



Management  
Analysis  
& Development

- **Minnesota State Legislature**

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# **The Human Services Fiscal Note Process**

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**January 2011**

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# Contents

<b>Recommendations Summary</b> .....	1
<b>Introduction</b> .....	2
<b>Methodology</b> .....	4
<b>Overview of the current fiscal note process</b> .....	5
<b>Role of each organization</b> .....	5
Department of Human Services .....	5
Minnesota Management & Budget .....	9
Minnesota State Legislature.....	10
<b>Summary of Findings, Conclusions &amp; Recommendations</b> .....	11
<b>Findings &amp; Conclusions</b> .....	11
<b>Recommendations</b> .....	12
Recommendations for DHS.....	13
Recommendations for MMB.....	17
Recommendations for the Minnesota Legislature .....	20
Recommendations for the three organizations.....	24
<b>Background and Key Issues</b> .....	27
<b>Current state</b> .....	27
<b>Considerations in preparing DHS Fiscal Notes</b> .....	33
Information systems considerations .....	33
Operational considerations.....	34
Federal considerations.....	35
Federal law .....	35
Maintenance of Effort (MOE) .....	35
Accounting and finance considerations.....	36
Cross-program considerations .....	36
Economic forecasting considerations.....	36
Dynamic forecasting .....	36
Professional judgment calls .....	37
Scope constraints .....	38
Forecasting challenges, a policy example .....	39
<b>Fiscal Note process issues</b> .....	40
Use of the Fiscal Note Tracking System .....	40
Unclear bill language.....	41
Unintroduced bills.....	41
Multiple versions of bills .....	42

Resource constraints .....	43
Recent streamlining efforts at DHS .....	44
<b>Evaluation of the option to create an independent office at the Legislature .....</b>	<b>47</b>
<b>Other Minnesota Agencies .....</b>	<b>55</b>
<b>Models in other States.....</b>	<b>60</b>
Wisconsin.....	60
Maryland .....	62
Washington State .....	64
Conclusions from other states.....	66
 <b>Appendices</b>	
<b>A. Interview guides.....</b>	<b>69</b>
<b>B. HealthCare Administration process maps.....</b>	<b>73</b>
<b>C. Continuing Care Administration process maps.....</b>	<b>78</b>
<b>D. Minnesota HealthCare programs Income and Asset Guidelines.....</b>	<b>81</b>
<b>E. Minnesota Revenue’s “Ways to Help Us” .....</b>	<b>83</b>
<b>F. Additional information from review of other states Fiscal Note practices – a national perspective and best practices reviews conducted by other states.....</b>	<b>84</b>



# Recommendations Summary

Relocating a fiscal note office to the legislative branch or creating new office for fiscal notes within the Department of Human Services (DHS) do not appear to be promising ways to address the Legislature’s concerns about DHS fiscal notes. As the study’s findings pointed to largely process-based problems, Management Analysis & Development recommends the following ways to improve the timeliness and quality of human services fiscal notes and the fiscal note process:

1. DHS should develop and articulate consistent policy and practices regarding technical assistance to the Legislature.<sup>1</sup>
2. DHS should strengthen fiscal note narratives to explain how staff reached their conclusions.
3. DHS should streamline the review/sign-off process so that fewer reviewers are each providing more value to the process.
4. DHS should develop staffing plans to more widely distribute fiscal note responsibilities, so that the same few staff are not working round the clock to meet fiscal note deadlines.
5. Minnesota Management and Budget (MMB) should have a stronger, more consistent presence in the early stages of fiscal note development.
6. MMB should facilitate setting assumptions and ensuring sign-offs for consolidated fiscal notes.
7. MMB should articulate a clear policy for when DHS will prepare fiscal notes during the year, in consultation with DHS and the Legislature.
8. MMB should replace the fiscal note tracking system with a spreadsheet-based system to improve efficiency and timeliness.
9. The Minnesota Legislature should increase the capacity of existing nonpartisan legislative staff offices to provide greater technical assistance to Members at the policy development and bill drafting stage.
10. The Minnesota Legislature should assign process ownership for fiscal notes to the Legislature’s nonpartisan staff.
11. The Minnesota Legislature should develop and articulate a clear, transparent policy and process for prioritizing fiscal note requests.
12. DHS, MMB and the Minnesota Legislature should work together to strengthen training for legislators and staff.
13. DHS, MMB and the Minnesota Legislature should meet prior to the start of each session to clarify roles and responsibilities and develop a common understanding of the session’s anticipated process and policy issues.
14. DHS, MMB and the Minnesota Legislature should work together to improve business processes and implement this report’s recommendations.

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<sup>1</sup> “Technical assistance” is a term used throughout this report to refer to bill development in the pre-fiscal note preparation stage.

# Introduction

Fiscal notes put a price tag on proposed legislation, and are integral to the legislative process. In Minnesota, fiscal notes are typically prepared by the agency/ies most familiar with the affected programs; their notes are professional assessments on the change in expenditures and revenues that will result from a particular bill. Legislators use this information to make informed decisions on proposed legislation. Consequently, a fiscal note may influence whether a bill passes, fails, or if changes need to be made to the bill language to adjust the cost or revenue impacts.<sup>2</sup>

In the past few legislative sessions, members in the House and Senate committees responsible for human services policy and budget experienced challenges in securing fiscal notes in a timely fashion, and had concerns about fiscal notes' analysis and conclusions. Members have questioned whether more DHS staff is needed or perhaps whether a different approach to doing fiscal notes is warranted for this area.

The 2010 session of the Minnesota Legislature directed Minnesota Management & Budget (MMB) to issue a report that makes recommendations for improving the preparation and delivery of fiscal notes relating to the Department of Human Services (DHS). (See Section 20 of 129 LAWS of MINNESOTA for 2010 Ch. 1, Art. 19, 2010 First Special Session.)<sup>3</sup> Specifically, the Legislature asked MMB to study whether establishing an independent fiscal note office in the human services department or transferring the responsibility for preparing human services fiscal notes to the Legislature would address legislative members' concerns about the timeliness, accuracy, and independence of human services fiscal notes.

MMB's Budget Services division contracted with Management Analysis & Development (Management Analysis) to conduct this study. In consultation with the study's legislative authors at the outset of the project, the scope was broadened beyond the specific questions in the legislation to include analysis of the roles of the three organizations involved in the process (MMB, DHS, and the Legislature) and to make comprehensive recommendations for improving the fiscal note process.

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<sup>2</sup> Fiscal Notes (Updated January 2010), Money Matters: No. 10.01, Gary Karger, Fiscal Analyst, Minnesota House of Representatives, at 1.

<sup>3</sup> Sec. 20. REPORT ON HUMAN SERVICES FISCAL NOTES.

The commissioner of management and budget shall issue a report to the Legislature no later than November 15, 2010, making recommendations for improving the preparation and delivery of fiscal notes under Minnesota Statutes, section 3.98, relating to human services. The report shall consider: (1) the establishment of an independent fiscal note office in the human services department and (2) transferring the responsibility for preparing human services fiscal notes to the Legislature. The report must include detailed information regarding the financial costs, staff resources, training, access to information, and data protection issues relative to the preparation of human services fiscal notes. The report shall describe methods and procedures used by other states to insure independence and accuracy of fiscal estimates on legislative proposals for changes in human services.

MMB and Management Analysis recommended this approach for a number of reasons:

- MMB staff believed there were process improvement opportunities in all three organizations and that a more comprehensive approach would yield greater and more systemic benefits;
- The project team needed to understand the root causes of legislators' frustrations in order to advise on the merits and drawbacks of a separate legislative office; and
- If findings pointed to a separate office not being the optimal solution, the project team and MMB wanted to provide alternative recommendations for consideration.

Staff across the three organizations said that one of the greatest values this project could bring would be to provide a "clear description of what goes into the DHS fiscal note process," that is, clearly describe what the three organizations are actually doing. This study pertains only to the fiscal note process at DHS, not at other state agencies.

*A note on report organization:*

Given the complexity of the subject and breadth and depth of information, this complete report is necessarily lengthy. However, high-level findings and conclusions and detailed recommendations ("Summary of Findings, Conclusions and Recommendations," starting on page 11) constitute somewhat of a "short report" and generally can be understood on their own. A detailing of the fiscal note components, process and complexity; full analysis of the separate legislative office option; and a detailing of other Minnesota agencies' and other states' fiscal notes practices comprise the remainder of the report, as detailed in the table of contents.

