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MEMORANDUM

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TO: Interested Persons

FROM: Josh Abram, Principal Fiscal Analyst, 303-866-3561

SUBJECT: Fiscal Note Overview

Summary

Fiscal notes are prepared by Colorado Legislative Council Staff (LCS), the nonpartisan research staff of the General Assembly. The fiscal note explains how proposed legislation impacts the expenditures of state agencies, state tax or fee revenue, and the expenditures and revenue of local governments. The fiscal note provides a substantive summary of each bill, describes how the proposal changes current law, and estimates the amount of state funding and new staff needed to implement that change. The fiscal note is a decision-making tool for legislators and others to use when deliberating state policy. This memorandum provides general information on the fiscal note process, and includes a description of recent legislation that expands the responsibility of the fiscal note section of LCS.

Overview: State Law and Fiscal Notes

State law requires that the General Assembly establish rules by which the legislature's nonpartisan research staff reviews the fiscal impact of legislative measures.¹ Fiscal notes do not address the merits of a bill or legislative proposal. Instead, fiscal notes summarize the measure, describe its impact on state and local government revenue and spending, and explain how it will be implemented. The only bills that do not get a fiscal note are appropriations bills, where the fiscal impact *is* the bill.

In addition to estimating new state expenditures, state law requires that fiscal notes include estimates of new state revenue, and estimates related to the creation or increase of fees collected by a state agency from individuals, families, or businesses. Fiscal notes also describe state transfers and diversions of funding from and between the General Fund and various cash

¹ Section 2-2-322, C.R.S.

Open records requirements: Pursuant to Section 24-72-202 (6.5)(b), C.R.S., research memoranda and other final products of Legislative Council Staff are considered public records and subject to public inspection unless: a) the research is related to proposed or pending legislation; and b) the legislator requesting the research specifically asks that the research be permanently considered "work product" and not subject to public inspection. If you would like to designate this memorandum to be permanently considered "work product" not subject to public inspection, or if you think additional research is required and this is not a final product, please contact the Legislative Council Librarian at (303) 866-4011 within seven days of the date of the memorandum.

funds. If the proposed bill creates or modifies a criminal offense, fiscal notes must compare the elements of the new or modified crime with existing conditions under current law, and include a five-year estimate of capital construction and operating costs for the Department of Corrections, if any.

Each state department, agency, or institution is required to cooperate with and provide fiscal impact information in a manner requested by LCS. The state departments are further required to substantiate the calculation of their estimates by providing documentation that clearly identifies any assumptions used to arrive at the calculation, and a narrative discussion of the justification for any estimated increase or decrease in workload. LCS works with the departments to set timelines and deadlines for estimating impacts, and then considers the input provided by state departments when preparing the official fiscal note for that measure.

Fiscal analysts have access to confidential bill drafts prior to a bill being introduced, but are legally obligated to keep that information confidential, just as the attorney drafting the bill must keep it confidential. This early access is necessary to ensure that a fiscal note is prepared in time for the bill's first committee hearing. Joint legislative rules and state law permit the Office of Legislative Legal Services (OLLS) to provide preliminary copies of bills to LCS in order for fiscal staff to commence their review and analysis; however, LCS must not reveal the contents or nature of such measures outside of discussions concerning the bill's fiscal impacts.² In order to meet the deadlines of the legislative session, LCS are permitted to work with affected agencies to analyze bills prior to the measure's introduction and assignment to a committee of reference. Until the bill is introduced, all discussions of the fiscal impact and analysis of the bill's provisions remain confidential, and neither OLLS, LCS, nor agency staff are permitted to discuss the bill with others.

Legislative Rules and Types of Fiscal Notes

Fiscal notes for committees of reference. The House of Representatives Rule 32A requires that each House bill or House concurrent resolution be accompanied by a fiscal note, which may also be a statement of no fiscal impact. In the House, a fiscal note is required before a bill can be referred out of a committee of reference. The Speaker of the House may waive this rule and note the waiver in the journal. In the Senate, a fiscal note is required before a bill can be passed on second reading; however as a practical matter, LCS prepares a fiscal note for the first committee of reference for every bill in either chamber.

