that is, the cost for each additional offender) that were used to estimate the state's potential savings. Because there is considerable excess capacity in Minnesota's local jails (2,300 beds as of September 2011, compared with 200 to 300 jail beds that would have been needed under this bill), the use of average costs in MMB's estimate likely overstated the costs to local governments.<sup>43</sup>

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<sup>41</sup> For 2009-10, 7 percent said reasonableness was "rarely or never" a problem, and 7 percent responded "don't know." For 2011, 13 percent said reasonableness was "rarely or never" a problem, and 13 percent said "don't know." The survey asked about the "reasonableness of the assumptions used by agencies in draft fiscal notes." We assume that the responses were based on the reviews conducted by MMB staff prior to the completion of the notes. Some assumptions that MMB staff deemed unreasonable in draft fiscal notes might have changed following MMB review; our survey did not ask MMB to assess the assumptions used in completed fiscal notes.

<sup>42</sup> H.F. 1033, 2011 Leg., 87<sup>th</sup> Sess. (MN).

<sup>43</sup> Legislative staff told us it is usual practice to use marginal cost, rather than average cost, in corrections-related fiscal notes. Typically, the marginal cost of adding limited numbers of offenders to existing facilities would be lower than the average cost (because certain fixed costs would already have been incurred). MMB told us it was unable to obtain data on the marginal cost of Minnesota jail facilities, so it used average daily jail costs of \$79 to \$114 for its estimates. However, the Department of Corrections pays much less than this (\$55 a day) to rent jail beds. When preparing fiscal notes, Iowa's legislative fiscal office assumes that local jails have marginal costs of \$15 a day.

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**Some fiscal notes have been based on questionable assumptions.**

- A 2011 bill would have allowed certain local governments, at their discretion, to contract with private firms for their annual audits rather than using the Office of the State Auditor.<sup>44</sup> The Office of the State Auditor's fiscal note discussed a range of possible responses by local governments to this legislation. However, for the estimates that appeared on the first page of the fiscal note, the office assumed what it acknowledged was a "worst-case scenario," involving the layoff of 70 staff and the elimination of the office's entire Audit Practice Division. Although it would be difficult to predict exactly how many local governments might choose to contract with private firms for audits, the office's choice of the most extreme assumption seems contrary to MMB's instructions that agencies assume the "most likely scenario."<sup>45</sup>
- A 2009 bill (discussed earlier) would have expanded opportunities for state employees to donate sick and vacation hours to help ill state employees.<sup>46</sup> The fiscal note made questionable assumptions about both the number of hours that would be used and donated. The note assumed that persons newly eligible to receive donated hours under the proposed program would stay off work for an average of 22 weeks. However, this was based on experience in the existing program, which had been restricted to employees with much more serious illnesses or injuries than the employees eligible under the proposed program.<sup>47</sup> Also, because the average employee who donated vacation hours under the existing program donated 58 percent of the allowed maximum (12 hours), the fiscal note assumed that the average donor of sick leave under the proposed program would donate 58 percent of the proposed maximum (40 hours). In our view, however, it seems unlikely that the average number of donated hours would more than triple for a program that would be expanded to serve persons with, on average, less serious medical needs.
- A 2011 bill proposed audits of dependent eligibility for state employee health and dental insurance.<sup>48</sup> The fiscal note focused mainly on the savings that would occur as a result of these audits. The estimated savings (\$10.8 million) were based on the midpoint of MMB's "high" and "low" savings estimates under alternative scenarios. However, the fiscal note did not offset these savings with an estimate of lost premium revenues the state would incur when certain employees losing coverage for their dependents would switch from family coverage to single coverage. The fiscal note discussed a range of estimates for the lost premiums (\$327,000 to \$1.3 million), but no high, low, or midpoint

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<sup>44</sup> S.F. 896, 2011 Leg., 87<sup>th</sup> Sess. (MN) and H.F. 1063, 2011 Leg., 87<sup>th</sup> Sess. (MN).

<sup>45</sup> Minnesota Department of Management and Budget, *[Fiscal Note] Policies and Procedures* (St. Paul, December 2010), 8.

<sup>46</sup> H.F. 691, 2009 Leg., 86<sup>th</sup> Sess. (MN).

<sup>47</sup> The existing program was limited to "life threatening" conditions of the employee, spouse, or dependent child that prevented the employee from working. The bill made no reference to life-threatening conditions, so the fiscal note assumed the bill would broadly expand eligibility.

<sup>48</sup> S.F. 811, 2011 Leg., 87<sup>th</sup> Sess. (MN) and H.F. 1090, 2011 Leg., 87<sup>th</sup> Sess. (MN).

estimate of costs was incorporated into the estimate of the bill's overall impact.

- A 2011 bill would have required salary reductions for legislators and the heads of certain agencies.<sup>49</sup> In the fiscal note, however, the affected agencies used different assumptions. Specifically, some agencies' estimates included state savings from reduced expenditures for employer-paid Social Security, Medicare, and pension costs, while others' estimates did not. In another 2011 multi-agency fiscal note, two agencies used different assumptions about the percentage of Minnesota's military veterans who were female (one used 20 percent, and one used 6 percent).<sup>50</sup>
- Bills in 2008 and 2009 were intended to strengthen the state's ability to identify and respond to fraud against the state. The Office of the Attorney General told us it prepared a fiscal note for a 2008 bill without doing much research because (1) the bill had not received a hearing and the agency was advised that the bill would not be enacted and (2) the fiscal note was due in four days at a busy part of the legislative session.<sup>51</sup> The agency said it "did not expend resources trying to determine the hypothetical fiscal impact of a bill that would not be enacted," devoting time instead to other bills.<sup>52</sup> The next year, the agency's fiscal note for a similar bill showed a much larger estimated cost, and the differences between the 2008 and 2009 estimates became a point of contention in legislative discussions.<sup>53</sup> The agency said its 2009 fiscal note was based on more thorough research because that year's bill had significant legislative support early in the legislative session.
- A 2011 bill proposed several modest changes in liquor licensing (for example, authorizing licenses for brewer tap rooms, farm wineries, private colleges, and auto racing facilities).<sup>54</sup> The Department of Public Safety prepared a fiscal note that said the proposed changes would require the department to increase its number of full-time liquor investigators by 50 percent (from two to three). The fiscal note relied partly on a discussion of the agency's budget reductions since 1990 to make the case for additional staffing. However, this discussion seemed more appropriate for the agency's budget process than for a fiscal note on a narrowly focused bill.

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<sup>49</sup> H.F. 178, 2011 Leg., 87<sup>th</sup> Sess. (MN).

<sup>50</sup> S.F. 51, 2011 Leg., 87<sup>th</sup> Sess. (MN).

<sup>51</sup> H.F. 483, 2008 Leg., 85<sup>th</sup> Sess. (MN). The fiscal note for this bill was not completed because one of three agencies from whom estimates were requested did not complete its portion of the fiscal note.

<sup>52</sup> Rebecca Spartz, Office of the Attorney General, letter to Joel Alter, Office of the Legislative Auditor, September 29, 2011, 2.

<sup>53</sup> H.F. 8, 2009 Leg., 86<sup>th</sup> Sess. (MN). The Office of the Attorney General's portion of the 2008 fiscal note estimated a \$234,000 annual cost, which the office said it could absorb within its existing budget. The office's 2009 fiscal note estimated a cost of \$2.055 million per year.

<sup>54</sup> S.F. 918, 2011 Leg., 87<sup>th</sup> Sess. (MN).

On the other hand, we also reviewed some fiscal notes that were, in our view, judged too harshly by their legislative critics. In the following cases, estimates of the bills' impacts were not easy to determine and could certainly be debated. Sometimes these fiscal notes could have provided better explanations. Nevertheless, the estimates in the fiscal notes discussed below seemed defensible to us, despite doubts expressed by some legislators or legislative staff:

**Legislators have sometimes criticized fiscal notes that, in our view, were defensible.**

- A 2011 bill proposed changes to Minnesota's "prevailing wage" law.<sup>55</sup> The fiscal note identified administrative costs to implement the bill's provisions, but it did not estimate any savings in the cost of state-funded construction projects, contrary to what the bill's proponents expected. The fiscal note said a more thorough analysis would be required to estimate whether the bill would increase or decrease the overall cost of these projects. The note could have been more explanatory about why a definitive estimate would be difficult to provide. But, in our view, the fiscal note gave a fair assessment of the possible impacts, acknowledging a level of uncertainty that was consistent with what we concluded in a 2007 prevailing wage evaluation.<sup>56</sup>
- Several 2011 bills would have required voters to show identification at polling places. Some people questioned why fiscal notes for these bills estimated significant expenditures for a statewide voter education campaign.<sup>57</sup> Such a campaign was not specifically required in the bills as initially introduced, and a fiscal note on a similar bill in 2009 had included no estimates for public education. However, studies issued in the intervening two years suggested that, without a voter education campaign, a voter identification law might be subject to legal challenges. Bills in both the House and Senate were amended in 2011 to include requirements for voter education campaigns.<sup>58</sup>
- A 2011 bill directed MMB to reduce debt services expenditures for the upcoming biennium by \$70 million.<sup>59</sup> Some legislators thought this could be achieved by refinancing existing bonds, but the fiscal note

<sup>55</sup> S.F. 1199, 2011 Leg., 87<sup>th</sup> Sess. (MN). Among its provisions, the bill would have changed the way prevailing wage rates were computed, defining the prevailing rate as the average rate rather than the rate paid to the largest number of workers in a class of labor.

<sup>56</sup> Office of the Legislative Auditor, Program Evaluation Division, *Prevailing Wages* (St. Paul, 2007). This evaluation said: "Studies that have examined the impact of prevailing wage laws on public construction costs have produced mixed results" (p. 75).

<sup>57</sup> H.F. 89 and 210, 2011 Leg., 87<sup>th</sup> Sess. (MN); and S.F. 479 and 509, 2011 Leg., 87<sup>th</sup> Sess. (MN). Estimates for the public education campaign were \$2.7 million in fiscal year 2013 and \$1.35 million in fiscal year 2015.

<sup>58</sup> The voter education expenditure estimates were based on a specific strategy outlined in several of the fiscal notes by the Office of the Secretary of State. Some bills were later amended to appropriate funding to the Department of Administration for a public education campaign. In fiscal notes prepared for these versions of the legislation in the House, the Department of Administration said that the Legislature—faced with budget constraints—could fund a less costly voter education campaign than the one assumed in the fiscal notes; the fiscal notes said this might risk a legal challenge.

<sup>59</sup> H.F. 1232, 2011 Leg., 87<sup>th</sup> Sess. (MN).

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**Clearly written fiscal notes provide legislators with a starting point for considering a bill's impact.**

suggested it would have to be achieved by cancelling or delaying projects to which funds had been committed but not yet allocated. The fiscal note explained that MMB had already considered refunding these bonds, and MMB had found that they did not meet the state's criteria for refunding. In addition, MMB told us that the state has traditionally not counted (for budget purposes) possible savings from refunding, due to uncertainties in bond markets.

Fiscal notes provide a starting point for considering a bill's impact, and they should be closely scrutinized. Legislative committees have the option of considering alternative assumptions or estimates. A written, publicly available fiscal note document—with transparent assumptions and calculations—provides a basis for legislators and others to weigh for themselves the reasonableness of the fiscal estimates.

## Estimates of Cost Savings in Fiscal Notes

MMB, in its fiscal note instructions to agencies, says that “only in those rare cases when no data exists to support a reasonable set of assumptions” should agencies declare that the fiscal impact cannot be determined.<sup>60</sup> However, some legislators have expressed frustration that fiscal notes have not identified savings for bills that were specifically intended to save money. Examples of such fiscal notes include the following:

- A 2011 bill proposed to eliminate state agencies' redundant information technology services through reorganization and consolidation.<sup>61</sup> The fiscal note estimated that the bill would result in aggregate state costs of about \$49 million over fiscal years 2012 through 2015, but it made no estimate of savings for that period.
- A 2011 bill proposed to consolidate certain “back-office” administrative functions in state agencies. The fiscal note showed aggregate costs of \$30 million for fiscal years 2012 to 2015, but it offered no estimate of savings.<sup>62</sup>
- A 2009 bill aimed to reduce publicly funded health care costs by requiring the Department of Human Services to implement a fundamentally different method of providing health care to certain low-

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<sup>60</sup> Minnesota Department of Management and Budget, *[Fiscal Note] Policies and Procedures* (St. Paul, December 2010), 8-9.

<sup>61</sup> H.F. 191, 2011 Leg., 87<sup>th</sup> Sess. (MN). The fiscal note commented that savings from information technology consolidation estimated in an earlier report to the Legislature had been based on assumed staffing and compensation changes that were not addressed in the 2011 bill and that the Office of Enterprise Technology could not implement on its own. The fiscal note also said that possible savings could not be responsibly estimated until a detailed implementation timeline was developed later.

<sup>62</sup> H.F. 418, 2011 Leg., 87<sup>th</sup> Sess. (MN). These “back-office” functions included accounting, financial reporting, procurement, fleet services, human resources, and payroll activities. The fiscal note said: “The changes resulting from the consolidation is long term and the outcomes in terms of savings/costs/results will be unknown for several years.”