Management Analysis would like to thank the many staff at the Legislature; the Department of Human Services; Minnesota Management & Budget; and the departments of Education, Public Safety, and Revenue for contributing, in many instances, significant time and energy to this project. Their experience, insights, and commitment to sound policymaking and public service were essential to this report's development. Staff who work on fiscal notes in several different states, as well as staff at the National Conference of State Legislatures were generous with their time as well.



# Methodology

This study was completed between September and December 2010. Management Analysis initially conducted interviews with legislators and their staff to understand the concerns that led to the study requirement. Thereafter, staff involved in the fiscal note process from MMB, the Legislature, and DHS were interviewed in depth to better understand their perceptions of the strengths and weaknesses of the fiscal note process and to get input and suggestions for improvement. (Interview guides are detailed in Appendix A.) When new House and Senate committee chairs were appointed for the 2011 legislative session, Management Analysis interviewed them to ensure that their concerns would be addressed by this study, as well. In all, Management Analysis interviewed 35 staff among the three agencies, individually or in group settings. Interviewees were assured that comments in this report would not be attributed to them, specifically.<sup>4</sup>

Interview data was supplemented with a variety of other resources, including: a description of the fiscal note process; process time data derived from MMB's Fiscal Note Tracking System and related process documentation; a Fiscal Note primer developed by a veteran House fiscal analyst; samples of fiscal notes and their related bills; and documentation from two business process improvement efforts undertaken by DHS' Health Care and Continuing Care Administrations.<sup>5</sup>

In order to learn to what extent the complexity of DHS fiscal notes is qualitatively different from other agencies, and which best practices might be applied to the human services note process, Management Analysis conducted interviews with fiscal note staff at the departments of Public Safety and Education. Management Analysis also interviewed Department of Revenue analysts to determine whether features of its revenue analysis process could be applied.

Finally, to supplement the Minnesota-focused review, Management Analysis interviewed staff from other states, notably Wisconsin, Washington and Maryland, and from the National Conference of State Legislatures (NCSL). We also reviewed related documentation, to understand other processes and procedures used to develop and validate fiscal note estimates, and to better understand how other states parse responsibilities between agencies and the Legislature in preparing fiscal notes.

The section, "Evaluation of the Option to Create an Independent Office at the Legislature," provides a cost analysis and assessment of other resources needed to develop a separate legislative office to prepare fiscal notes. Several offices at the Department of Human Services and the Legislative Coordinating Commission contributed data and analysis to address this specific question.

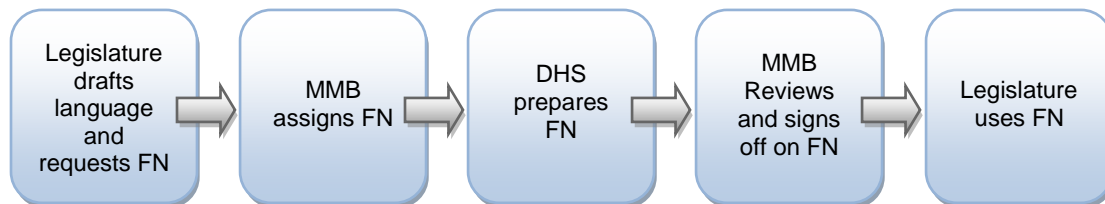
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<sup>4</sup> Minn. Stat. 13.64

<sup>5</sup> "Fiscal Notes," Fiscal Analysis Department, Minnesota House of Representatives, Updated January 2007; "Kaizen Event Report Out Presentation Final," DHS' Health Care Administration, Summer 2009; "Legislative Process Analysis and Improvement Project," Memorandum to DHS' Continuing Care Administration from Management Analysis & Development, January 20, 2006.

# Overview of the current fiscal note process

Figure 1.



The fiscal note process is governed by Minnesota Statutes 3.98. As illustrated in Figure 1, the human services fiscal note process begins at the Legislature. At the simplest level, legislators introduce a bill, which is typically drafted by legislative staff. For bills with potential fiscal impact, legislative staff may request a fiscal note through the fiscal note tracking system (FNTS) administered by MMB. Upon receiving a fiscal note request, MMB staff reads the bill and assigns the fiscal note to DHS and other agencies that may be affected. DHS’ fiscal note coordinator assigns the note to the appropriate program lead, and staff from various areas of DHS analyze data and assemble the note. The draft note is reviewed and approved by DHS and entered into the FNTS.

At this point, the fiscal note is in “preliminary” status, and can be viewed and printed by legislative and executive branch staff with access to the FNTS. Once the MMB executive budget officer for the program area has reviewed and signed on the fiscal note, the note is marked complete and is emailed to the bill author and relevant legislative staff. For bills that affect multiple agencies, the individual agencies’ fiscal notes are first signed off on by their executive budget officer (EBO) and then consolidated into a single fiscal note that is signed off on by a lead EBO. Completed fiscal notes are available to the public on MMB’s website a few days later.

## Role of each organization

### Department of Human Services

DHS is comprised of five administrations: Health Care, Continuing Care, Children & Family Services, Chemical/Mental Health Services, and Financial Management & Operations. Often, bill language will affect more than one DHS administration, necessitating considerable up-front and continuous coordination, particularly to ensure that the department is working from consistent assumptions in assessing programmatic and fiscal impacts. The Budget Analysis office coordinates and provides the department’s final review for fiscal notes. Information technology units support DHS’ major information systems and provide analysis of technology systems costs for program changes.

This study focuses on the three administrations that receive the majority of fiscal note requests (Health Care, Continuing Care, and Children & Family Services) as well as the divisions of the Financial Management & Operations administration that coordinate the fiscal note process (Budget Analysis) and provide economic analysis (Reports & Forecasts).

Table 1 lists amounts of direct state appropriations (not all funds) that DHS is responsible for tracking and administering. Total DHS direct appropriated spending for the 2010-11 biennium is \$9.9 billion. (The table excludes the Chemical and Mental Health Services Administration, the Minnesota Sex Offender Program, and the Financial Management and Operations Administration, as those areas are not the focus of this report.)

**Table 1. FY 2010-11 Direct Appropriated Expenditures for Selected DHS Program Areas (by DHS Administration)**

	Operations	Forecasted Grants	Non-Forecast Grants
Health Care Administration (HCA)	\$78 million	\$4.868 billion total: \$3.385 MA \$1.032 MnCare and \$452 million GAMC	\$24 million
Continuing Care Administration (CCA)	\$36 million	\$2.553 billion total: \$2.498 MA and \$55 million Alternative Care	\$85 million
Children & Family Services Administration (CFS)	\$22 million	\$783 million total for all non-health care forecasted programs	\$556 million