Fiscal notes for strike-below amendments. Fiscal notes are always written to the introduced version of the bill. In the case of an introduced bill that has not yet been considered by the first committee of reference, Joint Rule 22(b)(2)(A) and (B) allow the prime sponsor of a bill to request that LCS prepare a fiscal note for a proposed amendment to that bill striking everything below the enacting clause (a strike-below amendment), in lieu of preparing a fiscal note on the introduced version of the bill. In order to make such a request, the prime sponsor is required to provide LCS with a final copy of the proposed amendment, and obtain written permission from the leadership of the chamber in which the bill was introduced.

² Section 2-3-505(2)(a), C.R.S.

Fiscal notes on demand. House Rule 32A(c) requires that LCS update or prepare a fiscal note on a bill prior to consideration of the bill on second reading, if so requested by at least ten members of the House. Senate Rule 25(e) requires that a fiscal note be prepared or updated before a bill can be passed on second reading, if requested by at least five members of the Senate.

Revised and final fiscal notes. If a bill is amended in committee and referred for further action, LCS reviews the amended measure and if practicable, prepares an updated fiscal note for the bill's next committee consideration, whether that committee is a second reference committee, the appropriations committee, or the committee of the whole. LCS also typically revises fiscal notes after third reading when the reengrossed bill is sent to the second chamber.

Following adjournment of the legislature, a final fiscal note is prepared detailing each bill's ultimate disposition. The final fiscal note indicates if the bill was postponed indefinitely by a reference committee, failed to pass a floor vote, or if the bill was signed into law by the Governor, became law without the Governor's signature, or was vetoed by the Governor. The final fiscal note also tells readers if the bill's appropriation is consistent with the analysis and estimate made by the note.

Distribution and Use of Fiscal Notes

Fiscal notes are distributed to legislators in their bill folders and published online through the General Assembly's website. Fiscal notes are estimates made by non-partisan staff based on data and assumptions available at a particular time. The fiscal note is essentially a snapshot of the staff's knowledge at a given point in the legislative process. Fiscal notes reflect the official estimates of the non-partisan legislative staff, but do not bind the legislature in any way. Instead, the legislature decides whether and how to use the information provided in the note.

Fiscal notes are prepared by LCS using the fiscal information submitted by state agencies. Although the estimates begin with discussions with the agency or agencies responsible for implementing the bill, fiscal note analysts collect data from multiple sources and apply their own substantive knowledge of public programs to inform the analysis. Fiscal analysts provide an independent, nonpartisan evaluation of estimates made by state agencies, and accept, reject, or modify those estimates based on professional knowledge and judgement.

Although some fiscal notes make an estimate identical to that made by the implementing agency or agencies, other notes make an alternative estimate of the impact. When a fiscal analyst makes estimates that vary from the estimate made by a state department, the analyst will work with that department to arrive at an agreed upon estimate to publish in the note. If no agreement can be reached, and when a department's estimate is significantly different than the analyst's, the note may also include a Departmental Difference section, outlining the department's original estimate and the reason(s) why LCS did not include that estimate in the published note.

The Fiscal Note and the Appropriations Process

In addition to aiding legislators' decisions about a bill, the fiscal note also informs the budget-setting process. Each individual bill is assessed to identify the amount of money a state agency will need to implement that bill, and the change in staffing levels required. Once a bill is

identified as requiring an appropriation (the authority to spend money and/or increase staff), the committee of reference hearing the bill typically routes that bill to the Committee on Appropriations. Prior to that hearing, the Joint Budget Committee (JBC) staff analysts also review the bill and the fiscal analysis prepared by LCS. The JBC analyst provides a separate, independent review of the bill and the fiscal analysis, and advises the committee based on his or her own analysis of the bill. Typically, the JBC analyst agrees with LCS and prepares an appropriation clause for the committee to amend into the bill. On occasion, JBC staff prepares an updated analysis as a result of changes made to the bill, or as a result of new information. Finally, JBC staff may disagree with the LCS analysis and provide a different analysis of the bill's fiscal impact. Legislators use the estimates made by nonpartisan staff as a decision-making tool, even when staff disagree on the ultimate fiscal impacts.