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**Agencies sometimes have particular difficulty estimating the impact of bills intended to produce cost savings.**

income people.<sup>63</sup> In the fiscal note, the department said it had no relevant experience for this type of program, so “we are unable to determine whether the proposed program would have additional costs or would produce net savings.”<sup>64</sup>

Concerns about savings estimates have not been limited to Minnesota. For example, a review of the federal Congressional Budget Office (CBO) fiscal estimates for three major Medicare reforms enacted since 1983 said the CBO “substantially underestimated” savings in each case.<sup>65</sup> The author said: “The problem lies not with the competence or integrity of CBO, but with its cautious methods.”<sup>66</sup> Some Minnesota legislators went further, suggesting to us that agencies may be too rigid or not sufficiently creative in their assessment of possible savings, or that their estimates may be driven by self-interest.

Based on our review of fiscal notes and discussions with executive and legislative branch staff, we found that:

- **It has been especially challenging for agencies to estimate savings for certain types of bills—notably, (1) bills proposing large-scale or unprecedented reforms or (2) bills with long-term or indirect effects.**

These types of bills have posed challenges for agencies asked to make fiscal estimates in various states and the federal government. Generally, estimating agencies have erred on the side of caution so they do not assume savings for budgeting purposes that may not materialize. The author cited above said the CBO requires “substantial evidence that a cost-saving initiative has historically achieved savings,” and Minnesota officials told us, too, that estimates of savings should be based on careful analysis or studies.<sup>67</sup> In addition, it has been usual practice—at CBO, in Minnesota, and in most states—to limit estimates of fiscal impacts to direct effects and exclude “secondary impacts.” Some Minnesota fiscal notes we reviewed showed no savings because the agency said the magnitude and timing of possible savings might not be clear until initial steps to implement the initiatives occurred.

As we suggest in Chapter 4, bills proposing unprecedented, large-scale, or controversial changes may require better narrative discussions in their fiscal notes, especially if the agency determines that savings anticipated by the author cannot be reliably estimated. In a 2011 fiscal note referenced above, the

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<sup>63</sup> H.F. 1865, 2009 Leg., 86<sup>th</sup> Sess. (MN).

<sup>64</sup> Consolidated Fiscal Note for H.F. 1865-1E(R), completed May 14, 2009, [http://www.mmb.state.mn.us/bis/fnts\\_leg/2009-10/H1865\\_1E.pdf](http://www.mmb.state.mn.us/bis/fnts_leg/2009-10/H1865_1E.pdf), accessed December 19, 2011. The fiscal impact would have been driven largely by the number of people choosing to participate in the proposed new form of health care benefit. The department told us it did not have direct experience or peer-reviewed research that provided defensible support for an estimate.

<sup>65</sup> Jon R. Gabel, *Does the Congressional Budget Office Underestimate Savings From Reform? A Review of the Historical Record* (The Commonwealth Fund, January 2010). As we described in Chapter 1, the CBO prepares estimates of the fiscal impacts of pending federal legislation.

<sup>66</sup> *Ibid.*, 7.

<sup>67</sup> *Ibid.*, 1.

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**Fiscal notes should be based on appropriate rigor and caution, but agencies preparing these notes should also strive to help legislators understand the likelihood of future savings.**

Department of Administration determined that it was not possible to estimate savings that would result from a bill to consolidate state agencies' back-office administrative functions. It would have been helpful, however, if that fiscal note—which said the proposed changes would lead to “economies of scale”—had provided some context for evaluating savings that might result from such economies. For example, the fiscal note said at least 1,900 employees would be affected by the bill, but the note offered no estimate of the overall cost of these employees. Such information could have conveyed the dollar magnitude of the services that would be subject to change, even if a dollar estimate of savings was not possible. In other cases, it might be appropriate for agencies to discuss a range of estimates for possible savings, preferably with some indication of which scenario seems most likely. Furthermore, we suggest in Chapter 4 that (1) early discussions between bill authors and agencies about large, complex bills may help ensure better communication about the author's intent and how the agency envisions it would implement the bill; and (2) MMB should clarify for agencies the basis on which savings estimates should be made.

Even with these actions, however, we think it will be challenging for agencies to estimate savings for some bills. While agencies should do their best to assess the impact of proposals (including ones that would significantly change their operating practices), they should also apply appropriate rigor and caution when making these estimates. If the *savings* resulting from a proposed reform are, by their nature, harder to quantify than the *costs* (such as initial administrative costs), the proposal's fiscal note might under-estimate savings to some degree.

## Objectivity of Fiscal Notes

As part of our review of the reasonableness of fiscal notes, we considered whether fiscal notes have provided objective estimates. A House of Representatives publication on fiscal notes stated: “A fiscal note should be an objective opinion on the change in expenditures and revenues that will result from a bill.”<sup>68</sup> In addition, state law says: “The fiscal note may comment on technical or mechanical defects in the bill but shall express no opinions concerning the merits of the proposal.”<sup>69</sup>

If there is bias in fiscal notes, it could take different forms. First, a fiscal note could be biased if its estimates or discussions are written to impede or support a bill's chances of passage. Presumably, this would reflect the policy preferences of the fiscal note's authors or agency, or of others in executive branch leadership. Second, a fiscal note's estimates could reflect the agency's self-interest, either intentionally or inadvertently. For example, agency officials might adopt cautious assumptions that overstate a bill's likely effect on agency staffing or expenditures.

The existence of bias—whatever its causes—is not easy to prove. If a fiscal note's estimates are unreasonable, bias is just one of several possible

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<sup>68</sup> Gary Karger, Minnesota House of Representatives Fiscal Analysis Department, “Fiscal Notes,” *Money Matters*, no. 10.01 (January 2010), 1.

<sup>69</sup> *Minnesota Statutes* 2011, 3.98, subd. 2(b).

explanations. To consider whether fiscal notes are biased, we (1) solicited opinions from executive and legislative branch staff who have reviewed many fiscal notes, (2) examined whether a sample of fiscal notes expressed opinions on the content of bills, and (3) looked at the extent to which elected or appointed officials in agencies or the Governor's office exerted influence over the content of fiscal notes. Overall, we found that:

- **Executive and legislative branch budget staff perceive that agency bias may occasionally influence fiscal note estimates.**
- **However, agencies generally do not express opinions about bills in fiscal notes, and agency fiscal note coordinators reported no inappropriate interventions by executive branch officials from recent administrations.**

In our surveys of MMB budget staff and legislative fiscal analysts, none said that the objectivity of agency information or estimates in recent years' fiscal notes was "often" (or more frequently) a problem. However, 60 percent of MMB budget staff said objectivity was "sometimes" a problem with draft fiscal notes they reviewed in the 2011 legislative session, and 57 percent said it was "sometimes" a problem in draft fiscal notes they reviewed in 2009 or 2010.

**If there is bias in fiscal notes, it is generally not reflected in explicit statements in the notes.**

Legislative staff told us they sometimes perceive bias in the extent to which an agency's fiscal notes propose to "absorb" (or not absorb) a bill's estimated costs. ("Absorbed" costs are ones the agency pays for from its existing budget.) Specifically, some analysts said agencies have seemed more likely to propose absorbing costs associated with bills they supported and not absorbing costs for bills they opposed.<sup>70</sup>

Based on our reviews of fiscal notes, however, bias is (with rare exceptions) not reflected in explicit statements in fiscal notes about the merits of the bills in question. Occasionally, comments in fiscal notes verge on non-objective language. For example, the Emergency Medical Services Regulatory Board said that a 2011 bill to repeal a seat belt law would "have a negative medical effect on those served by [the emergency medical system] in Minnesota and result in inadequate funding for [emergency medical system] regional programs."<sup>71</sup> But, generally, agencies refrained from expressing opinions on bills in fiscal notes, reserving any such comments for public testimony or private discussions with the bill authors.

Finally, none of the agency fiscal note coordinators we surveyed said they had seen an instance in the past three years in which an official from their agencies or

<sup>70</sup> As we reviewed a sample of fiscal notes, we were often unaware whether the affected agencies favored or opposed the relevant bills. We reviewed one 2011 fiscal note in which the affected agency initially proposed to absorb about \$500,000 in costs (based on MMB's advice, according to the agency) for an initiative it favored. Legislative fiscal analysts questioned why the agency proposed to absorb these costs; the agency and MMB subsequently agreed to revise the fiscal note to show no absorbed costs.

<sup>71</sup> Consolidated Fiscal Note for H.F. 1023-2E, completed May 18, 2011, [http://www.mmb.state.mn.us/bis/fnts\\_leg/2011-12/H1023\\_2E.pdf](http://www.mmb.state.mn.us/bis/fnts_leg/2011-12/H1023_2E.pdf), accessed December 19, 2011.

the Governor’s office tried to intervene inappropriately in a fiscal note or in a way that would make the analysis less objective.<sup>72</sup> Involvement by agency heads or the Governor’s office in fiscal note development may be appropriate, and this involvement does not by itself demonstrate bias in the fiscal note process. For the most part, however, agency fiscal note coordinators reported that their agency heads and representatives of the Governor’s office were infrequently involved in reviewing fiscal notes.<sup>73</sup> In fact, the individual most immediately responsible for fiscal note preparation and oversight within an agency—the fiscal note coordinator—usually continues in this position when leadership in an agency changes.<sup>74</sup>

## ESTIMATED FISCAL IMPACTS ON LOCAL GOVERNMENTS

Minnesota law often provides for shared responsibilities among state and local governments in the administration or delivery of state-authorized programs. For example, counties play key roles in the provision of many human services programs, and local school districts oversee the implementation of statewide education initiatives. For this reason, it is important for the Legislature to consider local impacts, when possible, as part of its deliberations on proposed legislation.

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**Two types of documents—fiscal notes and “local impact notes”—may discuss the effect a bill would have on local governments.**

As we mentioned in Chapter 1, estimates (or discussions) of the fiscal impact of state legislation on local governmental units (such as counties, cities, or school districts) may appear in two types of documents. First, local impacts may be addressed in fiscal notes prepared by state agencies. Minnesota law does not specifically require that fiscal notes address the impact of proposed legislation on local units of government. However, MMB has instructed state agencies to identify in their fiscal notes the local government unit(s) affected by a bill, “along with an estimate from the local government unit.”<sup>75</sup> Second, state law authorizes certain legislative committee chairs to request “local impact notes” that focus specifically on a bill’s local fiscal impacts.

Regarding the first of these documents, we found that:

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<sup>72</sup> Eighty-five percent of respondents had served as agency fiscal note coordinator for more than a year, meaning they had performed this function in both the current and previous gubernatorial administrations.

<sup>73</sup> Regarding the extent to which agency heads reviewed fiscal notes, 23 percent of coordinators said “always or almost always,” 15 percent said “often,” 19 percent said “sometimes,” 38 percent said “rarely or never,” and 4 percent said “don’t know.” Regarding the extent to which a representative of the Governor’s office reviewed fiscal notes, no respondents said “always or almost always,” “often,” or “sometimes;” 58 percent said “rarely or never,” 23 percent said “don’t know,” and 19 percent said “not applicable.”

<sup>74</sup> All fiscal note coordinators we surveyed said they “always or almost always” review fiscal notes before they are submitted to MMB for approval.

<sup>75</sup> Minnesota Department of Management and Budget, *[Fiscal Note] Policies and Procedures* (St. Paul, December 2010), 13.

**Fiscal notes indicate that many bills would have local impacts, but they usually do not provide dollar estimates of these impacts.**

- **Minnesota's fiscal notes often provide limited information about the impact of legislation on local governments.**

On the first page of a fiscal note, agencies mark a box—yes or no—to indicate whether the bill would have a fiscal impact on local governments. Since 2001, 38 percent of completed fiscal notes have indicated that the bills would have a local fiscal impact.

MMB's fiscal note template also contains a narrative section where agencies are instructed to discuss local impacts, if any. MMB says agencies should "describe the fiscal impact to the local government unit(s), including any estimates received from the local government organization with any assumptions provided."<sup>76</sup> In our review of a sample of fiscal notes, we observed that the discussions of local impacts were often brief, rarely including dollar estimates, and sometimes incomplete. For example:

- A 2011 bill would have lengthened the application form for enrolling in publicly funded health care programs, and the portion of the fiscal note prepared by the Department of Human Services estimated the workload impact on the department's own operations.<sup>77</sup> The fiscal note's "Local Government Costs" section did not mention any impact on counties' application workloads, although counties administer about one-fifth of the state's applications for these health care programs.<sup>78</sup>
- A 2011 bill proposed to give counties the option to hire private firms (rather than the State Auditor) to do annual audits.<sup>79</sup> The fiscal note said that if fewer counties used the State Auditor for these audits, it would lead to higher audit costs for those continuing to do so (due to overhead costs spread across fewer counties).<sup>80</sup> The fiscal note did not mention the possibility, on the other hand, that counties given a choice about which auditor to employ might achieve cost savings. It would be hard to know in advance whether cost savings would occur, or how much they might be, but counties allowed to choose their auditors would probably consider cost as one factor in their decisions.

<sup>76</sup> *Ibid.*, 17.

<sup>77</sup> H.F. 535, 2011 Leg., 87<sup>th</sup> Sess. (MN).

<sup>78</sup> The "Assumptions" section of the fiscal note said: "DHS assumes there would be an impact to counties to review additional consent pages," but there was no further explanation or discussion. The department told us the lack of a statewide accounting system for counties inhibits the development of detailed estimates of administrative costs. The department said it sometimes asks a county association to estimate such costs but only if this can be done without delaying the fiscal note.