Source: DHS' Budget Analysis Division

### **Health Care Administration (HCA)**

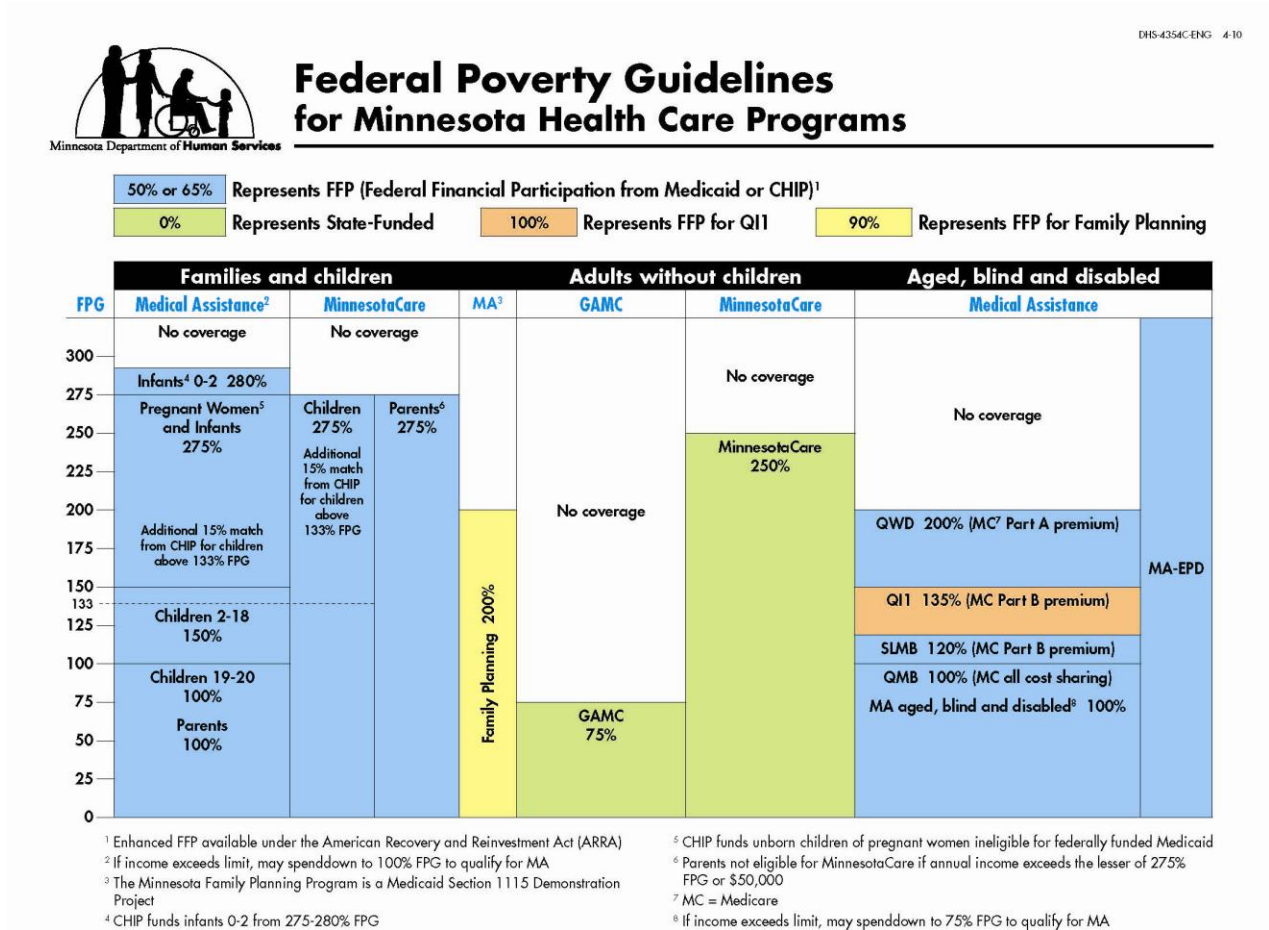
DHS' Health Care Administration receives the majority of fiscal note requests for the department, completing approximately 300 notes (57 percent) during the 2009-10 legislative sessions.<sup>6</sup>

HCA administers major health care programs such as MinnesotaCare; General Assistance Medical Care (GAMC); and Medical Assistance, the federal Medicaid program. These programs provide health care coverage (insurance) for families, children, elderly, and people with disabilities.<sup>7</sup> Within the Health Care Administration, four divisions work on managed care, health services management, eligibility, and performance measurement. Staff noted that it's as if there are "27 different medical assistance programs" because of

<sup>6</sup> Fiscal note totals listed in the text on the following pages do not necessarily reflect all of the cross-program area work, as work on secondary components of fiscal notes by non-lead program areas are not necessarily captured by DHS' tracking system.

<sup>7</sup> Department of Human Services website, Dec. 4, 2010, various pages under "Health Care" tab.

the number of subsets of population eligibility and how state and federal law apply differently across the populations. The following chart of major health care programs intersected with federal poverty guidelines illustrates a piece of the complexity. Appendix D provides more detailed guidelines of income and asset considerations.



### Continuing Care Administration (CCA)

The Continuing Care Administration manages programs that serve Minnesota’s senior citizens and people with disabilities. After HCA, CCA receives the next largest number of fiscal note requests, approximately 85 (16 percent) in the 2009-10 session, and often works closely with HCA on notes that affect both areas.

### Children and Family Services (CFS)

CFS manages programs that provide income and other support to families with children, such as the Minnesota Family Investment Program (MFIP), which provides cash and food assistance; child care assistance; and child support enforcement. CFS responded to approximately 68 fiscal note requests in the last session.

Other DHS program areas include Chemical and Mental Health Service, State Operated Services, and the Minnesota Sex Offender Program, which receive relatively fewer fiscal note requests.

## **Financial Management & Operations - Reports & Forecasts Division**

A major contributor to the fiscal note process is the Reports & Forecasts division, which projects the number of people who will participate in human services programs on a monthly basis. One interviewee described it succinctly, “We’re looking at historical data to predict what will happen in the future. [Programs] provide the past data, and [Reports & Forecasts] moves it forward.” Program participation is forecasted using a variety of econometric models that include economic variables where they have explanatory power. Forecasting work is done by the division director and three economists. Detailed forecasts are published in a large spreadsheet file.

Forecasted programs are ones for which the eligibility requirements are established by law and participation may increase or decrease depending on the number of applicants meeting the eligibility requirements. Medical Assistance (MA) is the largest of these programs. Forecasts of MA expenditures break out projections of basic medical services for children, parents and pregnant women vs. expenditures for elderly or disabled MA enrollees. Separate forecasts are provided for several different long term care services: home and community based waived programs, personal care assistance, nursing home services, and group homes for developmentally disabled individuals. Other forecasted programs that support lower-income families include the Minnesota Family Investment Program (MFIP) and the Child Care Assistance Program.

DHS staff use the detailed forecast prepared by Reports & Forecasts as a baseline for fiscal note projections. Staff explained that the basic method used, where possible, is to calculate a percentage change in the appropriate segment or segments of the forecast. Staff take the base forecast, and calculate what a percentage change will add or subtract to the forecasted costs. This is straightforward if the base to be used is an identified segment of the forecast. If the affected part is a smaller element, then additional data needs to be acquired to identify what portion of the forecast is affected by the change. The economists explained that it gets more complicated when the change affects an expansion population not part of current programs. Then, population estimates must be obtained from state demographic data or other agencies, such as Health Economics at the Minnesota Department of Health.

Basing fiscal note estimates on a detailed baseline forecast has two advantages. First, future trends in enrollment and costs under current law are accounted for. Otherwise, such trends would have to be projected in an ad hoc manner for each fiscal note or not be accounted for at all. Second, basing fiscal note estimates on a detailed baseline forecast ensures that projected savings reasonably relate to baseline budget projections.

Reports & Forecasts staff rely on DHS’ subject matter experts to determine who exactly is affected by eligibility changes, make legal interpretations, and articulate other program effects. Reports & Forecasts staff then quantify these effects.

Staff stressed that when legislation is passed, the fiscal note becomes an adjustment to the forecast; it is not just a stand-alone cost or savings. “As a fiscal note becomes law and implementation occurs or is phased in, we make judgments about whether or when the

effect of the change is in the base data and no longer requires an after-the-model adjustment.”

Organizationally, Reports & Forecasts is independent from the individual program administrations. Although they consult a great deal with program and policy staff, they do not report to them; they report to DHS’ Office of the Chief Financial Officer.

## **Minnesota Management & Budget**

MMB’s Budget Services Division oversees the development of Minnesota’s budget for state government and manages the fiscal note process. Once they receive a legislative request for a fiscal note, the bill is reviewed and assigned to the appropriate state agency or agencies. Agency staff then prepare the fiscal note using the MMB guidelines. When the fiscal note is completed, the executive budget officer (EBO) reviews the note for completeness, accuracy and objectivity. Once the EBO signs off on the fiscal note, it is forwarded by e-mail to the chief author, the committee chair, the person who requested the note, and the fiscal analyst for the area.

MMB must ensure that the state budget put forth by the executive branch balances and does not leave the state in a fiscal deficit. Fiscal notes on laws that become enacted are crucial building blocks in the state budget; MMB has a significant stake in ensuring that fiscal notes are accurate, comprehensive (all fiscal impacts throughout state government are accounted for), and reflect consistent assumptions across state agencies. To these ends, MMB staff, primarily the EBOs assigned to agencies, review and have final sign-off on fiscal notes before they are submitted to the Legislature.

MMB also administers the Fiscal Note Tracking System (FNTS), a database that holds and communicates the fiscal note requests and resultant fiscal notes. The FNTS is accessed by designated legislative, MMB, and DHS staff at various points in the process. After a legislative fiscal analyst enters a fiscal note request in the system, MMB staff review the legislation and assign the fiscal note to the appropriate agencies.

MMB staff specifically look for notes that will need input from multiple agencies, given the nature of the legislation. At this point, MMB designates a lead agency, electronically notifies the appropriate agencies; and the agencies take over preparation of the note.