Recent Measures Impacting the Fiscal Note

Three recent laws passed by the General Assembly expand the role of fiscal notes in the legislative process.

Fiscal notes and school district impacts. House Bill 11-1277 made two modifications to the fiscal note process. The first provision allows for school districts and Boards of Cooperative Educational Services (BOCES) to submit their own fiscal impact summaries for any bill imposing a new mandate on kindergarten through twelfth grade (K-12) education, or requiring an increase in the level of educational services provided under current law. The fiscal impact summaries submitted by districts are made available, unedited and unrevised, on the LCS website, and a notification that school districts have or have not submitted a summary are included in the LCS fiscal note, with a link to the web page that hosts the school district analyses.

The second provision of HB 11-1277 allows the Colorado Department of Education (CDE) to solicit fiscal and budget information from school districts and BOCES for proposed K-12 bills, and include that information when the department responds formally to requests for fiscal impact analysis from LCS. The data and analysis solicited from the school districts and BOCES by the CDE are considered by LCS when the official fiscal note for that bill is prepared.

Fiscal notes for ballot measures. Under previous law, LCS prepared fiscal impact statements for all citizen-initiated measures, once those measures became certified for the statewide ballot. House Bill 15-1057 instead requires that LCS prepare an initial fiscal impact statement for all measures submitted to the Title Board, the state agency that approves the title and language of citizen-initiated ballot proposals.

The initial fiscal impact statement must include an abstract describing the measure's effect on state and local government revenues, expenditures, taxes, and fiscal liabilities. The LCS must submit the statement to the proponents and the Title Board prior to the meeting at which the measure's ballot title will be set, and post it on the LCS website. This fiscal impact statement must be displayed on the first page of any section of the petition form when proponents gather signatures. The law permits LCS to later update the fiscal impact summary, if necessary, when preparing a fiscal impact statement for the Blue Book, the official voter guide prepared by LCS for statewide ballot measures.

The law requires that LCS consider any fiscal impact estimate submitted by the initiative proponents. LCS and the OLLS may provide comments about the fiscal impact estimates submitted by proponents at the review and comment meeting. The Secretary of State must immediately provide LCS and OLLS with a copy of each measure properly submitted to the Title Board and the proponents' fiscal impact estimate, if the estimate was amended.

The law permits the proponents of a measure, or any registered elector who is not satisfied with the fiscal impact statement abstract, to file a motion for a rehearing with the Secretary of State within seven days following the title and submission clause being set. If the motion claims that an estimate in the abstract is incorrect, the motion must include documentation supporting a different estimate. If the motion specifies that particular language in the abstract is misleading or prejudicial, the motion must specifically identify the wording that is being challenged. The Title Board may modify the abstract based on information presented at the rehearing.

Fiscal notes for interim committee bills. Interim legislative committees generally have the authority to introduce committee bills. Bills recommended by an interim committee do not typically count against any individual member's five-bill limit. At the end of each interim, all such recommendations are subject to review and approval by the 18-member Legislative Council Committee before being introduced in the following regular session. Once the committee approves a bill draft, that bill is considered ready for introduction and LCS begins working with agency staff on a fiscal note for the measure, usually completed prior to the beginning of the legislative session in January.

House Bill 15-1335 requires instead that a fiscal note be prepared for all bills considered by interim committees *before* the committee votes on sending bill recommendations to the Legislative Council. It also requires that the deadlines for requesting bills be adjusted so that each interim committee is granted sufficient time to consider the fiscal note before voting to recommend legislation.

For More Information

Interested persons often have questions about fiscal notes, particularly when the note identifies a bill's cost that had not been anticipated. For this reason, the name and phone number of the analyst is published with each note. Please call the analyst with any questions specific to a given fiscal note.

Questions about the general process or other broader topics, can be directed to LCS offices at 303-866-3521. Any fiscal analyst in the section can answer questions about LCS and the fiscal note process. Todd Herreid, LCS Fiscal Director, manages the fiscal note section, and Mike Mauer is the Director of Research for LCS. Additional information is available at: www.colorado.gov/fiscalnotes