<sup>79</sup> S.F. 896, 2011 Leg., 87<sup>th</sup> Sess. (MN) and H.F. 1063, 2011 Leg., 87<sup>th</sup> Sess. (MN).

<sup>80</sup> The "Local Government Costs" section of the fiscal note focused on the higher audit costs for counties that would continue to use the State Auditor. However, the dollar estimates presented on the first page of the fiscal note assumed that all counties would choose to have a private firm perform their audits, starting in fiscal year 2012.

Staff from some associations representing local governmental units expressed concern to us that fiscal notes often do not adequately convey to legislators the local fiscal impacts of bills under consideration.

The fiscal note section in which agencies are instructed to address local impacts is labeled “Local Government Costs.” In our opinion, this heading—focused solely on costs and not revenues or savings—is misleading. The heading seems contrary to MMB instructions that agencies discuss the local “fiscal impact” in this section, which presumably could include effects other than increased expenditures. However, due to the “cost” label, agencies might be inclined to not mention revenue impacts in this section. For example, the fiscal note for a 2011 bill that would have allowed local school boards to extend expiring operating referendums without voter approval said “None” in the “Local Government Costs” section.<sup>81</sup> Fortunately, another section of this fiscal note indicated that the bill would result in more local school district revenues than would otherwise be the case.

We also looked at “local impact notes.” *Minnesota Statutes* 2011, 3.987, authorizes the chairs or ranking minority members of the Tax, Ways and Means, or Finance committees to request a local impact note, to be coordinated by MMB. We found that:

- **The Legislature has infrequently requested local impact notes, which are specifically intended to assess the fiscal impact of a bill on political subdivisions of the state.**

Since the law passed in 1998, a total of 51 local impact notes have been prepared, or an average of 3.6 per year. Representatives from some local government organizations told us that, at times, local agencies put considerable work into these estimates. Consequently, they said, their organizations have tried to limit requests for local impact notes to those related to legislation with potentially significant impacts that seems likely to pass.

In addition, we observed that:

- **State law authorizes MMB to receive county aid specifically for the purpose of coordinating local impact notes, but MMB has used this funding for a wider array of activities.**

State law specifies that MMB must coordinate the development of local impact notes. MMB often relies considerably on local officials (or associations that represent local governments) to provide information for these estimates. State law authorizes MMB to bill the Department of Revenue for up to \$207,000 annually of the state’s aid to counties “for the cost of preparation of local impact notes.”<sup>82</sup> (This law also authorizes the Department of Education to receive up to \$7,000 in county aid annually to prepare local impact notes on behalf of school districts. The law does not provide for any portion of state aid to cities or schools

<sup>81</sup> H.F. 973, 2011 Leg., 87<sup>th</sup> Sess. (MN).

<sup>82</sup> *Minnesota Statutes* 2011, 477A.03, subd. 2b(b).

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**The Legislature has rarely requested local impact notes, which focus exclusively on bills’ local fiscal impacts.**

**Under state law, MMB receives county aid to coordinate local impact notes, but it uses some of this money for other purposes.**

to pay for local impact note costs.) Since fiscal year 2006, MMB has used all or nearly all of the \$207,000 of county aid it has been eligible to receive each year.<sup>83</sup> We thought this seemed surprising, given (1) the small number of local impact notes prepared and (2) the typically narrow time period during the year when local impact notes are requested and developed.<sup>84</sup> MMB told us it has used this funding not only for local impact notes, but also for its review of local government rules, local capital projects, and other local issues that arise. MMB said it has previously informed the Legislature and local government associations about these uses of this funding. However, *Minnesota Statutes* 2011, 477A.03, subd. 2b(b), only authorizes MMB to use county aid for the local impact notes specified in *Minnesota Statutes* 2011, 3.987, not for other activities. In Chapter 4, we suggest that MMB use this aid only for expenses related to local impact notes, unless the Legislature amends this state law.

## MMB'S OVERSIGHT AND GUIDANCE

The Minnesota Department of Management and Budget (MMB) oversees the development of fiscal notes. Specifically, MMB (1) has policies and procedures for agencies to follow when preparing fiscal notes and (2) approves fiscal notes before they are considered “complete.” In our view,

- **MMB has provided agencies with fairly good instructions for fiscal notes, but there is room in several areas for MMB to provide better guidance and coordination.**

When asked to provide an overall assessment of MMB’s fiscal note instructions, most agency fiscal note coordinators expressed satisfaction. In our survey, 77 percent of coordinators said that MMB provides clear instructions regarding the scope and content of fiscal notes; 8 percent disagreed. Also, 96 percent of coordinators said that MMB provides clear guidance for using the state’s Fiscal Note Tracking System; 4 percent disagreed.

Table 3.3 shows lower levels of satisfaction about MMB’s guidance on some specific fiscal note topics. First, only 36 percent of agency coordinators said they were satisfied with MMB’s instructions about how fiscal notes should address indirect, or secondary, impacts of a bill. For instance, legislation that encourages seat belt use might have indirect effects on the number of emergency room visits. MMB’s instructions state that “[a]gency estimates should only include direct impacts; secondary impacts are excluded from fiscal note estimates.”<sup>85</sup> It is unclear from these instructions whether it is appropriate for agencies to discuss indirect impacts in the narrative portion of fiscal notes—and, if so, in what

<sup>83</sup> MMB receives the full \$207,000 in aid from the Department of Revenue at the beginning of the fiscal year. MMB tracks its spending in areas related to local governments and, at the end of the year, cancels unspent funds back to the general fund. In recent years, the smallest amount MMB has used of its \$207,000 in aid was \$191,215 (fiscal year 2010).

<sup>84</sup> We saw evidence in MMB files of some instances in which MMB staff have worked on local impact notes when the Legislature is not in session, but most are prepared during the session.

<sup>85</sup> Minnesota Department of Management and Budget, *[Fiscal Note] Policies and Procedures* (St. Paul, December 2010), 14.

circumstances. In addition, some agencies said they would like additional guidance about what constitutes a secondary impact.

**Table 3.3: Agency Fiscal Note Coordinators’ Satisfaction with Selected Minnesota Department of Management and Budget (MMB) Instructions**

Agency Satisfaction with MMB Instructions About:	Very Satisfied or Satisfied	Neither Satisfied Nor Dissatisfied	Dissatisfied or Very Dissatisfied
Bill-related costs that an agency proposes to “absorb”	58%	27%	15%
A bill’s long-term fiscal implications	73	15	12
A bill’s impacts on local governments	54	35	12
Cost savings that might result from a bill	62	31	8
Indirect, or secondary, impacts of a bill	36	40	24

SOURCE: Office of the Legislative Auditor, survey of agency fiscal note coordinators, September 2011. (N=26).

**Agencies are mostly satisfied with MMB’s fiscal note instructions, but there is a need for more clarity about “absorbed costs” and “secondary impacts.”**

There is also a need for additional MMB guidance regarding “absorbed costs.” We observed inconsistencies in the way agencies reported “absorbed costs” in the fiscal notes we reviewed. State law requires that fiscal notes, where applicable, “include the costs which may be absorbed without additional funds.”<sup>86</sup> Some fiscal note narratives stated that certain costs could be absorbed by the agency, but the amount of these costs was not shown in the fiscal note’s line item for “absorbed costs.” In our survey of agency fiscal note coordinators, some said they were unclear about circumstances in which a cost should be designated as “absorbed.” Some nonpartisan legislative staff suggested amending state law so that agencies would not have to designate in fiscal notes which costs they propose to absorb.<sup>87</sup> To comply with existing law on absorbed costs, however, it appears to us that agencies would benefit from further MMB guidance.

Agency officials said MMB has provided helpful guidance at the beginning of the fiscal note process. For example, 88 percent of agency fiscal note coordinators said MMB usually (or more often) adequately informed them about bill language for which a fiscal note was required. Ninety-six percent of coordinators said MMB usually (or more often) informed them about when fiscal notes should be completed.

<sup>86</sup> *Minnesota Statutes* 2011, 3.98, subd. 2(a)(4).

<sup>87</sup> Staff cited several possible reasons to remove absorbed costs from the fiscal note form. First, decisions about which costs can be absorbed might best be made in the context of an agency’s overall budget, rather than by considering a single bill in isolation from other bills and other agency activities. Second, fiscal notes usually do not discuss why an agency may (or may not) have the capacity to absorb new costs. Third, the Governor’s budget proposal does not show costs that may be absorbed, so some people question why fiscal notes on legislative proposals should consider absorbed costs.

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**MMB takes its fiscal note oversight responsibilities seriously, although its review of individual fiscal notes is sometimes limited due to time constraints.**

But agency officials were less favorably impressed by MMB's coordination of agency activities, especially for cases in which multiple agencies have been assigned to a fiscal note. In our survey, only 23 percent of coordinators agreed with a statement that "MMB ensures the consistency of fiscal note practices among agencies."<sup>88</sup> In a separate question, 54 percent of agency coordinators agreed with a statement that "MMB effectively coordinates the fiscal note process when multiple agencies are involved."<sup>89</sup>

MMB approves agency fiscal notes after reviewing them for reasonableness, completeness, and conformity with state policies.<sup>90</sup> Overall, 73 percent of agencies' fiscal note coordinators said MMB's review of draft fiscal notes is worth the time this review requires.<sup>91</sup> Most MMB budget officers told us it is the exception, not the rule, for them to discuss with an agency its possible assumptions for a fiscal note before or even after the agency has submitted the note to MMB for review.<sup>92</sup> But most MMB budget staff said that agencies "usually" (or more often) modify the content of draft fiscal notes in cases in which MMB raises questions or offers suggestions. Sometimes MMB's suggestions for ways to improve the transparency of the fiscal notes go unheeded. As one MMB budget officer told us, "At peak times, agencies are so swamped with fiscal note requests that they are often not receptive to suggestions to improve clarity [of their fiscal notes]." Another said: "To date, we haven't really used the threat of withholding MMB sign-off [on a fiscal note] to any great extent, except in dramatic cases."

MMB conducts its reviews under some important constraints. MMB staff usually lack the data and subject area expertise that agency staff have. In addition, the fiscal note reviews by MMB staff usually occur within tight time constraints. Review of an individual fiscal note can take anywhere from a few minutes to a few days, depending on the fiscal note's complexity, the need to ask the affected agencies for clarifications or changes, and the urgency of the Legislature's need for the note. After an agency drafts a fiscal note, MMB sometimes finds itself with little time to review the note before it is discussed in a legislative committee.

Based on our interviews and surveys, we think that MMB staff have taken their fiscal note oversight responsibilities seriously, although the reviews themselves have sometimes been brief and limited, due to time constraints. However,

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<sup>88</sup> In addition, 15 percent disagreed, 31 percent said they neither agreed nor disagreed, and 31 percent responded "don't know or not applicable."

<sup>89</sup> In addition, 35 percent disagreed and 12 percent said they neither agreed nor disagreed.

<sup>90</sup> MMB officials told us they have typically been more directive in their oversight of fiscal notes prepared by executive branch cabinet agencies than in their oversight of fiscal notes prepared by constitutional offices and agencies in the legislative or judicial branches.

<sup>91</sup> Another 4 percent disagreed that MMB's review was worth the time it requires, 12 percent neither agreed nor disagreed, and 12 percent responded "don't know or not applicable."

<sup>92</sup> Seventy-five percent of MMB's executive budget officers ( $N=12$ ) estimated that they discussed possible assumptions *beforehand* with agencies in 0 to 50 percent of the fiscal notes they reviewed in 2011. When asked about the extent to which they raise questions about assumptions *after* agencies submit fiscal notes for review, 67 percent of these staff said they do this in 0 to 50 percent of the cases.

MMB's reviews do not represent the end of the fiscal note oversight process. It is worth noting that:

- **Following the review of fiscal notes by MMB, fiscal notes often receive considerable legislative and public scrutiny.**

As bills progress through the legislative process, fiscal notes are often part of these discussions. The estimates in fiscal notes are reviewed by legislative fiscal analysts, other legislative staff, legislators, lobbyists, and members of the public interested in the legislation. Legislative hearings provide an important opportunity for legislators to discuss these cost estimates (and sometimes their underlying assumptions).<sup>93</sup> One MMB budget officer noted, "It is certainly possible to look at almost every fiscal note and point out minor or sometimes major problems, and improvements that could be made." Others suggested that fiscal notes, with whatever flaws they have, offer starting points for constructive discussions, as legislators look for ways to clarify bill language, reach understandings with agencies about the best ways to estimate bill impacts, or find ways to constrain the cost of legislative proposals.

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<sup>93</sup> Some observers expressed concern to us about the extent of legislators' critical or accusatory comments about fiscal notes during committee hearings or floor debates, especially in recent years.

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# Discussion and Recommendations

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**Minnesota’s fiscal note system is not fundamentally broken, but it faces important challenges.**

The first three chapters of this report presented findings—but no recommendations—regarding Minnesota’s fiscal note process. In this chapter, we summarize our overall observations and present recommendations to the Legislature, Minnesota Department of Management and Budget (MMB), and agencies. We also discuss the merits of other options that have been suggested.

## GENERAL OBSERVATIONS

Minnesota’s fiscal note system has been the subject of periodic legislative complaints over the years, but it is not fundamentally broken. In many respects, it works as intended: providing information about the possible impacts of proposed laws before legislators make final decisions. In surveys and interviews, most legislative and executive branch budget staff told us that fiscal notes provide the Legislature with a basis for carefully considering a bill’s possible impacts.<sup>1</sup> Some legislative committee chairs told us they have had no concerns about the reasonableness of fiscal notes prepared for bills heard in their committees. Even some critics of Minnesota’s fiscal note process told us it works well most of the time. However, Minnesota’s system—like the fiscal note system of any state—faces some important challenges.

First, estimates of future fiscal impacts are necessarily based on assumptions, which may be debatable. There is often uncertainty about the extent to which these assumptions will hold true. It is also possible that assumptions may—perhaps inadvertently—reflect biases by the agencies making the estimates. Furthermore, it may be especially challenging to select reasonable assumptions for certain types of bills—for example, for proposals for which there is little or no precedent, for which implementation would occur over a period of years, or for which the level of participation (by individuals, agencies, or others) is uncertain. Thus, discussions—and potentially disagreements—about fiscal note assumptions should be viewed as a natural part of the legislative process. However, these discussions will be more constructive if fiscal notes clearly explain their assumptions and calculations.

Second, fiscal notes are produced in a high-stakes, high-stress environment: the legislative budget process. Many agencies are asked to produce a lot of fiscal notes in a short period of time, and errors may occur. Fiscal notes can have a significant impact on a bill’s prospects for success, and bill authors may question

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<sup>1</sup> For example, 96 percent of agencies’ fiscal note coordinators said fiscal notes provide a basis for the Legislature to carefully consider a bill’s possible impacts, and 87 percent of MMB budget staff said the same.

agency motives when fiscal notes do not align with the authors' expectations. Legislative committees have limited amounts of time to discuss bills and their potential impacts; as one legislator told us, there is not time to debate fiscal estimates for most bills. All of these factors can contribute to frustration among the developers and users of fiscal notes.

## RECOMMENDATIONS

This section offers a variety of recommendations to the Legislature, MMB, and state organizations that prepare fiscal notes. We recommend several changes in state law, but some improvements in Minnesota's fiscal note process are not ones that would be easily addressed through legislation. Notably, the fiscal note process relies considerably on the level of communication that exists among legislators, legislative staff, MMB, and agencies, and there is room for improvement. As one executive branch official told us:

I think the Legislature could better communicate [the] priority of [fiscal notes] to MMB and agencies. I think MMB can better communicate with agencies on [multi-agency fiscal notes]. I think agencies can better communicate when their work on a note has stalled for various reasons [such as unclear bill language].

Thus, among our recommendations below are several intended to improve communication among the entities that play roles in the fiscal note process.

## Recommendations to the Legislature

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### RECOMMENDATION

*The Legislature should clarify in state law the definition of a fiscal note.*

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**Statutes should define “fiscal note” and clarify which impacts fiscal notes must address.**

There is a common understanding within the branches of Minnesota state government that fiscal notes are documents that estimate the impact of proposed legislation, but this should be explicitly stated in law. Existing law sets forth certain requirements about the content of fiscal notes, but the term “fiscal note” is not statutorily defined. Even if the absence of a definition has not caused confusion, it is a good practice for statutes to clearly define the terms they use.

Furthermore, the law says that fiscal notes shall “cite the effect in dollar amounts,” but it does not specify the nature of the “effect” that fiscal notes are to estimate.<sup>2</sup> At a minimum, the law should specify that fiscal notes should estimate the impact of bills on *state* expenditures or revenues. However, it would also be useful for the law to clarify—consistent with current MMB instructions—that fiscal notes should discuss *local* fiscal impacts, where applicable. Although fiscal notes rarely include dollar estimates of local impacts, it is helpful when

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<sup>2</sup> *Minnesota Statutes* 2011, 3.98.

fiscal notes have some discussion about the likely effects of bills on local costs or revenues.

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### RECOMMENDATION

*The Legislature should require in statute or legislative rules that proposed bills—with certain exceptions—have publicly available fiscal notes or revenue estimates before finance or tax committees vote on the bills’ passage.*

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**As a general rule, finance committees should consider an “official” fiscal note for each bill before voting on whether to pass the bill.**

In Chapter 1, we observed that legislative committees have relied on various sources of information to help determine the fiscal impact of proposed legislation. Besides the fiscal note process, committees have sometimes relied on informal estimates from agencies, estimates provided by vendors, estimates developed by legislative staff, and other sources of information. In our view, there can be a legitimate role for each of these types of estimates in the legislative process. As a general rule, however, we think legislative committees should consider an “official” fiscal note (or revenue estimate) for each bill with a likely fiscal impact. This is because formally requested fiscal notes (1) are public documents that are made widely available to persons interested in the legislation, and (2) are reviewed prior to completion by MMB, the executive branch agency that oversees the Minnesota state budget. The availability of formal fiscal notes—with clearly stated assumptions—improves the ability of legislators, MMB, and other interested parties to discuss the impact of pending legislation. Other types of fiscal estimates may also be useful at times, but such estimates should generally supplement—rather than substitute for—the official estimates.

Minnesota’s statutes and legislative rules are less detailed than those of many states about when fiscal notes should be completed. Thus, some fiscal notes in Minnesota are not requested in time for legislative hearings on the relevant bills; in other cases, legislators have intentionally bypassed the fiscal note process as bills have moved through committees. With certain exceptions, we recommend requiring, either in state law or legislative rules, that a bill have a fiscal note before a legislative finance committee votes on whether to pass the bill (or incorporates its provisions into a larger bill). The Legislature may wish to exclude from this general requirement those bills that include a specific dollar amount—for example, a grant to a local government, or an appropriation for a bonding project. In such cases, the bill’s fiscal impact on the state may be readily apparent. Also, there may be no need to require a fiscal note for an entire “omnibus” funding bill if (1) the bill’s individual provisions with fiscal impacts have been estimated in earlier fiscal notes and (2) any interactive effects among the provisions assembled into the omnibus bill have already been estimated by the affected agencies.<sup>3</sup> In addition, the Legislature may wish to allow committees to vote to override the fiscal note requirement if the affected agency

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<sup>3</sup> Omnibus bills are typically large, and it can be time-consuming for agencies to prepare fiscal notes that cover an entire omnibus bill. Often, however, fiscal notes have already been prepared for many, if not all, of the individual bills that have been incorporated into an omnibus bill.

had a reasonable amount of time to complete a fiscal note but did not do so.<sup>4</sup> Finally, the Legislature should consider whether to make an exception to the requirement for agency-prepared fiscal notes in the case of House of Representatives education bills. As noted in Chapter 1, House nonpartisan staff now prepare most estimates of the impacts of education-related bills, particularly those related to education formulas. In contrast, the Senate has usually asked the Department of Education to prepare fiscal notes for these bills.

With such exceptions, however, we envision that House or Senate finance committees would vote to pass a bill only if a fiscal note had been completed on the bill (possibly on an earlier version of the bill that was considered).<sup>5</sup> This would not diminish the Legislature's ability to choose whether to abide by the estimates of the fiscal note for budgeting purposes. However, such a requirement would help ensure that estimates of possible fiscal impacts are made publicly available before the bills are considered by the full House or Senate.

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### RECOMMENDATION

*The Legislature should amend Minnesota Statutes 2011, chapter 13, to authorize that requests for fiscal notes on un-introduced bills and the resulting fiscal notes be classified as “not public” data, and MMB should work with legislative leaders to develop a strategy for implementing this.*

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**A fiscal note should be classified as “not public” until the bill for which it was developed is introduced.**

When Minnesota legislators ask the Office of the Revisor to draft bill language, the request and any documents prepared in response to the request are classified by law as “not public” data.<sup>6</sup> This is consistent with the longstanding policy of the nonpartisan House and Senate offices that work with legislators to draft bills. However, when legislative requests for fiscal notes are entered into MMB's Fiscal Note Tracking System for bills that have not yet been introduced, all persons with authorized access to the Fiscal Note Tracking System can see the request, the draft bill language, and any draft of a fiscal note that has been entered into the system. Some people told us that legislators' desire to keep the content of draft bills confidential (until a bill is introduced) has been one reason that legislators have “informally” asked agencies to prepare fiscal estimates on

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<sup>4</sup> Another option would be for a finance committee to vote to pass a bill (or to include a provision in its omnibus bill) that does not have a fiscal note on the condition that the fiscal note be completed before the bill is acted on by a subsequent committee or before the bill is heard on the House or Senate floor.

<sup>5</sup> Ideally, a fiscal note would reflect the version of a bill passed by the finance committee, but this may not always be practical. For example, a committee might amend a bill subsequent to its discussion of the fiscal note, and time constraints may demand action by the committee before the fiscal note could be updated. If an updated fiscal note is not feasible before the committee acts, legislative fiscal analysts should work with the affected agencies and MMB to ensure that reasonable assumptions about the bill's fiscal impact are incorporated into the House or Senate spreadsheets used to track the fiscal impact of legislation under consideration. Where appropriate, a committee chair could request that the fiscal note be updated prior to action by the next committee hearing the bill or prior to action on the bill by the full House or Senate.

<sup>6</sup> *Minnesota Statutes* 2011, 3C.05, subd. 1(a).

un-introduced bills, rather than requesting fiscal notes through the “official” process.

Since 2009, MMB has provided legislators with a way to use its Fiscal Note Tracking System to enter formal requests for fiscal notes on bill language that has not yet been introduced. In our view, there are times when this can be useful. Early discussions between legislators and agencies about bill ideas can help ensure that the bill language is workable, and that assumptions in the fiscal note are reasonable. However, legislators have legitimate concerns that their ideas for possible bills may be publicly disclosed at a stage when these ideas are still taking shape.

We think the Legislature should amend state law to classify as “not public” fiscal notes on bill language not yet introduced, as well as the fiscal note requests and any bill language associated with these requests. This information could be made public prior to bill introduction, but only at the discretion of the fiscal note’s requester. If a bill is subsequently introduced that contains the language on which the fiscal note was based, the fiscal note’s data classification should change to “public.”

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**Changes in the classification of some fiscal notes may require changes in the information system used to store fiscal notes.**

MMB staff told us that, because the Fiscal Note Tracking System is so old, it would be challenging to make significant changes to the system—including changes that would limit the public availability of certain notes.<sup>7</sup> If the Legislature amends state law to classify fiscal notes on un-introduced bills as not public, MMB and legislative leaders should discuss options for (1) replacing the Fiscal Note Tracking System or (2) developing a stand-alone tracking system for fiscal notes on un-introduced bills.<sup>8</sup>

We recommend no change in the classification of requests for fiscal notes on introduced bills (and the resulting fiscal notes); these would remain public information, consistent with existing law. Also, our earlier recommendation would require that all bills have a publicly available fiscal note before they are acted on by a legislative finance committee. This would require that a not-public fiscal note that was developed prior to a bill’s introduction be made publicly available (in its original version or as updated later) prior to legislative action on the bill.

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<sup>7</sup> MMB has expressed a desire to replace its Fiscal Note Tracking System—now 25 years old—with a system using more up-to-date technology. We heard mixed comments about the system from agency and legislative users—some who said the existing system meets their needs well, and others who said they would prefer a system with more flexibility (such as the ability to incorporate spreadsheets). Perhaps the most compelling reasons for MMB to consider updating this system are technical ones. MMB has a diminishing number of staff who understand the system’s technology because it is based on old computer programming language. Also, the system’s technology is not compatible with some other operating systems, and the system’s server has been unstable. Legislative staff encountered some significant difficulties accessing the system in 2011.

<sup>8</sup> In a fiscal note for H.F. 1506, 2011 Leg., 87<sup>th</sup> Sess. (MN), MMB estimated that it would cost \$1.5 million to replace the Fiscal Note Tracking System.

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### RECOMMENDATION

*To facilitate the development of clear bill language and better fiscal notes, legislators should strive to establish strong communication with agencies in the early stages of developing bills likely to have large, complex, or hard-to-measure fiscal impacts.*

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**Improved communication between bill authors and agencies may foster better estimates of bills' fiscal effects.**

Developing good fiscal notes requires a certain amount of shared understanding between bill authors and agencies. Legislators know best what they would like their bills to accomplish. On the other hand, state agencies have staff with technical expertise about the affected programs and how they have been implemented.

Communication between bill authors (or their staff) and agencies may help to ensure that bill language is clearly stated, can be implemented, and is not open to varying interpretations. Communication can also help to ensure that the estimates in fiscal notes are based on reasonable assumptions and likely scenarios, without an undue amount of speculation.

For bills that propose major reforms or unprecedented initiatives, early communication between the legislative branch and agencies is preferable. One legislative fiscal analyst described fiscal notes to us as “colossal undertakings in short timeframes with many miscommunications possible.” Some legislators have been unaware that committee chairs can request fiscal notes prior to a bill’s introduction, but such requests may be a good practice for complex bills. Also, it may sometimes be reasonable for legislators to ask agencies to prepare informal estimates on initial bill ideas, with the intent of requesting a fiscal note if a bill is eventually introduced.

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### RECOMMENDATION

*To the extent possible, legislative committees should provide agencies with advance notice of hearings during which fiscal notes may be discussed.*

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The legislative process is sometimes difficult to “map out” in advance. But, when possible, committee chairs and committee administrators should plan upcoming meetings far enough in advance to give agencies fair warning about bills likely to be discussed. As noted in Chapter 2, this does not always occur. Advance notification helps communicate to agencies a sense of urgency about certain fiscal notes. In addition, determining committee agendas a week or two in advance may help ensure timely fiscal note requests—that is, requests that are far enough in advance to give agencies reasonable amounts of time to prepare credible fiscal notes.