After the agency signs-off on the note, it’s entered into the FNTS, and the EBO reviews the note for accuracy, clarity and consistent assumptions. The EBO will either sign off on the note, designating it as “complete,” or contact the agency/ies to ask questions or make suggestions to otherwise strengthen the note quality.

## **Minnesota State Legislature**

Legislators are supported by nonpartisan research staff in both houses. In the Senate, Senate Counsel, Research and Fiscal Analysis provides legal, research, and technical assistance to Senate members and committees in the development of public policy and legislation. Staff provide budget tracking spreadsheets developed during legislative sessions to record state budget decisions or to provide analyses of specific budget proposals; budget summaries and fiscal issues briefs that provide post-session summaries of budget decisions and analyses of specific budget topics; and research reports that analyze issues currently being considered in the Legislature.

The House of Representatives has two offices to support legislators. House Research conducts research and drafts legislation, with a focus on legislative decision-making, helping legislators and committees develop and evaluate policies and laws.

The Fiscal Analysis Department provides services for all members of the House of Representatives, and provides legislative support services to the House Finance and Tax Committees on fiscal issues. The Finance committee and its divisions, the Tax, and the Ways and Means Committees are staffed by fiscal analysts who provide assistance to the committees in making decision on state budgetary and fiscal legislation. Staff analyze spending requests, aid committees in developing and analyzing budgetary options, draft legislation to implement legislative budget decisions, track legislative decisions, and provide analysis for legislative oversight of enacted budgets.

Another way in which legislative staff support the process is by facilitating communication, especially when Members are communicating directly or meeting with DHS staff. Legislative staff, the fiscal analysts at this point, are in a position to keep track of the details, ensure assignments are clear, watch the timeline, and shepherd the process.

# Summary of Findings, Conclusions & Recommendations

## Findings & Conclusions

Human services fiscal notes are uniquely complex. Compiling accurate notes requires knowledge of dozens of programs and their interactions, forecasting, federal law and funding requirements, and DHS operational systems, among other factors.

In recent years, a number of factors have resulted in growing concerns that the Legislature is not getting requested human services fiscal notes that are complete, accurate and timely. These factors included:

- Increased demands on staff at the Department of Human Services (DHS), the Legislature, and Minnesota Management & Budget (MMB), some resulting from the state's growing budget deficit, and state and federal health care reform;
- Relatively frequent staff turnover in this policy area in the three organizations; and
- Suboptimal communication and cooperation among the three organizations.

Additionally, Legislators' often need more information and technical assistance than can be provided in a fiscal note. Because of their programmatic expertise and experience, DHS staff are often called upon to help Members fully develop policy options before a bill is in the shape where a fiscal note can be completed.

The Legislature directed MMB to study whether structural changes would improve the preparation of human services fiscal notes. However, interview and other data strongly suggest that the current *structure* for providing fiscal notes through the executive branch is *not* the root cause of problems. Interview and other data point to *process* issues, which can be effectively addressed without upending the entire structure. Therefore, creating an independent legislative office to develop fiscal notes did not appear to be the optimal solution to the Legislature's concerns regarding human services fiscal notes, for a variety of reasons. Broadly:

- The expertise for fiscal note development is with DHS staff, and it is an integrated part of their entire workload. Developing that level of expertise and program familiarity at the Legislature, while feasible, would be duplicative and not the most cost-effective way to meet Members' information needs.
- From a budgetary perspective, having DHS be solely responsible for fiscal note preparation is an efficient use of resources, even if legislative demands may overwhelm those resources in some cases. DHS staff responsibilities equip them with the knowledge and expertise to prepare fiscal notes. Also, DHS is able to claim federal financial participation for fiscal note costs, whereas a separate, legislative office performing the same function could not. Therefore, DHS is able to prepare fiscal notes at less cost to the state than the Legislature could.



- The State of Maryland provides the strongest model for legislative staff having primary responsibility for fiscal notes. However, fiscal notes are a piece of the whole policy and budget support work provided by Maryland’s substantial legislative services department. A number of interviewees in Minnesota, from all three organizations, said that it is not clear how fiscal notes alone could be taken out of the whole without restructuring how all nonpartisan legislative services are provided to legislators.

A separate organizational structure within DHS for fiscal note development would not have clear benefits, from a quality or independence standpoint, and would be redundant and less efficient than the current structure. DHS staff who prepare fiscal notes have full-time jobs within their programs. Hiring part-time staff to prepare fiscal notes during the legislative session does not seem feasible given the knowledge and skills required. Pulling current staff out of their program areas does not make sense because of the short duration of the legislative session.

DHS’ Reports & Forecasts division, which by tradition has the final say on notes’ assumptions and calculations, is already independent from the program areas. While Reports and Forecasts staff frequently consult program staff, they report to DHS’ Office of the Chief Financial Officer (CFO). Similarly, DHS’ Budget Director, who has the final sign-off for the agency, also reports to the CFO.

However, there is potential for significant improvements to the fiscal note process, and addressing the Legislature’s concerns, by approaching it from a process improvement perspective, with areas for improvement for all three participating organizations. Improvement efforts would increase both the efficiency of the process and quality of the notes.

## **Recommendations**

Management Analysis based the following organization-specific and collective recommendations for DHS, MMB, and the Legislature on an analysis of interviews with staff and leadership in all three organizations, other Minnesota state agencies, and staff in other states.

Interviewees articulated the important role that the notes play in the policymaking and state budgeting process, have a strong appreciation for the complex work that developing fiscal notes entails, and are committed to maintaining the notes quality and integrity. For these reasons, no one suggested easy fixes or even thought that simply adding more staff (at DHS or at the Legislature) would resolve legislators’ concerns. Most of the improvement recommendations are process-focused, as the majority of interviewees attributed problems to process weaknesses, not inherent deficiencies in any organization.

## Recommendations for DHS

### 1. DHS should develop and articulate consistent policy and practices regarding technical assistance to the Legislature.

Because of the depth of policy expertise at DHS, the Legislature has turned to DHS staff for assistance throughout the legislative process, including the policy development stage. While “technical assistance” was not cited in the legislative language directing this study, legislators’ need for this assistance, separate from fiscal notes, has emerged as one of the study’s central findings.

Policy ideas generally flow from general to specific; the Legislature needs different types of information at different points in the process. Legislators may need technical assistance in the formative stages, to shape legislation that makes sense, can be implemented and complies with federal law. Fiscal notes, however, need to be developed from already formed, specific, unambiguous language. Currently the fiscal note process is being “stretched” to encompass technical assistance – but the fiscal note process is not designed for the speed and flexibility necessary to provide timely technical assistance.

DHS staff reported that they regularly assist Members and legislative staff in developing bill language, a task that a number of interviewees suggested should be carried out in the legislative branch. This provision of technical assistance by DHS varies by staff member and may be based on their past experience, their tenure and position in the department, and their philosophical stance on blurring executive and legislative branch roles. The inconsistency in practice has in some cases led to legislative *perceptions* of political bias on the part of the department and resulted in inconsistencies, in terms of meeting Members’ information needs, because of resource constraints and unclear expectations.

The fiscal note is intended by statute, to be a tool for the executive branch to provide information to the Legislature on the cost impacts to state agencies and feasibility of legislation. The statute states, “The fiscal note may comment on the technical or mechanical defects in the bill but shall not express opinions concerning the merits of the proposal.”<sup>8</sup> When DHS staff are asked to essentially shape legislation, those staff can be placed in a difficult position of developing policies that may be contrary to executive branch positions. Staff said that this did not occur often, and indicated in confidential interviews that they did not feel influenced by department leadership to skew fiscal notes one way or the other.

This absence of role clarity between policy development and fiscal note development can also put legislative staff in a difficult position. Said one interviewee, “When roles and expectations are unclear, it creates a lot of tension on the fiscal analyst who sits between the technical-oriented agency staff and the policy-oriented legislator.”

Some DHS interviewees indicated that they are comfortable discussing ideas back and forth with Members and legislative staff and that they are clear on role distinction.

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<sup>8</sup> Minn. Stat. 3.98

As an interviewee said succinctly, “We have staff provide technical assistance because we have the information. If we have it, we should provide it; but we should never cross the line to advocacy. Given what legislators want to do, we tell them how they can get it done. We tell them how we could/would implement their ideas and what the implications might be.”

