



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Memorandum

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TO: Interested Persons

FROM: Legislative Council Staff, 303-866-3521

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.

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. Every bill introduced during the legislative session receives a fiscal note, except appropriations bills, where the fiscal impact is the bill. Fiscal notes are also provided for interim committee legislation and concurrent resolutions; however, House, Senate, and Joint resolutions and memorials do not receive a fiscal note.

In addition to estimating changes in state expenditures, state law requires that fiscal notes include estimates of state revenue impacts, including an estimate of the impact of fees on individuals, families, or businesses from the creation or increase in fees collected by state agencies. Fiscal notes also describe transfers and diversions of state funding from and between the General Fund and various cash funds.

¹ Section 2-2-322, C.R.S.

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.

State agencies. Each state department, agency, or institution is required to cooperate with and provide fiscal impact information in a manner requested by LCS.² 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. LCS may also consider outside information in inform the estimates in a fiscal note.

Confidentiality. 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 so that fiscal staff can 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.³

In order to meet the deadlines of the legislative session, LCS is permitted to share the bill with affected agencies, with the sponsor's permission, in order to analyze impacts prior to the measure's introduction and assignment to a committee of reference. Like OLLS and LCS staff, agency staff are not permitted to discuss the bill with others until the bill is introduced.

Legislative Rules and Types of Fiscal Notes

Fiscal notes for committees of reference. According to Joint Rule 22 (b)(1), LCS must provide a fiscal note for each bill and concurrent resolution prior to consideration in the committee of reference to which the bill was assigned. The fiscal note must be written to the introduced version of the bill, with certain limited exceptions (see fiscal notes for strike-below amendments below). This initial fiscal note is typically provided to the sponsor 24 to 48 hours prior to the committee meeting.

Fiscal notes for strike-below amendments. 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 2-2-322(3), C.R.S.

³ Section 2-3-505(2)(a), C.R.S.

Fiscal note memoranda for amendments. The LCS can review amendments and assess the fiscal impact of a bill, should the amendment be adopted. If an amendment removes the fiscal impact, staff can prepare a memorandum that permits the committee to route a bill to the Committee of the Whole, rather than to the Appropriations or Finance Committees. Memorandums assessing the fiscal impact of amendments are provided when time permits. Fiscal note staff are also available to provide testimony to a committee concerning impacts of proposed amendments.

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 considered on second reading, if requested by at least five members of the Senate.

Revised fiscal notes. If a bill is amended in committee and referred for further action, LCS reviews the amendments and, if necessary, prepares a revised fiscal note. Depending on the timing of the legislative process and the scope of the amendments, the revised fiscal note may be provided for the bill's consideration in that same chamber, such as a second committee of reference, the Appropriations Committee, or the Committee of the Whole, or after third reading when the reengrossed bill is sent to the second chamber. Fiscal notes may be revised multiple times as a bill moves through the legislative process. Fiscal notes may also be updated to reflect new information or make technical corrections.

Final fiscal notes. Following adjournment of the legislature *sine die*, a final fiscal note is prepared detailing each bill's ultimate disposition. For example, the final fiscal note may indicate 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 in the fiscal note.

Preparation of Fiscal Notes

Fiscal notes are distributed to legislators in their bill folders and published online through the General Assembly's website. While fiscal notes reflect the official estimates of the non-partisan legislative staff at a given point in the legislative process, they do not bind the legislature in any way. Instead, the legislature decides whether and how to use the information provided in the fiscal note.

Fiscal notes are prepared by LCS using the fiscal information submitted by state agencies. Although the estimates begin with discussions with the 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 LCS estimate, the fiscal 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 fiscal 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 also disagree with the LCS analysis and provide a different analysis of the bill's fiscal impact. Legislators use the estimates made by nonpartisan staff from Legislative Council and the Joint Budget Committee to decide how much to appropriate for a bill.

Other Fiscal Note Requirements

State law sets various other requirements for fiscal notes and LCS fiscal staff, as outlined below.

School district impacts. School districts and Boards of Cooperative Educational Services (BOCES) may submit their own fiscal impact summaries to LCS for any bill imposing a new mandate on kindergarten through twelfth grade 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.

Ballot measures. LCS provides fiscal estimates and information for citizen-initiated ballot measures at various points in the initiative process, as outlined below.

As a first step, LCS provides an initial fiscal summary for all measures appearing before the Title Board, which is the body tasked with setting the official title and ballot question language for citizen-initiated ballot measures. The fiscal summary must describe the measure's fiscal impact, including a preliminary estimate of the measure's effect on state and local government revenues, expenditures, taxes, and fiscal liabilities if implemented. It also includes a qualitative description of the economic impacts of the measure, and any other information from the initiated measure or description of government implementation necessary to describe the fiscal and economic impacts. The fiscal summary must be included on the signature petitions circulated by initiative proponents.

If the Title Board sets a title and the measure is approved to gather signatures, LCS prepares a fiscal impact statement on the measure, similar to the analysis provided for fiscal notes for bills. The full fiscal impact statement must be completed within two weeks after a measure is approved to gather signatures, and must be posted on the General Assembly's website.

Lastly, LCS prepares fiscal impacts statements for all ballot measures as part of the Voter Information Booklet (Blue Book) process, both for citizen-initiated measures and measures referred by the General Assembly. These fiscal impact statements are summarized in the Blue Book for each measure, and the full fiscal impact statement is posted on the General Assembly's website in both English and Spanish.

Fiscal notes for interim committee bills. Legislative interim committees generally have the authority to recommend bills for introduction at the next regular session of the General Assembly. Bills recommended by an interim committee do not 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.

State law requires 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. The law 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. If the bill is amended by the interim committee during the approval process, the fiscal note will be updated for the first committee of reference during the regular legislative session.

Criminal bills. For any bill that creates or modifies a criminal offense, the fiscal note must describe the elements of the new or modified crime; provide a comparison of the proposed crime to similar types of crimes; estimate the current and future prevalence of the new or modified crime; and provide gender and demographic data impacted by the new offense.⁴

For More Information

Interested persons often have questions about fiscal notes, particularly when the note identifies unanticipated costs. For this reason, the name, phone number, and email address of the analyst is published at the top of each fiscal note. Please contact 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. Additional information is available at: www.colorado.gov/fiscalnotes

⁴ Section 2-2-322(2.5), C.R.S.