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**It is helpful when legislative fiscal analysts communicate with agencies preparing fiscal notes about committees' upcoming agendas and priorities.**

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### RECOMMENDATION

*Legislative fiscal analysts should provide information to MMB and relevant agencies whenever possible to help facilitate the development and use of fiscal notes.*

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In a 2011 report, MMB's Management Analysis and Development unit recommended that nonpartisan legislative staff "take on greater responsibility to facilitate and shepherd" the fiscal note process among the Legislature, MMB, and agencies.<sup>9</sup> Executive branch staff recognize the important role that legislative fiscal analysts can play in the fiscal note process, and some suggested ways to us in which fiscal analysts could be even more helpful. For example, when fiscal notes are requested, fiscal analysts can help identify similar bills for which fiscal notes were previously requested, suggest possible assumptions or sources of information, or suggest which agencies should be assigned to the fiscal note.<sup>10</sup> In addition, it is helpful when fiscal analysts communicate directly and frequently with agencies about legislative committees' upcoming agendas and fiscal note priorities.

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### RECOMMENDATION

*Legislative leaders should ensure that training and orientation for legislators and committee staff address the fiscal note process.*

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In Chapter 1, we said that several legislators and legislative staff told us there has been little or no discussion of the fiscal note process in recent orientation sessions for new or returning legislators. Some expressed concern that staff for legislative committees have not understood the process for requesting fiscal notes or have had unrealistic expectations for how quickly fiscal notes can be developed. We recognize that training sessions for legislators and legislative staff must address a wide range of topics. Nevertheless, fiscal notes are a key tool in the legislative process and should be explained clearly in these orientations, even if this discussion is brief.

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### RECOMMENDATION

*The Legislature should amend Minnesota Statutes 2011, 3.98, subd. 2, replacing the requirement for fiscal notes to "cite the statutory provisions affected" with a requirement that fiscal notes include a brief summary of the bill.*

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<sup>9</sup> Minnesota Department of Management and Budget, Management Analysis and Development, *The Human Services Fiscal Note Process* (St. Paul, January 2011), 21.

<sup>10</sup> Executive branch staff said some fiscal analysts enter notes and suggestions of this sort directly into the Fiscal Note Tracking System, which has been helpful to agencies.

A summary of a bill's main provisions at the beginning of a fiscal note gives readers some context for the fiscal estimates that are subsequently presented. Most fiscal notes have a bill summary, although occasionally these bill descriptions are excessively long.<sup>11</sup> In our view, it would be preferable for statutes to require fiscal notes to provide a short bill summary rather than specific statutory citations. Statutory references can be found in the bill itself, and legislative staff often prepare section-by-section summaries of bills; both are posted on the House and Senate Web sites for individual bills.

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### RECOMMENDATION

*The House and Senate public information offices should establish online links from the Web sites for individual bills to any pertinent local impact notes for these bills.*

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In Chapter 1, we said that legislatively requested fiscal notes and analyses of tax revenue impacts can now be accessed through the House and Senate Web sites for individual bills. However, such links have not been established for the local impact notes prepared under *Minnesota Statutes* 2011, 3.987. Local impact notes are requested by legislators infrequently, and potential users may not know where to obtain the completed analyses. Providing links to these documents from the legislative Web sites of individual bills should make local impact notes more readily available to legislators and the general public.

## Recommendations to the Minnesota Department of Management and Budget

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### RECOMMENDATION

*MMB should take additional steps to ensure that the estimates in agency fiscal notes are adequately explained, justified, and documented.*

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In its role as the coordinator of the fiscal note process, MMB provides guidance to agencies. MMB has developed online instructions for development of fiscal notes. In addition, MMB provides training for agency staff, although this training has focused largely in the past on how to use the Fiscal Note Tracking System. MMB officials told us they would like to find new ways—such as periodic e-mails to agency fiscal note coordinators—to remind agencies about fiscal note policies, procedures, or recommended practices.

In Chapter 3, we said there is room for improvement in the transparency of fiscal notes. Agencies usually list their assumptions in fiscal notes, but often they do not adequately explain or justify these assumptions. Also, some agencies show the bottom line fiscal estimates without explaining how they arrived at the

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**The Minnesota Department of Management and Budget (MMB) should help improve the transparency of agency fiscal notes.**

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<sup>11</sup> For example, the fiscal notes for one of the bills in our sample (H.F. 210, 2011 Leg., 87<sup>th</sup> Sess. [MN]) devoted about six pages to descriptions of the bill provisions.

estimates. It would be difficult for MMB to articulate a general policy stating exactly how much explanation and documentation in a fiscal note is “enough.” However, MMB should regularly remind agencies of the importance of clear, transparent fiscal notes that can be understood and, potentially, critiqued by legislators and other interested readers.<sup>12</sup>

In some cases, actions by MMB or agencies to ensure that fiscal notes are explained clearly might add to the length of the notes or the amount of time it takes to prepare the notes. Our hope, however, is that these impacts will be minimal. Agencies should strive to keep fiscal notes reasonably concise while improving the notes’ clarity. Also, with appropriate reminders and guidance from MMB, agencies should be able to draft clearly explained fiscal notes in a timely manner.

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### RECOMMENDATION

***MMB should improve its fiscal note instructions to agencies in several key areas.***

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In Chapter 3, we said that agencies may benefit from clearer or more specific guidance regarding some specific fiscal note issues. In particular, MMB should provide additional guidance to agencies about (1) the circumstances in which agencies should propose to “absorb” certain costs that would result from a bill; (2) what constitutes a “secondary” impact or a behavioral response to a direct impact (and when, if at all, a fiscal note should address such impacts); and (3) how fiscal notes should address local government impacts, where applicable.

Also, in light of the number of large-scale policy changes proposed during the 2011 legislative session, MMB should provide additional advice to agencies about how to prepare cost or savings estimates for unprecedented, large-scale, or complex proposals. MMB should re-emphasize the importance of making dollar estimates whenever possible, but it should provide guidance about circumstances in which it is acceptable for agencies not to provide estimates.

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### RECOMMENDATION

***MMB should improve its oversight of multi-agency fiscal notes, for the purpose of improving timeliness and internal consistency.***

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Multi-agency fiscal notes pose special challenges because they require a level of inter-agency coordination that single-agency notes do not. Chapter 2 said that multi-agency notes have taken longer to complete than other notes, and Chapter 3 said that agencies would like to see improved efforts by MMB to ensure

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<sup>12</sup> Some calculations or models may be too detailed to describe in a fiscal note, but agencies should still keep clear documentation for a reasonable period. MMB directs agencies to maintain “work papers utilized in the preparation of fiscal notes” for at least two years following the applicable legislative session. See Minnesota Department of Management and Budget, *[Fiscal Note] Policies and Procedures* (St. Paul, December 2010), 8.

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**To address some ongoing concerns about fiscal notes, MMB should provide additional guidance and better oversight.**

consistency within these notes. A recent review by MMB's Management Analysis and Development unit said that "not much up-front coordination currently occurs between the lead agency and [MMB executive budget officer] prior to completion of the note by assigned agencies."<sup>13</sup> To the extent possible, MMB should communicate with the affected agencies at an early stage and facilitate the development of consistent assumptions. Also, MMB staff should closely monitor the progress of multi-agency notes so that unnecessary delays by individual agencies do not hinder the fiscal notes' timely completion and public release.

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## RECOMMENDATIONS

***MMB should establish in the Fiscal Note Tracking System a default due date longer than five working days. MMB should report to the 2014 Legislature on the extent to which fiscal note due dates were met following such a change.***

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**Legislative requesters of fiscal notes should specify short deadlines when necessary, but they should understand that not all fiscal notes can be completed within five working days.**

The legislative requester of a fiscal note can specify a due date for that note within the Fiscal Note Tracking System. If the requester does not specify a date, the system—by default—specifies a due date five working days from the date of the request. In Chapter 2, we noted that most fiscal notes have not been completed before their due dates. However, legislative staff did not express significant concern about this, noting that they have informally tried to convey priorities among fiscal notes to agencies. For a bill that does not receive a hearing, there might be no harm when the fiscal note is completed past the due date.

Presently, a majority of fiscal note requests are assigned the default due date. Statutes and legislative rules do not specify any timeframes for completing fiscal notes. Unless the Legislature chooses to provide direction, MMB can adopt a different default due date than the one it now uses. We think that having a default due date of longer than five working days might help differentiate higher and lower priority fiscal notes. When requesting a fiscal note, legislative staff would still be able to specify any due date they deem appropriate. However, a default due date longer than five working days would be more in line with the actual time it has taken agencies to complete lower priority fiscal notes. With a more generous default due date, legislative requesters would bear more responsibility for designating which fiscal notes will be needed on a faster schedule. When possible, due dates should (1) reflect the urgency with which a fiscal note is needed by legislative committees and (2) take into account any special challenges the agencies may face (such as complex calculations, multi-agency coordination, or research regarding costs in other states).<sup>14</sup> Adopting a default due date longer than five working days would probably not change the

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<sup>13</sup> Minnesota Department of Management and Budget, Management Analysis and Development, *The Human Services Fiscal Note Process*, 18.

<sup>14</sup> Another option would be to lengthen the default due date for fiscal notes requested in the early weeks of a legislative session, while retaining the current default for fiscal notes requested after a certain date.

time it takes to complete a fiscal note, but it might provide fiscal note requesters with more realistic expectations for when a fiscal note will be done.

If a change in default due dates is implemented, we recommend that MMB prepare a report to the 2014 Legislature on fiscal note timeliness. This would allow MMB to examine the timeliness of fiscal notes in a budget year (2013), when there are usually more fiscal note requests.

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### RECOMMENDATION

***MMB, in consultation with representatives of statewide pension funds, should consider developing an alternative fiscal note format for agencies to use when showing the impact of pension bills.***

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**Pension bills may need a fiscal note format that is different from the format used for other fiscal notes.**

As we discussed in Chapter 3, the standard fiscal note format can create an incomplete and misleading picture of a pension bill's fiscal impact. A fiscal note that only shows four years of direct impacts on the state budget may inadequately convey a bill's longer term effects on pension funds' unfunded liability. For example, it may be useful for the fiscal note's front page to show—in addition to direct budget impacts—how the bill would affect the annual contributions that would be required to meet pension funds' benefit obligations, including any unfunded liabilities.

We also discussed in Chapter 3 how the front page of fiscal notes for pension bills can create a misleading picture for bills affecting the two largest statewide local government pension funds—the Teachers Retirement Fund (TRA) and the Public Employees Retirement Fund (PERA). The front page is supposed to only show a bill's impact on state government. But sometimes the page shows costs to these two pension funds even though they are largely financed by local governments. Meanwhile, by not showing the direct fiscal impact on schools, cities, and counties, the front page sometimes does not provide a clear, complete view of a bill's impact. Currently, direct local impacts are not shown in the front-page table even when these estimates are readily available.<sup>15</sup>

MMB staff expressed concern to us that having a format for pension-related fiscal notes that is different from other fiscal notes might cause confusion. They preferred to restrict the front page of pension-related fiscal notes to a table showing state fiscal impacts, but they said MMB could provide additional guidance to agencies about how to convey information in the table and the fiscal note's narrative. We think additional MMB guidance is necessary, but it might not fully address the unique challenges that pension-related fiscal notes present. In our view, the front page of pension-related fiscal notes would be more informative if it allowed agencies to (1) show longer term impacts and (2) separately present state and local impacts. We suggest that MMB work with the pension funds to develop an improved fiscal note format for pension bills.

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<sup>15</sup> For example, in S.F. 813, 2011 Leg., 87<sup>th</sup> Sess. (MN), the front page of the fiscal note included the costs to the statewide local government pension funds but left out the savings to local governments. The narrative sections of this fiscal note included discussions by PERA and TRA about the local impacts.

**MMB should comply with statutory provisions regarding its use of county aid to pay for “local impact notes” or seek changes in the law.**

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### RECOMMENDATION

*MMB should comply with Minnesota Statutes 2011, 477A.03, subd. 2b(b), and spend the county aid it is allotted by this statute only for the purpose specified in this law.*

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As noted in Chapter 3, state law authorizes MMB to annually bill the Department of Revenue for up to \$207,000 of the state’s aid to counties. This is “for the cost of preparation of local impact notes as required by [Minnesota Statutes] section 3.987.”<sup>16</sup> MMB has generally used all or nearly all of the aid it has been eligible to receive each year, even though the number of local impact notes prepared each year has been very small. MMB told us (and has previously reported to the Legislature and local government associations) that it has used this funding not only for local impact notes, but also for other MMB activities related to local governments. However, the law does not specifically authorize use of county aid for these additional activities. Unless the Legislature amends *Minnesota Statutes* 2011, 477A.03, to authorize the use of county aid for a broader set of purposes, MMB should only use this aid to cover its actual costs of coordinating the local impact notes governed by *Minnesota Statutes* 2011, 3.987.