Some interviewees noted that Members or legislative staff will sometimes call DHS staff directly, wanting a “preliminary read” on whether there would be costs associated with a legislative change, and the magnitude of the impact. Staff said that sometimes as a result of the analysis, a legislator will decide against introducing the language as a bill. Staff present this information as “not official,” and note that the information is a “fiscal advisory” with the caution that if the assumptions used to calculate the advisory are not upheld in subsequent legislative language, then the costs are subject to change. Staff said that although the advisories are not fiscal notes, they are treated seriously – the estimates are based on thorough analysis of available data.

Other interviewees, in all three organizations, said that a few high-profile policy issues have made the lack of role clarity an issue. Also, many felt that a clear line existed between the two branches of government with regard to roles, regardless of which political parties were in charge. Some also take the position that DHS should stick to the letter of the statute. One said, “In a perfect world, legislative staff would [provide technical assistance] on non-introduced bills, and we would get only fully-developed proposals that we could reflect on in the fiscal note.” Another said, “Legislative staff should come up with ideas; we can test options, but we shouldn’t come up with the ideas. It’s especially problematic ideas when are attributed to us, but I do understand that it’s a fine line.”

On a practical level, providing technical assistance to develop bill language adds time to the process for those notes, as well as delays processing other fiscal notes. However, the clock starts running when a fiscal note request is entered in the Fiscal Note Tracking System and has in instances created the impression that DHS is not working in a timely manner.

Ultimately, the level of technical assistance that the department provides should be governed by a formal, transparent process that is documented and communicated by department leadership to the Legislature as well as department staff. The process and guidelines would be subject to professional judgment and circumstances, and would likely change over time if legislative staff assume greater responsibility for providing technical assistance (Recommendation 9). However, having a common starting point across the administrations should provide greater consistency and overall improve service to the Legislature. The process should include consistent tracking of technical assistance requests, and clear delineation between technical assistance and fiscal note work. Timelines should be clearly communicated to the legislative requestor, so that expectations are clear.

**2. DHS should strengthen the fiscal note narratives to explain how staff reached their conclusions.**

Specifically, DHS should cite precedents where applicable, cite relevant federal funding and statutory implications, and explain operational and administrative costs that may not be well-understood by non-DHS staff. Clearer, more explanatory narratives will add transparency to the process and help dispel perceptions of department bias.

DHS staff who are expert in human services policies and programs may write the fiscal narratives assuming that legislators and other audiences are similarly well-versed in certain areas; therefore, narratives may fail to explain key points and conclusions. As became apparent in reviewing some fiscal notes that legislators and some legislative staff cited as concerning, DHS narratives have not always made clear how the fiscal conclusions were reached.

For example, a bill was introduced by the House to create an Office of the Health Inspector General to enhance anti-fraud activities and to protect the integrity of state health care programs.<sup>9</sup> The intent of the legislation was to save money, and other states' experiences showed that they had saved money through a Health Inspector General office. However, the fiscal note did not show any savings. DHS staff explained in interviews that Minnesota already has a strong edit system in its Medicaid Management Information System (MMIS) that protects against many fraudulent or incorrect payments, and that anti-fraud efforts already exist in areas such as the Surveillance and Integrity Review System (SIRS), Medicaid Eligibility Quality Control (MEQC), and Payment Error Rate Measurement (PERM). However, the fiscal note narrative did not provide this explanation, reinforcing some legislative perspectives that "DHS never gives us any [savings]."

MMB also could provide significant value on this point through their review process. Because they are outside of DHS, they can better review fiscal notes from the "lay person" perspective when determining whether the note's analysis path and narrative explanations would make sense to audiences less familiar with the policy content. In particular, MMB should provide this review for notes that agencies indicate have "no fiscal impact," where a reasonable person might expect costs or savings, ensuring that the notes clearly explain the analysis path.

**3. DHS should streamline the review/sign-off process so that fewer reviewers are each providing more value to the process.**

Streamlining the review and sign-off process would involve assessing the specific fiscal note areas or components that each reviewer is responsible for and ensuring that each review improves the quality of the note. DHS also should revisit the review process from a continuous improvement perspective, with the goals of reducing wait times and redundant checking as much as possible.

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<sup>9</sup> HF 3047, "Office of Health Care Inspector General Created."

Many interviewees described DHS as having a culture that is overly concerned with avoiding mistakes, in this case, issuing an inaccurate fiscal note that later has to be publicly corrected. Perhaps because of this culture, layers of reviews and sign-offs are attached to the fiscal note process. (See Health Care Administration process maps in Appendix B, as an example.) While the review process varies by DHS administration, fiscal notes are reviewed by budget and legislative staff, policy analysts, the forecasting staff, division directors, assistant commissioners, the DHS budget director, and then the EBO at MMB. Staff are providing and checking the fiscal notes' content; and managers and above are reviewing for many of the same things: clear writing, objective analysis, articulation of reasonable and sound assumptions, and whether all impacts have been considered. And the math is checked and rechecked.

Management Analysis suggested reducing or eliminating some of the higher-level reviews for more straightforward fiscal notes, particularly when the timelines are tight. DHS interviewees' reactions to this were mixed. Some higher-level managers pointed out that they are ultimately responsible for program delivery; so they have a significant stake in the process. One assistant commissioner framed it, "I am personally committed to run these programs. If this legislation is implemented, we will deliver what we said we would deliver." Higher-level managers also acknowledged that staff are very thorough in their work; have the best sense of the technical aspects of the programs; and that by the time the fiscal note reaches them, there aren't any surprises.

DHS should revisit its fiscal note review process from a process improvement perspective.

- Clarify expectations regarding what staff members are specifically reviewing for.
  - Determine where multiple reviews on the same fiscal note components add value.
  - Determine where the redundancy doesn't add value, and eliminate.
  - Reduce wait times.
4. **DHS should develop staffing plans to more widely distribute fiscal note responsibilities, so that the same few staff are not working around the clock to meet fiscal note deadlines.**

Many interviewees mentioned that a relatively small number of staff have the knowledge and experience to contribute to specific aspects of the fiscal note process. This dynamic results in extreme workloads for key staff during the legislative session and creates process bottlenecks. Staff in all three organizations literally work around the clock to meet legislative deadlines. One DHS staff person spoke of regularly working late and simultaneously reviewing a fiscal note at midnight while entering it into the fiscal note system for a hearing the next morning.

Where specific areas of expertise are concentrated in a small number of staff, DHS management in each administration should re-examine workload distribution, identify opportunities for growing new leadership, and provide for "bench depth" during crunch times. The current workload distribution is not sustainable for the long-term. DHS leadership could seek assistance from their human resources staff or neutral experts to

develop redesigned roles and responsibilities, in addition to facilitating knowledge transfer and succession planning.

Management Analysis did not review staffing data for the three organizations; however, interviewees **in all three organizations** observed that staff in key positions who have human services fiscal note responsibilities have changed every few years. A number of these interviewees commented that the turnover inhibits developing trust, candid and frequent communication, and other features of constructive working relationships. Moreover, it also prevents staff from developing the depth of policy expertise and facility that support the fiscal note process. Exceptions are the several staff who have stayed in the human services arena but have moved from one organization to another; in those cases, knowledge of the other organizations seems to have enhanced their ability to provide leadership in the process.

Recognizing that staff's workload and schedule during the legislative session encompasses much more than fiscal note work, Management Analysis still suggests that a healthier work schedule could mitigate some of the staff turnover that has typified human services areas in all three organizations. This would allow for stronger working relationships and greater program and policy experience.

## **Recommendations for MMB**

### **5. Executive budget officers should have a stronger, more consistent presence in the early stages of fiscal note development.**

MMB executive budget officers (EBOs) provide a final review of fiscal notes to ensure completeness, accuracy, consistency of assumptions, neutrality, and clarity. For this reason, EBOs should be kept informed and understand the assumptions and other features of fiscal notes early in the development process, and certainly before DHS completes the notes. EBOs reported that they already do this to the extent possible, given the broad scope of their responsibilities. However, they are not always aware of fiscal notes that may be started informally (such as fiscal advisories), and they have not generally attended ad hoc meetings between Members/staff and DHS staff to review bill language. By attending DHS fiscal note staff meetings or other mechanisms that make sense in a process improvement context, EBOs would be better positioned to weigh in early on key fiscal considerations. Some level of MMB participation, particularly for anticipated complex notes, should be a standard part of the process.

### **6. MMB should facilitate setting assumptions and ensuring sign-offs for consolidated fiscal notes.**

For bills that affect multiple agencies, the agencies' individual estimates of fiscal impact are consolidated into one complete fiscal note. MMB reviews the language and assigns the fiscal note to all agencies that they think would have a fiscal impact from the proposed changes. Interviewees agreed that MMB adds value by reviewing consolidated notes. MMB is considered to have the statewide budget perspective and will identify cross-agency implications that an individual line agency may not consider.

As agencies work on their parts of the fiscal note separately, they each may be making different assumptions about bill intent, populations affected, and other implementation issues. When MMB assigns a consolidated fiscal note, it designates a lead agency and a lead EBO. However, not much up-front coordination currently occurs between the lead agency and EBO prior to completion of the note by assigned agencies.

The lead agency fiscal note coordinator and the lead agency EBO should coordinate key assumptions at the outset of a fiscal note's development, before the assigned agencies start working off of conflicting assumptions that later need to be reconciled when each agency signs off on their completed part of the note, as this creates delays in completion of these notes. One interviewee explained, "We regularly get fiscal note requests that another agency is involved in, for example, education and child care are often pulled together. MMB could do a better job of making sure agencies come together on their assumptions before giving them separate pieces."

Interviewees suggested that EBOs could play a stronger role in shepherding minor agency sign-offs for consolidated bills, as well.

**7. MMB should articulate a clear policy for when DHS will work on fiscal notes during the year, in consultation with DHS and the Legislature.**

There is a lack of clarity and agreement regarding whether DHS staff can (or should) work on fiscal notes outside of the legislative session. The practice is discouraged by DHS and MMB, because staff are focused on their other responsibilities when the Legislature is not in session. Also, fiscal notes on forecasted programs will need to be redone after November and/or February forecast information is available. However, MMB does assign and request completion of all fiscal notes requested during the interim.

Thus DHS staff have provided technical assistance and sometimes fiscal note work outside of the legislative session. For example, DHS staff did a significant amount of work on health care bill development and cost estimates prior to the release of the February forecast in the 2010 session. One staff person noted pragmatically, "as in all things fiscal note-related, we try to strike a balance given the information needs of the Legislature and the resource constraints at agencies."

Given the complexity of some legislative proposals, a number of interviewees thought it makes sense to get started before the beginning of session on selected proposals, such as those that are complex, programmatically new, and are fairly certain to advance through the legislative process.

Table 2 illustrates a distribution of fiscal note assignments by month and demonstrates that over 95 percent of fiscal notes are assigned between January and April each year. Whenever possible, preparing fiscal notes prior to March could mitigate some of the bottlenecks.

**Table 2. Month when fiscal note was assigned to DHS, all sessions (2005-2010)**

<b>Month assigned</b>	<b>Senate</b>	<b>Percent</b>	<b>House</b>	<b>Percent</b>
January	36	5%	30	4%
February	170	22%	176	25%
March	397	51%	375	54%
April	160	21%	100	14%
May or later	11	1%	13	2%
<b>Total</b>	<b>774</b>	<b>100%</b>	<b>694</b>	<b>100%</b>

Management Analysis recommends that DHS and MMB articulate a clear policy for when fiscal notes can be assigned, at a minimum to clear up confusion among legislators. When the Legislature seeks to develop policy proposals during the interim, the first step should be to determine whether early-stage technical assistance or a full fiscal note is required. Also, when full fiscal notes are requested by the Legislature during the interim, MMB and DHS should continue to provide them as requested, but with more flexible deadlines agreed upon by all three parties based on workload considerations and whether the information would be more useful after the next forecast.

**8. MMB should replace the Fiscal Note Tracking System.**

DHS and the other state agencies interviewed for this project were in strong agreement that the Fiscal Note Tracking System (FNTS) was antiquated and resulted in significant inefficiency and increased risk for errors. Likening the FNTS to DHS' legacy IT systems, one interviewee remarked, "we are preparing fiscal notes that affect *billions* of dollars, and we have finance systems that are 30 years old." Specifically, staff complained that they are working offline in Microsoft Excel, the Excel data has to be converted into Word by another staff member, and then that information is hand-entered into FNTS by still a third staff person. Duplicative entry not only takes time but invites many opportunities to drop or transpose numbers, necessitating extra reviews.

Upgrading the FNTS will reportedly save a significant amount of DHS professional staff time on redundant data entry. If there was one point that staff in the three agencies agreed on, it was that a fiscal note tracking system should be Microsoft Excel/spreadsheet-based, instead of word-processing-based, to cut down on wasted time, redundant data entry, and risk of error.

MMB recognizes the need to replace FNTS and has identified the replacement of this system as something that will be pursued, resources permitting, after the development of a new budget system is complete.



## Recommendations for the Minnesota Legislature

### 9. **The Minnesota Legislature should increase the capacity of and reliance on existing nonpartisan legislative staff offices to provide greater technical assistance to Members at the policy development and bill drafting stage.**

As discussed in Recommendation 1, DHS staff report that sometimes bill language is given to them that is not specific enough for them to write a fiscal note from. For example, the language may not reflect cross-program effects, federal implications for matching funds or simply compliance with federal law. In these cases, DHS staff will contact Members or legislative staff to clarify intent and the specifications necessary to attach costs to the bill. Interviewees said that the process of clarifying bill language is a necessary step, but one that often causes delays in the fiscal note process.

Management Analysis recommends that the Legislature increase the capacity of nonpartisan legislative staff to provide greater technical assistance to Members at the pre-fiscal note stage, when policy ideas and language are under development. Legislative staff would be responsible for ensuring that bill language provides the specificity needed to develop a fiscal note, to minimize back-and-forth with DHS on bill intent and requirements. Legislative staff should have the expertise and resource capacity to advise legislators on program aspects, federal and state requirements, the forecast and its relationship to program changes, and various policy options.

As the Maryland model and key Minnesota legislative staff demonstrate, legislative staff can and do develop enough policy expertise to assist legislators in policy development at the level that DHS staff have been providing. Maryland nonpartisan staff develop their expertise through year-round staffing and involvement with legislative committees and workgroups, professional development, National Council of State Legislatures committee involvement, professional conferences, conducting topical research and writing white papers. A lengthy learning period and longevity are central to developing deep policy expertise.

The suggestion to reframe nonpartisan staff positions toward the end of providing greater technical assistance in no way implies that Minnesota's legislative staff are currently lacking competence. Rather, some interviewees suggested that it is a resource issue. To provide the level of support described, additional staff may be required.

Others point to process issues – that nonpartisan legislative staff can and often do provide this level of support; but the process, the way it is “supposed” to work, is not consistently followed.<sup>10</sup> (Recommendation 10 addresses this issue.)

One benefit of having more of the technical assistance provided by nonpartisan legislative staff would be that when bills are then given to DHS to fiscal note, they would

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<sup>10</sup> If this recommendation is pursued, a neutral analyst/facilitator could pinpoint to what extent the current gaps are due to job definition, insufficient staffing resources, and unclear business processes, and then working with staff, develop methods and products to address each.

have all of the necessary information; and DHS staff would not have to spend as much time clarifying bill language and could turn notes around more quickly. A second benefit would be that this would take DHS staff more clearly out of any potential policy *development* role for the Legislature, thereby adhering to the fiscal note statute and giving Members a greater comfort level in the assistance they are receiving.

*This report does not suggest that legislative staff prepare fiscal notes. The technical assistance recommendation pertains only to policy and language development prior to making fiscal note requests.*

Management Analysis explored with interviewees the benefits and risks of having legislative staff compile the more straightforward fiscal notes. To some extent, this could be analogous to fiscal analysts at the Legislature running formula-driven fiscal notes for education-related bills. (See the section “Other Minnesota Agencies” for a description of the Minnesota Department of Education’s fiscal note process.)

Opinions were mixed regarding the feasibility and advisability of transferring this responsibility for human services notes. Some thought that it would work to have legislative staff work from DHS-provided workbooks and formulae. Other interviewees described drawbacks of transferring any fiscal note development responsibilities: It may not always be clear where to draw the line between simple and more complex, such that legislation that looks simple may have other program impacts and costs not recognized by legislative staff. Legislators and the executive branch would likely still want to have DHS run their own numbers, as the fiscal notes feed the overall state budget, thereby duplicating efforts and perhaps creating “dueling numbers.” There are also mixed opinions about how “simple” the simple notes are.

Perhaps the strongest argument against transferring straightforward fiscal notes, however, is that legislative and DHS staff report that the simple fiscal notes are already turned around quickly; no significant time would be gained from moving the function. The complex notes, for which DHS staff have to do more in-depth research and analysis, are the ones that take more time.

#### **10. The Minnesota Legislature should assign process ownership for fiscal notes to the Legislature’s nonpartisan staff.**

Management Analysis recommends that, in addition to consistently drafting more comprehensive bills and providing other technical assistance to Members, nonpartisan legislative staff also take on greater responsibility to facilitate and shepherd the process between the Legislature and their counterparts at DHS and MMB.

Interviewees reported that nonpartisan staff are often involved sporadically. When they are involved, they help to shepherd the process, clarify responsibilities, and communicate information. When they are out of the loop, the fiscal note process is more likely to break down. For example, a bill in the 2010 session to require Medical Assistance coverage for licensed birthing centers was modified four times during the session; each time, a new fiscal note was prepared. DHS reported that the note on the final version was produced

the night before the bill was to be heard in committee, based on changes that were submitted the previous afternoon. However, legislative interviewees perceived that DHS

had not been responsive and was giving them the note at the last minute, because the initial request for the first iteration of the note had been some time back. The communication and facilitative role of legislative staff in these situations – in this case, keeping Members apprised of the fiscal note status, reasons for delays, and managing expectations throughout the process – is critical to maintaining an environment of trust and good will.

Interviewees also cited a number of examples of meetings between Members and DHS staff in which each organization was waiting for the other to act – on the one hand, to provide updated bill language; and on the other, to prepare the fiscal note. The result was downtime and frustration on both sides.

Management Analysis recommends that nonpartisan staff should be tapped to a greater extent, in a more structured, consistent way, to make the mechanics of the process work well.

A former legislative staffer described a productive process:

I conducted daily meetings of the chair, [chamber] researchers, and agency technical staff and said, ‘here are the ideas that need to be worked on.’ I would set timelines and clear expectations of who was working on what while everyone was in the room. The technical staff would outline what technical components needed to be in the bill. And when the results came back from this work, if we saw that the proposal didn’t make sense, everyone in the room heard it at the same time....The most important thing is roles and expectations need to be defined and controlled, and the fiscal analyst is best-positioned to do this.

Process ownership would include establishing a clear, understandable, consistently-used process whereby nonpartisan legislative staff consistently:

- Coordinate the fiscal note process,
- Manage communications among Members, legislative staff, DHS, and MMB,
- Ensure that expectations for assignments and timelines are clear,
- Highlight language changes in amended bills for which new fiscal notes will be prepared, to save DHS and MMB staff time in searching for single word or sentence changes in voluminous bills,
- Enter and update bill information in the FNTS, including deactivating defunct versions of language,
- Communicate prioritization and changing deadlines, and
- Explain narratives and assumptions to legislators.

**11. The Minnesota Legislature should develop and articulate a clear, transparent policy and process for prioritizing fiscal note requests.**

As workloads, for fiscal notes and otherwise have increased, interviewees expressed a desire for a clearer sense of the priority given a particular fiscal note.

As FNTS data show, the number of human services fiscal note requests increased substantially in the 2009-10 sessions. The number of DHS staff who contribute to fiscal note preparation did not increase accordingly, nor would it have been possible to ramp up new staff to the level of expertise required to complete complex fiscal notes.

**Table 3. Number of fiscal note requests, by session**

Type	Session	Senate	House	Total
Unintroduced bills	2005-06	1	1	2
Unintroduced bills	2007-08	8	1	9
Unintroduced bills	2009-10	117	6	123
Introduced bills	2005-06	226	247	473
Introduced bills	2007-08	168	189	357
Introduced bills	2009-10	249	156	405

Total number of Fiscal Notes requested, regardless if completed or not.  
All bill numbers and versions are unique.

Prioritization of fiscal note requests to DHS by the Legislature is one of the more difficult aspects to address from a process improvement perspective. Interviews revealed a variety of values and practices regarding whether committee chairs should prioritize fiscal note requests, what those criteria should be, and whether and how priorities are communicated to DHS staff. While some felt that ideally, all legislators should be able to get whatever information they need from agencies to the end of developing sound, data-driven legislation, in practice, prioritization is required given workload demands.

Some fiscal notes are moved to the forefront at DHS, often in consultation with legislative staff, based on who is requesting the note, whether a hearing has been scheduled, and a bill’s perceived chances of passage. (An inherent problem with using scheduled hearings as indicators of priority is that some legislators want to review fiscal notes to determine whether to schedule a hearing.)

Revenue analyses are prepared for the Legislature, Governor or other entities and relate the direct impact of state tax law changes on tax revenue over a four year period.<sup>11</sup> Minnesota Revenue’s process for providing revenue analyses may provide some guidance for setting priorities for human services fiscal notes. Specifically, Revenue has developed and communicated a prioritization list (below), which is agreed to by all parties. However, it seems to be the reported level of trust and collaboration between the

<sup>11</sup> Minn. Stat. 270C.11, Subd. 5

Revenue staff and the Legislature's Tax Committee staff and clarity around technical assistance that provides the support for such a list.<sup>12</sup> This is discussed in more detail in the "Other Minnesota Agencies" section.

The revenue analysis process prioritizes requests as follows:<sup>13</sup>

- Bills scheduled for the Tax Committee
- Governor's Office, Commissioner and Assistant Commissioners
- House and Senate Tax Committee staff
- House Research, Senate Counsel and Research, and fiscal staff
- House and Senate Majority and Minority Research
- Individual legislators
- Minnesota Management & Budget (MMB) fiscal notes
- Key outside organizations (e.g., Minnesota Taxpayers Association)
- Other outside organizations

In contrasting fiscal note from revenue analysis processes, Revenue staff indicated that one of the biggest differences is that they have a high level of certainty when their analysis will be due and heard. The human services fiscal note process often involves bills that are never set for hearing, resulting in challenges to the agency in setting work priorities and potentially wasting effort.

In lieu of the Legislature setting priorities, DHS staff have to set them if and when they reach a saturation point. Legislators in turn have developed work-arounds to increase their chances of getting the information they need, such as increased use of un-introduced bills and companion fiscal note requests (described more fully in the section, "Unintroduced Bills"), and scheduling a hearing to *get* a fiscal note.

Recommendations in this report, such as transferring some technical assistance responsibility to legislative staff, process improvements to eliminate redundant efforts, etc., should free up some DHS staff time for fiscal note work. Some interviewees thought that legislative staff could take a more proactive role in managing Members' expectations for fiscal notes and help to set more transparent priorities. To the extent that committee chairs can establish and communicate fiscal note priorities for their committees, it would help DHS staff more transparently provide fiscal notes and direct their efforts toward the highest priority work.

## **Recommendations for the three organizations**

### **12. Strengthen training for legislators and staff.**

The three organizations should work together to develop and implement a training plan for legislative Members and staff on the fiscal note process and human services policy.

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<sup>12</sup> In contrast, DHS provided a fiscal note prioritization list to the Legislature in 2009; and it was rejected.

<sup>13</sup> "Tax Research Priorities for Revenue Estimates," Tax Research Division and Property Tax Research, Minnesota Department of Revenue, January 25, 2010.

Training should be provided prior to each session and updated as needed from session to session. Different areas of DHS have historically provided information briefings to

Members and staff as requested, for example, on the forecast. DHS should be involved in the planning, content development, and delivery on a more regular basis. MMB also should provide content, from the statewide perspective, and training and facilitation services, as requested. Legislative staff may take the lead on initiating the training, establishing the objectives based on Members' information needs and preferences, and providing the Legislature's perspective to the agencies.

**13. DHS, MMB and the Minnesota Legislature should meet prior to the start of each session to clarify roles and responsibilities and develop a common understanding of the session's anticipated process and policy issues.**

DHS staff and their legislative and MMB policy counterparts should meet prior to the start of each legislative session to review (and establish or update, as necessary) fiscal note processes, staff roles and responsibilities, and other relevant information. The meetings should be professionally facilitated and have an agenda, concrete objectives and documentation. This pre-session orientation would help identify key issues as well as jump-start collaborative working relationships among staff.

**14. Continue to improve business processes and implement recommendations.**

DHS described recent fiscal note process streamlining efforts that resulted in significant improvements to their internal processes. (These are described in the "Recent Streamlining Efforts at DHS" section.) Building on the success of these efforts, the three organizations should conduct facilitated work process improvement events designed to reduce wasted time and effort ("kaizens") for the fiscal note process at the macro level and involving staff from all three organizations.<sup>14</sup> The events should take place at the end of the 2011 legislative session. Additionally, in the spirit of "continuous improvement," further kaizen analyses in each of the three organizations would likely yield more efficiencies.

Two related benefits of conducting these process improvement events are that it will give staff at all three organizations a chance to learn about the process at the other two organizations, and it will provide an opportunity to document the process both at the macro level and within each organization.

Staff at all three organizations believe that the fiscal note process at the other two organizations is not clear. Beyond addressing the study's legislative directive, many interviewees thought that this project would add significant value if it made each organization's processes more transparent. To interviewees in any one organization, what happens to the fiscal note in the other two is obscure, a "black box."

This lack of transparency and clarity about the fiscal note process, in part, has led to a lack of trust, which complicates the transfer of information. The political environment also affects the trust levels among the organizations, both between the two major parties

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<sup>14</sup> Enterprise Lean website, Dec. 4, 2010. <http://www.lean.state.mn.us/glossary.htm>

and between the executive and legislative branches. Strengthening the fiscal note process so that it is more transparent, objective, and logical can help to dispel some of the perceptions of politicization.

Interviewees report that the fiscal note process works best in instances in which staff across the organizations have existing relationships, for example, where staff who used to work in the Legislature work for an agency, and vice versa. Similarly, one of the findings from review of the similar processes in other Minnesota agencies is that long-standing relationships and clear processes and understandings between Department of Revenue staff and their counterparts at the tax committees in the House and Senate have resulted in a high level of trust and collegial working relationships, which makes their work together more smooth and efficient.

Management Analysis recommends that DHS, MMB and the Legislature participate in facilitated meetings to clarify roles and responsibilities and to discuss optimal staffing models to improve the fiscal note process and that the organizations engage skilled, neutral organizational development facilitators and analysts to structure and assist with implementation work.

# Background and Key Issues

## Current state

MMB’s stated policy is for agencies to complete fiscal notes in five calendar days.<sup>15</sup> This time frame is much shorter if the note is requested as an emergency or when committee deadlines are approaching. Fiscal notes are sometimes turned around within hours of a request; and sometimes they have exceeded the five days, depending on when the clock started, sometimes a point of misunderstanding between the Legislature and DHS. DHS interviewees asserted that the clock should start when the bill language is sufficient to craft a fiscal note from. Some at the Legislature have thought that the clock started when they made the initial fiscal note request.

Fiscal notes for the House and Senate are typically completed in the same number of days, likely due to the similarity in bills. Table 4, below, demonstrates that even in 2009-10, when the Senate had significantly more notes, the two bodies’ averages are similar.

**Table 4. Days to Complete**

Session	Senate notes	Agency days	Total days	House notes	Agency days	Total days	Total notes
2001-02	147	16	19	141	16	20	288
2003-04	88	11	16	108	9	13	196
2005-06	163	10	15	175	9	14	338
2007-08	71	10	14	83	11	16	154
2009-10	225	11	14	85	12	15	310
<b>Total</b>	<b>694</b>	<b>12</b>	<b>16</b>	<b>592</b>	<b>11</b>	<b>16</b>	<b>1,286</b>

Agency days are the average number of days from fiscal note assignment to agency sign off. Total days are the average number of days from fiscal note assignment to lead EBO sign off.

### MMB review time

MMB’s review of agency-completed fiscal notes was raised by a number of interviewees as an area for potential time savings, as they considered the value added against the time for the EBO to review. Although not all interviewees believed that the EBO’s final review of all of the fiscal notes added value to the process, there have been instances in which the MMB involvement resulted in correcting or otherwise improving a fiscal note. One instance involved taking the “reasonable person” stance on legislation to reduce a program, and whether or not there would be staff savings as a result. Another instance involved fiscal notes on MA early expansion. The initial note was completed by DHS, but then revised to include information about the impact of the proposal to the Health Care Access Fund balance, after discussions with the EBO helped to identify that the reduction in MinnesotaCare spending first had to eliminate the projected deficit in the fund before it could be used to provide savings to fund an early expansion of MA.<sup>16</sup>

<sup>15</sup> “Policies and Procedures,” Minnesota Management & Budget, Updated November 2009, page 7.

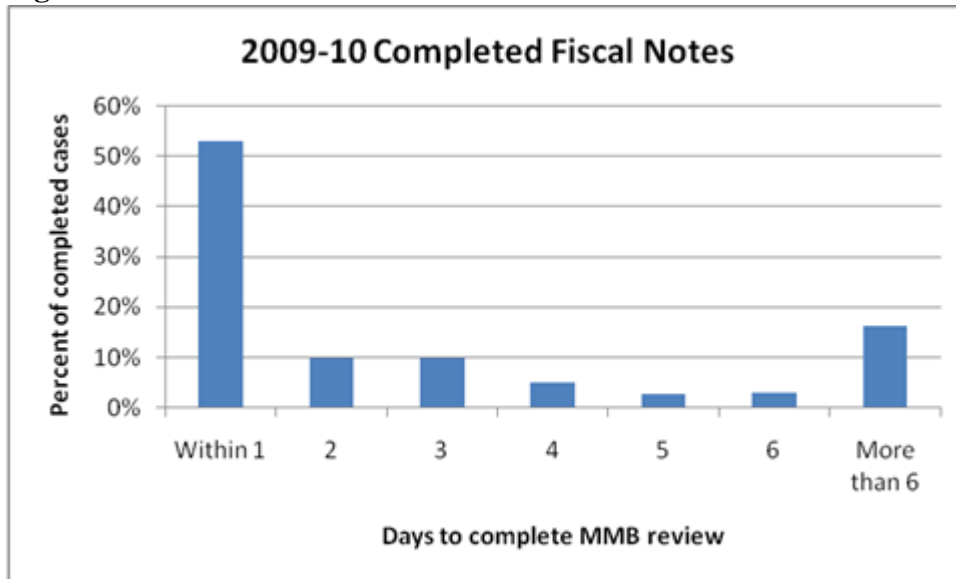
<sup>16</sup> E-mail communication from DHS staff, Dec. 1, 2010.



Some interviewees also felt that MMB is in a position to be more objective, because they aren't as closely connected to affected programs and policies. And, as discussed elsewhere, most interviewees thought that MMB's review adds value to consolidated notes, as MMB holds the statewide perspective.

Analysis of the human services notes from 2009-10, shows that MMB reviewed 53 percent of the 2009-10 notes within 24 hours (median days is .84). Therefore, the average is skewed higher because of the portion of notes that took a significantly longer time.

**Figure 2. MMB Review Time**



**Table 5. MMB Median Review Time**

	Agency days	Total days	Total days minus agency days
Average	11.30	14.60	3.30
Median	8.01	11.95	0.84

**Increase in Fiscal Note requests**

As FNTS data show in Table 6, below, the number of human services fiscal note requests increased substantially in the 2009-10 sessions. Reasons for this are discussed more fully in the “Unintroduced Bills” section, below. In essence, information that DHS had previously provided as technical assistance or otherwise more informally became formalized. Too, external pressures such as the state’s budget situation and health care reform likely contributed to the increase in note requests. However, the number of DHS staff who contribute to fiscal note preparation did not increase accordingly, nor would it have been possible to ramp up new staff to the level of expertise required to complete a complex fiscal note.

**Table 6. Number of fiscal note requests, by session**

Type	Session	Senate	House	Total
Unintroduced	2005-06	1	1	2
Unintroduced	2007-08	8	1	9
Unintroduced	2009-10	117	6	123
Introduced	2005-06	226	247	473
Introduced	2007-08	168	189	357
Introduced	2009-10	249	156	405

Total number of Fiscal Notes requested, regardless if completed or not. All bill numbers and versions are unique.

Often legislators request a fiscal note before formally introducing a bill; these fiscal notes are assigned a generic number, such as S9999. The Senate's un-introduced fiscal note requests significantly increased in 2009-10 and EBOs signed off on 65 of 117 of them. The other notes' statuses were no data (43 notes), preliminary data (8) and agency signed off (1). Senate fiscal staff provided three potential explanations for the increase:

- The Senate's \$719 million budget reduction target for health and human services was larger than the House's \$400 million HHS reduction target, resulting in more Senate fiscal note requests.
- Requests were often iterative on the same bill: for example, what would be the impact of 1 or 2.5 percent grant reductions.<sup>17</sup>
- