



Fiscal Notes

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.
- 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.
- 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.
- 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.
- 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.

Key Recommendations:

- The Legislature should require, with certain exceptions, that bills have fiscal notes before finance committees vote on their passage.
- 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.” 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. MMB should improve its fiscal note instructions to agencies in certain areas, and it should improve its oversight of multi-agency fiscal notes.
- For large-scale or controversial bills, legislators and affected agencies should communicate more effectively, especially regarding bill language and fiscal note assumptions.
- 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.

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.

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.

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.

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

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

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.

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

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.

Summary of Agency Response

In a letter dated January 27, 2012, Minnesota Department of Management and Budget (MMB) Commissioner Jim Schowalter said that “many of the recommendations, when implemented together, will lead to more informed decision making.” He said MMB is working to implement improvements as a result of a 2011 MMB report on human services fiscal notes, and he said the OLA recommendations align with several recommendations from that earlier report. Commissioner Schowalter said that MMB “will work with agencies to consider strategies that will support implementation of the recommendations of the report,” and he encouraged the Legislature to seriously consider the report's recommendations.

The full evaluation report, *Fiscal Notes*, is available at 651-296-4708 or:
<http://www.auditor.leg.state.mn.us/ped/2012/fiscal.htm>