## Recommendations to State Agencies

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### RECOMMENDATION

*State agencies should take additional steps to ensure that fiscal notes are transparent to general readers.*

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MMB can remind agencies of the need to ensure that fiscal notes are sufficiently transparent, but the primary responsibility for clear, transparent fiscal notes rests with agencies. When dozens of fiscal notes are being prepared in the middle of a legislative session, it can be difficult for MMB—through its review process alone—to ensure that assumptions and calculations in fiscal notes are clear and well explained. Thus, agencies need to do what they can to improve the quality of the draft fiscal notes they submit to MMB.

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### RECOMMENDATION

*State agencies should make stronger efforts in their fiscal notes to, where feasible, discuss and estimate the impact of bills on political subdivisions, such as cities, counties, or school districts.*

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State law does not require fiscal notes to address impacts of bills on local government units, but MMB instructions require this. Although many fiscal notes declare that the bills in question would have local fiscal impacts, we

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<sup>16</sup> *Minnesota Statutes* 2011, 477A.03, subd. 2b(b).

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**Where possible, fiscal notes should provide more helpful discussion of bills' local fiscal effects.**

observed that these notes sometimes provide minimal details. This probably reflects the limited time that state agencies have to prepare fiscal notes, as well as the overriding interest of legislators in the impact of bills on state revenues and expenditures. Still, we think it is important for legislators to consider local impacts, when possible. In many program areas (such as education, human services, and transportation), Minnesota relies on a combination of state and local agencies to administer or provide services intended to accomplish statewide goals. While state agencies may not always be able to prepare dollar estimates of proposed legislation's local impacts, these agencies should use the narrative portion of fiscal notes to provide greater insights (where possible) into likely local impacts than is now the case.

Our hope is that fiscal notes can provide somewhat better discussions of local impacts without delaying their completion. If legislative committees want a more detailed examination of local impacts for a given bill, existing law allows certain committee chairs to request that MMB coordinate the preparation of a "local impact note." However, this type of fiscal analysis is rarely requested. Thus, it would be helpful if agencies' fiscal notes provided a little better explanation of possible local impacts.

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## RECOMMENDATION

*Especially for complex or potentially controversial fiscal notes, agencies should, as necessary, seek clarifications from legislators (or legislative staff) about bill language or discuss possible fiscal note assumptions.*

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Improving communication between the legislative and executive branches is a two-way street. However, as one MMB budget officer said to us:

[I]t's very rare that the agency completing the [fiscal note] communicates with a legislator to understand what the legislator is trying to do with the legislation—often it seems like [this occurs] after agencies complete a note, and the legislator indicates that the note was not completed in the way they expected.

As recommended earlier, we encourage legislators to make greater efforts to seek agency input as they develop language for possible bills. At times, however, it is also appropriate for agencies to reach out to legislators and legislative staff—especially legislative fiscal staff who work in the topic area covered by a bill. This is especially important if a bill's legislative intent is unclear, the bill has technical defects or is open to interpretation, or there is room for disagreement about the nature or size of the bill's likely fiscal impacts.

## OTHER OPTIONS

In addition to the recommendations presented above, the Legislature may wish to consider other options for improving the fiscal note process. We discuss four options below: (1) assigning responsibility for fiscal notes to a legislative office;

(2) establishing a process for appealing fiscal notes; (3) providing opportunities for bill authors to respond to fiscal notes developed on their bills; and (4) reviewing the accuracy of prior years' fiscal estimates. Options 1 and 2 have been the subject of bills considered but not adopted by the Minnesota Legislature in recent years. All four of these options—but most frequently Option 1—have been adopted by some other states' legislatures. Some people we talked with expressed interest in Option 4 as a way to hold agencies more accountable for their fiscal notes. We discuss the merits of each option, but we did not find the arguments for these options sufficiently compelling to recommend them. As discussed, these options might be challenging or costly to implement, or they are not demonstrably advantageous to Minnesota's current practices.

## Option 1: Assign Responsibility for Fiscal Notes to a Legislative Office

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**As in many other states, legislative staff in Minnesota could be assigned to oversee fiscal note development.**

In Chapter 1, we said that the legislatures of a majority of states rely on one or more legislative staff offices to prepare the fiscal notes they use. This contrasts with Minnesota, where executive branch agencies, under MMB's direction, prepare most fiscal notes.<sup>17</sup> In 2011, bills in Minnesota's House and Senate proposed giving the Legislative Commission on Planning and Fiscal Policy responsibility to prepare fiscal notes and review revenue estimates related to proposed legislation.<sup>18</sup> An author of one of these bills told us that legislative budget committees often do not have time for lengthy discussions about fiscal notes, so it is important that fiscal notes be prepared by agencies that have strong credibility among legislators.

As noted in Chapter 1, even states in which fiscal notes are prepared by legislative offices rely considerably on executive branch agencies in this process. Executive agencies have specialized staff who are familiar with programs' requirements and data systems. For example, the Minnesota Department of Human Services has over 250 information systems and applications, and data for a fiscal note might require information from multiple sources. A fiscal note prepared for the 2011 House proposal to transfer fiscal note responsibility to the legislative branch assumed that executive agencies would continue to (1) be the primary source of information and analysis for fiscal notes and (2) take the lead in drafting many fiscal notes. It also assumed that House and Senate fiscal analysts would play a very limited role in preparing fiscal notes, due to the demands of their existing duties. This fiscal note assumed that a larger staff for the Legislative Commission on Planning and Fiscal Policy would become responsible for reviewing and approving agency drafts of fiscal notes.<sup>19</sup> The note

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<sup>17</sup> In Minnesota, judicial and legislative branch agencies sometimes prepare fiscal notes for bills that would affect their activities. However, a large majority of fiscal notes are prepared by executive branch agencies.

<sup>18</sup> S.F. 1359, 2011 Leg., 87<sup>th</sup> Sess. (MN) and H.F. 1506, 2011 Leg., 87<sup>th</sup> Sess. (MN).

<sup>19</sup> The fiscal note assumed that commission staff would sometimes gather their own information and produce their own analyses.

**However, it is unclear that this option would be superior to Minnesota's current approach.**

said an additional 4.75 full-time equivalent staff would be required for the fiscal note and revenue estimate portion of this bill.<sup>20</sup>

The 2010 Legislature directed MMB to assess, among other things, the merits of “transferring the responsibility for preparing human services fiscal notes to the legislature.”<sup>21</sup> The resulting report did not recommend that legislative staff prepare fiscal notes. It said that most people in the executive and legislative branches interviewed for the study “did not think a new office would be an optimal solution to address [legislative] concerns about fiscal notes.”<sup>22</sup> The report also said it would cost 67 percent more for a legislative office to prepare human services fiscal notes than for the Department of Human Services to do so, due to the ineligibility of legislative offices to claim federal funding for this purpose.<sup>23</sup> Overall, the report recommended various improvements to the fiscal note process rather than changes in organizational responsibility for fiscal note preparation.<sup>24</sup>

In our view, assigning oversight of fiscal notes to a legislative agency would be feasible, but it is unclear whether the outcome would be superior to MMB’s existing oversight. The feasibility of having legislative agencies prepare fiscal notes is demonstrated by the experience of other states and by the Minnesota House’s use of nonpartisan staff to prepare education-related fiscal estimates. It is unclear, however, whether fiscal notes issued by legislative staff would be more accurate than those completed by the executive branch, even if they were seen as more credible. The notes would still rely largely on data from executive agencies, and we heard some concern that legislative staff might feel some pressure to have their estimates conform to legislators’ expectations. As noted above, transferring responsibility for fiscal notes to the legislative branch would require additional expenditures.

As an alternative to a complete transfer of fiscal note authority to the legislative branch, the Legislature could consider more limited options. For example, the next section mentions some states in which, following the preparation of a fiscal

<sup>20</sup> It is unclear that these new staff would do more review or supplemental analysis of agencies’ fiscal estimates than is now done by MMB. Also, it would be challenging for this commission’s staff to have subject matter expertise covering the full array of state agencies and programs, just as this is challenging for MMB.

<sup>21</sup> *Laws of Minnesota* 2010, First Special Session, chapter 1, art. 19, sec. 20.

<sup>22</sup> Minnesota Department of Management and Budget, Management Analysis and Development, *The Human Services Fiscal Note Process*, 47. The unit of MMB that conducted this analysis provides fee-for-service management consulting to state agencies and is not involved in MMB’s ongoing processes for preparing or reviewing fiscal notes.

<sup>23</sup> *Ibid.*, 50.

<sup>24</sup> The report recommended that the Department of Human Services: develop consistent policies and practices regarding its provision of technical assistance to the Legislature; strengthen its fiscal note narratives; streamline its process for reviewing and approving draft fiscal notes; and distribute fiscal note duties among more of its staff. It recommended that MMB: play a stronger role in the early stages of fiscal note development; improve coordination of multi-agency fiscal notes; replace the Fiscal Note Tracking System; and clarify when agencies should work on fiscal notes during the year. The report recommended that the Legislature: rely more on its nonpartisan staff for technical assistance on bill drafting and policy development; and give its nonpartisan staff more responsibility to manage communication during the fiscal note development process.

note, legislative offices may be asked to comment on the fiscal note or prepare an independent estimate.

## Option 2: Establish an Appeals Process

This option would provide a possible mechanism for legislators to challenge the assumptions or conclusions of fiscal notes. For example, Missouri law allows legislators to appeal to the chair of the Joint Committee on Legislative Research if they wish to revise a completed fiscal note.<sup>25</sup> Such an appeal results in a hearing by this committee (or its Oversight Subcommittee).

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**An appeals process could provide a legislative forum for discussing controversial fiscal notes, but there may be better options.**

In 2008, bills in the Minnesota House and Senate proposed establishing a process for legislators to appeal the estimates in a fiscal note.<sup>26</sup> Under the proposals, appeals would be initiated by the chair of (1) the House Ways and Means Committee or (2) the Senate Finance Committee. A legislative commission would have been required to meet within five days of the appeal's submission.<sup>27</sup> Under these proposals, the commission could agree to alter the conclusions of the appealed fiscal note, and any revised conclusions would be considered the final estimate of the bill's impact for the current legislative session (if the bill remained unchanged). These proposals for an appeals process were not enacted.

An appeals process would provide a forum within the Legislature for disputes about fiscal analyses to be heard and decided. However, legislators and others expressed several concerns about this option. First, fiscal notes have no specific legal standing in budget decisions, and they are generally considered to be advisory. Some people told us it would be odd to establish a formal legislative process for the purpose of resolving disputes about advisory estimates. Second, given that fiscal notes are often prepared during the final two months of the legislative session, some legislators questioned whether the appeals body could meet in a timely manner, given other demands of the legislative session. Third, some people we talked with thought an appeals mechanism was unnecessary, given that legislative fiscal committees already have opportunities to discuss and debate fiscal notes. Finally, one of the authors of a 2008 appeals bill suggested to us that other strategies to improve fiscal notes—such as improving collaboration on fiscal notes between legislative staff and agency staff—would be more beneficial than an appeals mechanism. As we recommended earlier, it would be helpful if legislators and agencies can strive for stronger communication about the content and possible impact of bills likely to have significant or complex impacts.

Rather than seeking a “ruling” on a fiscal note by an appeals body, the Legislature could authorize legislative committees to, on a limited basis, ask legislative staff analysts to prepare (1) commentaries on agency-prepared fiscal

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<sup>25</sup> Staff of this committee are responsible for preparing fiscal notes for the Missouri Legislature.

<sup>26</sup> S.F. 3180, 2008 Leg., 85<sup>th</sup> Sess. (MN) and H.F. 3772, 2008 Leg., 85<sup>th</sup> Sess. (MN). The introduced versions of these bills also provided for appeals of “revenue estimates.”

<sup>27</sup> The introduced versions of the House and Senate bills called for the Legislative Advisory Commission to hear the appeals. Amended versions of the Senate bill called for the Legislative Commission on Planning and Fiscal Policy to hear the appeals.

notes or (2) independent fiscal estimates. For example, if a bill author in Wisconsin's Legislature is not satisfied with the fiscal note prepared by the executive branch, the author may request the Legislative Fiscal Bureau to prepare a new fiscal note. In Virginia, committee chairs may request the Joint Legislative Audit and Review Commission to comment on individual fiscal notes.<sup>28</sup> In Colorado, staff of the Legislature's Joint Budget Committee review fiscal notes prepared by another legislative office and indicate whether they concur.

### Option 3: Provide Bill Authors with Opportunities to Respond to Fiscal Notes

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**A few states have mechanisms within the official fiscal note process to allow bill authors to rebut fiscal notes.**

Another option the Legislature could consider would provide an opportunity for the chief author of a bill to offer written comments on a fiscal note developed for the bill. For example, a bill author might wish to challenge the assumptions used in the fiscal note, or to question why certain evidence was not considered. If a bill author concurred with a fiscal note, the author could prepare a statement to this effect. Author comments could be included within the fiscal note itself, or they could be distributed as separate documents.

We are aware of three states that have a provision of this sort. In Montana, bill sponsors can prepare a "rebuttal" within four days of a fiscal note's completion. The fiscal note rebuttal is sent to the committee in which the bill will be heard. If the bill is printed for legislators, it must be accompanied by the rebuttal. Also, Mississippi's legislative rules authorize bill authors (or committees considering bills) to, if they disagree with an agency-developed fiscal note, prepare their own fiscal note based on "information, research, study and belief which shall then be incorporated in and become a part of the fiscal note."<sup>29</sup> In New Jersey, a bill sponsor who disagrees with the bill's fiscal note may have the following sentence included in the note: "The sponsor does not concur with the information presented herein."<sup>30</sup>

We have two observations about this option. First, including an author's comments in the fiscal note document could delay the completion and distribution of the fiscal note. Second, there are often opportunities during committee discussions for authors to verbally comment on a fiscal note prepared by an agency. If so, this may be sufficient, given that fiscal notes are advisory to committees and do not bind the committees to adopt a particular estimate. Also, it may be unrealistic during the height of legislative sessions to expect bill authors to prepare written comments on fiscal notes, and such comments might duplicate the verbal testimony they already provide.

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<sup>28</sup> Over the past ten years, this option was used an average of six times a year.

<sup>29</sup> Mississippi Legislature, Joint Rule 20, [http://billstatus.ls.state.ms.us/htmls/j\\_rules.pdf](http://billstatus.ls.state.ms.us/htmls/j_rules.pdf), accessed December 19, 2011.

<sup>30</sup> *New Jersey Statutes* 2011, title 52, chapter 13B-11.

## Option 4: Review Accuracy of Fiscal Notes from Prior Years

**It might be interesting to gauge the accuracy of prior years' fiscal notes, but measuring it would be challenging.**

During our evaluation, several people commented that it would be interesting to determine, after bills were enacted into law, how accurate the fiscal notes for these bills proved to be. We are aware of a small number of states that have done this type of review. For example, Tennessee statutes require that the state's Fiscal Review Committee staff annually select "a fair and representative sample" of at least five chapters of law enacted in the previous five years "and compare the actual fiscal impact of each public chapter to the fiscal impact as stated in the cumulative fiscal note."<sup>31</sup> Another example is Utah's Legislative Fiscal Analyst Office, which has issued yearly reports that summarize the accuracy of prior years' fiscal notes. This office relies largely on information provided by executive agencies about actual implementation costs.

There can be significant challenges to assessing the accuracy of fiscal notes. For example, the versions of bills that were enacted into law sometimes differ from earlier versions on which the fiscal notes were developed. Also, it is sometimes difficult to determine which expenditures were related to the passage of one bill, or to disentangle the changes among interacting programs. In addition, it may take years for the fiscal impacts of a bill to become clear. These are among the reasons the U.S. Congressional Budget Office does not regularly compare its original fiscal estimates to actual impacts for bills that were enacted.

In our surveys, agency and MMB staff expressed ambivalence when asked whether the Legislature should periodically review the accuracy of estimates made in previous years' fiscal notes. While few said they opposed this idea, less than one-third favored it and about half said they neither agreed nor disagreed with the idea.

Certain types of fiscal notes may be more amenable to after-the-fact accuracy checks than others. For example, some legislative staff said it would be useful and feasible to periodically review the accuracy of fiscal notes related to changes in criminal sentences.<sup>32</sup>

<sup>31</sup> *Tennessee Code Annotated* 2011, article 3, chap. 2, sec. 107(c)(1).

<sup>32</sup> We tested this by looking at the prison bed impact of two significant changes in criminal sanctions. First, for a 2001 law that created a felony-level offense for driving while intoxicated, the assumptions in a 2001 Department of Corrections fiscal note underestimated the actual prison bed impact. The fiscal note projected a need for 528 beds by fiscal year 2009 as a result of this law; as of January 2009, there were 684 inmates in prison for this offense. Second, the fiscal note for a 2005 law that created a felony-level offense for domestic assault by strangulation overestimated the number of prison beds that would be required. The Department of Corrections estimated that 78 beds in fiscal year 2009 would be occupied by persons convicted of this offense; as of January 2009, there were 32 such inmates. We did not measure how the overall costs of these laws compared with the estimates in the fiscal notes, but comparing estimated and actual prison bed use seems like a worthwhile proxy.

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# List of Recommendations

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- The Legislature should clarify in state law the definition of a fiscal note. (p. 72)
- The Legislature should require in statute or legislative rules that proposed bills—with certain exceptions—have publicly available fiscal notes or revenue estimates before finance or tax committees vote on the bills’ passage. (p. 73)
- The Legislature should amend *Minnesota Statutes* 2011, chapter 13, to authorize that requests for fiscal notes on un-introduced bills and the resulting fiscal notes be classified as “not public” data, and the Minnesota Department of Management and Budget (MMB) should work with legislative leaders to develop a strategy for implementing this. (p. 74)
- To facilitate the development of clear bill language and better fiscal notes, legislators should strive to establish strong communication with agencies in the early stages of developing bills likely to have large, complex, or hard-to-measure fiscal impacts. (p. 76)
- To the extent possible, legislative committees should provide agencies with advance notice of hearings during which fiscal notes may be discussed. (p. 76)
- Legislative fiscal analysts should provide information to MMB and relevant agencies whenever possible to help facilitate the development and use of fiscal notes. (p. 77)
- Legislative leaders should ensure that training and orientation for legislators and committee staff address the fiscal note process. (p. 77)
- The Legislature should amend *Minnesota Statutes* 2011, 3.98, subd. 2, replacing the requirement for fiscal notes to “cite the statutory provisions affected” with a requirement that fiscal notes include a brief summary of the bill. (p. 77)
- The House and Senate public information offices should establish online links from the Web sites for individual bills to any pertinent local impact notes for these bills. (p. 78)
- MMB should take additional steps to ensure that the estimates in agency fiscal notes are adequately explained, justified, and documented. (p. 78)
- MMB should improve its fiscal note instructions to agencies in several key areas. (p. 79)
- MMB should improve its oversight of multi-agency fiscal notes, for the purpose of improving timeliness and internal consistency. (p. 79)

- MMB should establish in the Fiscal Note Tracking System a default due date longer than five working days. MMB should report to the 2014 Legislature on the extent to which fiscal note due dates were met following such a change. (p. 80)
- MMB, in consultation with representatives of statewide pension funds, should consider developing an alternative fiscal note format for agencies to use when showing the impact of pension bills. (p. 81)
- MMB should comply with *Minnesota Statutes* 2011, 477A.03, subd. 2b(b), and spend the county aid it is allotted by this statute only for the purpose specified in this law. (p. 82)
- State agencies should take additional steps to ensure that fiscal notes are transparent to general readers. (p. 82)
- State agencies should make stronger efforts in their fiscal notes to, where feasible, discuss and estimate the impact of bills on political subdivisions, such as cities, counties, or school districts. (p. 82)
- Especially for complex or potentially controversial fiscal notes, agencies should, as necessary, seek clarifications from legislators (or legislative staff) about bill language or discuss possible fiscal note assumptions. (p. 83)

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# Fiscal Note Responsibilities in States

## APPENDIX

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As noted in the Introduction to this report, there has been no recent survey of fiscal note practices in all 50 states. We did not attempt to document all aspects of states' fiscal note practices, and we did not use a standardized survey to obtain information from states. Rather, we relied largely on our review of fiscal note references in states' statutes and legislative rules, as well as contacts we made with selected individuals in each state. Typically, we initially contacted staff in a state's legislative branch; sometimes we also contacted staff in the executive branch.

At a minimum, we asked for clarification of the respective legislative and executive branch responsibilities for preparing the fiscal notes used by the Legislature. We focused primarily on estimates prepared for bills *other than* bills with tax-related impacts, although some states have offices that prepare estimates of all bills with expenditure or revenue (including tax) impacts. To help us better understand fiscal note practices, we often reviewed (1) examples of fiscal notes from other states and (2) states' instructions or manuals for preparing fiscal notes, or other documents discussing the fiscal note process. Based on the information we collected, we categorized states as shown in Table A.1. Following this table, we briefly describe responsibility for fiscal notes in each state.

**Table A.1: Types of Agencies Primarily Responsible for Fiscal Notes Used by States' Legislatures**

State	Legislative	Executive	Both Legislative and Executive	Neither Legislative Nor Executive
Alabama	X			
Alaska		X		
Arizona	X			
Arkansas	X			
California			X	
Colorado	X			
Connecticut	X			
Delaware	X			
Florida	X			
Georgia			X	
Hawaii				X
Idaho			X	
Illinois		X		
Indiana	X			
Iowa	X			
Kansas		X		
Kentucky	X			
Louisiana	X			
Maine	X			
Maryland	X			
Massachusetts	X			
Michigan	X			
Minnesota		X		
Mississippi			X	
Missouri	X			
Montana		X		
Nebraska	X			
Nevada		X		
New Hampshire	X			
New Jersey			X	
New Mexico	X			
New York	X			
North Carolina	X			
North Dakota		X		
Ohio	X			
Oklahoma	X			
Oregon	X			
Pennsylvania	X			
Rhode Island			X	
South Carolina		X		
South Dakota	X			
Tennessee	X			
Texas	X			
Utah	X			
Vermont	X			
Virginia		X		
Washington		X		
West Virginia		X		
Wisconsin			X	
Wyoming	X			

SOURCE: Office of the Legislative Auditor, based on reviews of states' laws and rules and contacts with individuals in those states.

### **Brief Summaries of Individual States**

*Below, we briefly discuss which branch of government (or specific organization) has primary responsibility for preparing fiscal notes for the Legislature in each state. Our categorization in the table focused on fiscal note practices for bills other than those affecting tax revenues.*

**Alabama:** State law requires that fiscal notes be prepared by the Legislative Fiscal Office for every bill affecting a state or local program, service, function, or revenue source.

**Alaska:** State law requires executive agencies to prepare fiscal notes. The law also allows bill authors or legislative committees to prepare fiscal notes in addition to those done by agencies, but such notes are prepared on a limited number of bills.

**Arizona:** Fiscal notes are prepared by staff of the Joint Legislative Budget Committee.

**Arkansas:** At the request of legislative committee chairs, the Bureau of Legislative Research prepares fiscal notes (mostly for the education and judiciary committees)—except for those requested by the Revenue and Taxation Committees (which are prepared by the Department of Revenue).

**California:** Staff for the House and Senate Appropriations Committees prepare analyses (including analysis of fiscal implications) for bills heard in these committees. The Department of Finance often, but not always, provides these committees with its own fiscal analyses of the bills.

**Colorado:** State law requires staff from the Colorado Legislative Council to prepare fiscal notes. In addition, the staff from the Legislature's Joint Budget Council sometimes prepare comments on fiscal notes.

**Connecticut:** State law authorizes the Legislature to request the executive branch to prepare analyses of bills' fiscal effects. However, the Legislature primarily relies on fiscal notes prepared by its Office of Fiscal Analysis.

**Delaware:** Executive branch agencies prepare fiscal notes on all legislation, but a legislative office (Comptroller General) has statutory responsibility for fiscal notes and does not always accept the estimates provided by executive agencies.

**Florida:** House and Senate staff prepare bill summaries that include discussions of bills' possible fiscal impact. These discussions may reflect estimates from the affected agencies, but they may reflect other sources of information, too. State law authorizes "economic estimating conferences" in which legislative and executive branch representatives try to reach consensus on economic, demographic, or fiscal issues for budget purposes. However, these meetings are more likely to address the revenue impacts of bills than their expenditure impacts.

**Georgia:** For estimates of bills' cost impacts, a legislative agency (Department of Audits and Accounts) works with the executive branch's Office of Planning and Budget to prepare fiscal notes. Both agencies sign off on the fiscal notes. Estimates of bills' tax revenue impacts are prepared by a university center under contract with the Office of Planning and Budget.

**Hawaii:** There is no formal fiscal note process. Executive agencies sometimes provide testimony in legislative hearings about the possible fiscal impacts of bills.

**Idaho:** A joint legislative rule requires all bills, when introduced, to have fiscal notes, but it does not specify a responsible agency. Legislators sometimes draft their own fiscal notes on the bills they author, but they sometimes rely on executive agencies or legislative staff. For legislation proposed by executive agencies, agencies draft the fiscal notes. Individual legislative committee chairs determine whether fiscal notes are adequate.

**Illinois:** State law requires agencies, boards, or commissions that would be affected by bills to prepare the relevant fiscal notes. In addition, the Department of Commerce and Economic Opportunity prepares fiscal notes for bills with potential fiscal impacts on local governments, the State Superintendent of Education prepares fiscal notes on bills with potential impacts on school districts, and the state community college board prepares fiscal notes for bills with potential impacts on community college districts. A legislative body (Commission on Government Forecasting and Accountability) prepares pension-related "impact notes."

**Indiana:** The Legislative Services Agency prepares a fiscal impact statement for each bill before it is introduced. (This is required by Senate rules but not House rules; there is no statutory requirement.) The executive budget agency also prepares fiscal notes for most bills and shares these with legislative leaders, but these notes are "primarily for internal purposes," according to the budget director.

**Iowa:** According to joint legislative rules, the Legislative Services Agency (or its "designee") shall prepare fiscal notes for any bill or joint resolution with a likely annual fiscal impact of at least \$100,000 or an aggregate impact of at least \$500,000 over five years. (The agency's director told us the agency prepares all fiscal notes.)

**Kansas:** The executive branch's director of the budget is required by law to prepare fiscal notes on bills that would have expenditure or revenue impacts. A note must be completed within seven days of the relevant bill's first reading.

**Kentucky:** According to legislative rules, Legislative Research Commission staff shall prepare fiscal notes for bills with state revenue or expenditure impacts, as well as bills with local government mandates. These staff also coordinate the estimation of health insurance premium impacts, prison population or other state correctional impacts, and public retirement system impacts, although executive branch agencies or actuaries play significant roles in preparing these estimates.

**Louisiana:** According to legislative rules, the Legislative Fiscal Office shall prepare fiscal notes for (1) bills with an estimated fiscal impact of at least \$100,000 in a fiscal year; (2) bills establishing minimum or maximum mandatory prison sentences; (3) bills affecting the receipt, dedication, or allocation of funds by political subdivisions; or (4) bills issuing general obligation funds. The Legislative Auditor prepares fiscal notes for bills that would affect (1) expenditures by political subdivisions, or (2) state boards or commissions not appropriated funds in an appropriations bill.

**Maine:** For bills that would have state fiscal impacts or affect local expenditures, joint legislative rules assign responsibility for fiscal notes to the legislative Office of Fiscal and Program Review.

**Maryland:** According to state law, legislative committees may not vote on bills unless they have fiscal notes—prepared by the legislative branch’s Department of Legislative Services—that estimate the bills’ state and local fiscal impacts.

**Massachusetts:** Staff of the House and Senate Ways and Means Committees prepare fiscal notes for bills reported out of these committees. State law requires such notes for bills with anticipated costs exceeding \$100,000.

**Michigan:** The House and Senate fiscal agencies’ fiscal impact statements are contained in “bill analysis” documents that describe and analyze the contents of introduced bills. Staff are instructed to describe and, if possible, estimate fiscal impacts to state and local governments.

**Minnesota:** State agencies that would be affected by bills prepare fiscal notes at the request of legislative committee chairs. The executive branch’s budget agency signs off on these notes before they are made publicly available.

**Mississippi:** Bill authors or legislative committees may request fiscal notes from any of various executive or legislative entities specified in joint legislative rules. For cases in which the bill author (or committee) disagrees with the fiscal note, or in which the requested agency does not provide the fiscal note within seven days, the author (or committee) may develop the fiscal note, based on “information, research, study and belief.”

**Missouri:** State law requires that fiscal notes be prepared by staff from the Oversight Division of the Legislature’s Committee on Legislative Research.

**Montana:** State law requires the executive branch’s budget director to prepare fiscal notes in cooperation with relevant state or local agencies. Fiscal notes must address state or local government fiscal impacts.

**Nebraska:** Legislative rules require a legislative agency (the Legislative Fiscal Office) to prepare a fiscal note for each bill that addresses state or local fiscal impacts.

**Nevada:** A legislative office (Fiscal Analysis Division) plays a very limited role in fiscal notes: mainly, requesting them from agencies that would be affected by bills and ensuring the notes’ distribution. By law, affected agencies are

responsible for preparing the fiscal estimates for bills with state-level impacts, and affected political subdivisions prepare fiscal notes for bills with local impacts. Fiscal notes prepared by executive branch agencies are reviewed by the executive branch's budget office.

**New Hampshire:** State law requires that fiscal notes addressing state and local fiscal impacts be prepared by a legislative office (Legislative Budget Assistant Office).

**New Jersey:** By law, agencies that would be affected by bills are required to prepare fiscal notes at the direction of the state budget director. The budget director and the Office of Legislative Services each review a fiscal note and attach a statement that concurs with the note or offers an alternative. If the affected agency fails to prepare the fiscal note before it is needed by the Legislature, the Office of Legislative Services is required to prepare it.

**New Mexico:** Staff from the Legislative Finance Committee are responsible for preparing "fiscal impact reports" for each bill, using input from affected agencies and various other sources.

**New York:** Statutes and legislative rules do not clearly specify responsibility for fiscal note preparation. However, legislative and executive branch officials told us the Legislature has tended to rely primarily on its own staff for fiscal estimates. State law requires bills affecting retirement systems to contain fiscal notes, and these are usually prepared by an actuary or the retirement system.

**North Carolina:** The legislative Fiscal Research Division prepares fiscal notes upon the request of the bill author. These fiscal notes address bills' impacts on state or local governments. Fiscal notes are required for bills that would increase incarceration; change employee retirement, medical, or disability benefits; or implement a federal mandate.

**North Dakota:** Joint legislative rules specify that fiscal notes of state and local impacts be prepared by the state agencies deemed appropriate by North Dakota's Legislative Council.

**Ohio:** State law specifies that a legislative office (the Legislative Service Commission) shall prepare a "fiscal analysis" of the relevant bill or resolution, addressing state or local fiscal impacts.

**Oklahoma:** House and Senate fiscal staff prepare fiscal notes for bills with possible state-level budgetary impacts.

**Oregon:** The Legislative Fiscal Office prepares "fiscal impact statements" for bills with state or local impacts. Senate rules require fiscal impact statements for all bills except congratulatory or memorial resolutions; House rules require fiscal impact statements for all bills scheduled by a committee for a "work session."

**Pennsylvania:** House and Senate rules require legislative appropriations committees to develop fiscal notes that address bills' state and local fiscal impacts.

**Rhode Island:** According to state law, legislative requests for fiscal notes are forwarded to the executive branch's budget officer and the appropriate agencies. Once completed, an agency's fiscal estimate is reviewed by staff for the relevant legislative finance committee, who approves the fiscal note or adds comments or exceptions. The executive branch's Department of Administration prepares fiscal notes for bills affecting cities or towns, subject to review by the finance committee staff.

**South Carolina:** State law specifies that an executive branch agency (the Office of State Budget) shall estimate the state and local expenditure impacts of proposed legislation; another executive agency (the Board of Economic Advisors) estimates state and local revenue impacts.

**South Dakota:** Joint legislative rules specify that the Legislative Research Council shall prepare fiscal notes on all bills that would affect state revenues, expenditures, or liabilities. The council also assesses local government impacts, if requested by the Legislature.

**Tennessee:** State law specifies that a legislative agency (the Fiscal Review Committee) shall prepare fiscal notes for all bills with state or local fiscal impacts.

**Texas:** House and Senate rules require that the Legislative Budget Board prepare fiscal notes that estimate bills' state and local fiscal impacts.

**Utah:** Joint legislative rules state that a legislative agency (the Legislative Fiscal Analyst) is responsible for preparing fiscal notes. State law requires this office to estimate the cost of proposed legislation to the state, local governments, and Utah residents.

**Vermont:** There is no law requiring fiscal notes, but a legislative agency (the Joint Fiscal Office) prepares fiscal notes in response to legislative requests (including all bills emerging from the House Ways and Means Committee). Staff with this office sometimes prepare fiscal notes jointly with the executive branch to arrive at consensus estimates.

**Virginia:** Fiscal notes are prepared by the executive branch (typically the Department of Planning and Budget, working with the affected agencies). A legislative office (the Joint Legislative Audit and Review Commission) can be asked by a committee chair to review and comment on a fiscal note, but this has rarely occurred. The Commission on Local Government (with members appointed by the Governor) prepares fiscal notes on bills that would have local government impacts.

**Washington:** State law specifies that the executive branch's Office of Financial Management shall coordinate the development of fiscal notes with the affected state agencies. That office also oversees revenue estimates for proposed legislation prepared by the Department of Revenue.

**West Virginia:** Legislative rules require the preparation of a fiscal note prior to legislative consideration of a bill with fiscal impacts. These fiscal notes are prepared by executive branch agencies.

**Wisconsin:** When bills are introduced, the executive branch's Department of Administration assigns them to the affected state agencies to prepare the fiscal notes. Bill authors dissatisfied with fiscal notes can request that the notes be redone, or that new ones be prepared by a legislative agency (the Legislative Fiscal Bureau). Also, for each bill referred to the Joint Committee on Finance, the Legislative Fiscal Bureau prepares an analysis of the bill, including a discussion of its fiscal effect.

**Wyoming:** State law assigns responsibility for fiscal notes to the Legislative Service Office.



January 27, 2011

James R. Nobles, Legislative Auditor  
Office of the Legislative Auditor  
140 Centennial Office Building  
658 Cedar Street  
St. Paul, Minnesota 55155

Dear Mr. Nobles:

Thank you for the opportunity to review and respond to the findings and recommendations included in the Fiscal Notes Program Evaluation conducted by your office. We appreciate the comprehensive review your office conducted on the fiscal note process in Minnesota and believe that many of the recommendations, when implemented together, will lead to more informed decision making when considering proposed legislation and its impact to the state budget.

Minnesota Management and Budget (MMB) is currently working to implement improvements to the fiscal note process as a result of the Human Services Fiscal Note Process report released in January 2011. The program evaluation completed by your office aligns well with several of the recommendations found in this report. Specifically, MMB will use the recommendations from both reports to revise agency instructions and enhance review efforts to improve the transparency of assumptions contained within fiscal notes.

While MMB has a pivotal role in the fiscal note process, the report acknowledges the important roles of the Legislature and agencies as well. MMB, in its oversight role to fiscal notes, will work with agencies to consider strategies that will support implementation of the recommendations of the report and encourages the Legislature to seriously consider implementing the recommendations of the report.

We look forward to working in partnership with the Legislature, legislative staff and agencies to continue to enhance the fiscal note process in Minnesota.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Schowalter".

Jim Schowalter  
Commissioner



## **Forthcoming Evaluations**

*Child Protection Screening*, February 2012  
*Consolidation of Local Governments*, March 2012  
*Helping Communities Recover from Natural Disasters*,  
February 2012  
*Preventive Maintenance for University of Minnesota  
Buildings*, June 2012  
*Enforcement of Vehicle Size and Weight Restrictions*,  
Fall 2012

## **Recent Evaluations**

### Agriculture

*“Green Acres” and Agricultural Land Preservation  
Programs*, February 2008  
*Pesticide Regulation*, March 2006

### Criminal Justice

*Public Defender System*, February 2010  
*MINNCOR Industries*, February 2009  
*Substance Abuse Treatment*, February 2006  
*Community Supervision of Sex Offenders*, January 2005  
*CriMNet*, March 2004

### Education, K-12, and Preschool

*K-12 Online Learning*, September 2011  
*Alternative Education Programs*, February 2010  
*Q Comp: Quality Compensation for Teachers*,  
February 2009  
*Charter Schools*, June 2008  
*School District Student Transportation*, January 2008  
*School District Integration Revenue*, November 2005  
*No Child Left Behind*, February/March 2004

### Education, Postsecondary

*MnSCU System Office*, February 2010  
*MnSCU Occupational Programs*, March 2009  
*Compensation at the University of Minnesota*, February 2004  
*Higher Education Tuition Reciprocity*, September 2003

### Energy

*Renewable Energy Development Fund*, October 2010  
*Biofuel Policies and Programs*, April 2009  
*Energy Conservation Improvement Program*, January 2005

### Environment and Natural Resources

*Environmental Review and Permitting*, March 2011  
*Natural Resource Land*, March 2010  
*Watershed Management*, January 2007  
*State-Funded Trails for Motorized Recreation*, January 2003

### Financial Institutions, Insurance, and Regulated Industries

*Liquor Regulation*, March 2006  
*Directory of Regulated Occupations in Minnesota*,  
February 1999  
*Occupational Regulation*, February 1999

### Government Operations

*Fiscal Notes*, February 2012  
*Capitol Complex Security*, May 2009  
*County Veterans Service Offices*, January 2008  
*Pensions for Volunteer Firefighters*, January 2007  
*Postemployment Benefits for Public Employees*,  
January 2007  
*State Grants to Nonprofit Organizations*, January 2007  
*Tax Compliance*, March 2006

### Health

*Financial Management of Health Care Programs*,  
February 2008  
*Nursing Home Inspections*, February 2005  
*MinnesotaCare*, January 2003

### Human Services

*Civil Commitment of Sex Offenders*, March 2011  
*Medical Nonemergency Transportation*, February 2011  
*Personal Care Assistance*, January 2009  
*Human Services Administration*, January 2007  
*Public Health Care Eligibility Determination for  
Noncitizens*, April 2006  
*Substance Abuse Treatment*, February 2006  
*Child Support Enforcement*, February 2006  
*Child Care Reimbursement Rates*, January 2005

### Housing and Local Government

*Preserving Housing: A Best Practices Review*, April 2003  
*Managing Local Government Computer Systems: A Best  
Practices Review*, April 2002  
*Local E-Government: A Best Practices Review*, April 2002  
*Affordable Housing*, January 2001

### Jobs, Training, and Labor

*Workforce Programs*, February 2010  
*E-Verify*, June 2009  
*Oversight of Workers' Compensation*, February 2009  
*JOBZ Program*, February 2008  
*Misclassification of Employees as Independent Contractors*,  
November 2007  
*Prevailing Wages*, February 2007  
*Workforce Development Services*, February 2005

### Miscellaneous

*The Legacy Amendment*, November 2011  
*Public Libraries*, March 2010  
*Economic Impact of Immigrants*, May 2006  
*Gambling Regulation and Oversight*, January 2005  
*Minnesota State Lottery*, February 2004

### Transportation

*Governance of Transit in the Twin Cities Region*,  
January 2011  
*State Highways and Bridges*, February 2008  
*Metropolitan Airports Commission*, January 2003

*Evaluation reports can be obtained free of charge from the Legislative Auditor's Office, Program Evaluation Division, Room 140 Centennial Building, 658 Cedar Street, Saint Paul, Minnesota 55155, 651-296-4708. Full text versions of recent reports are also available at the OLA Web site: <http://www.auditor.leg.state.mn.us>*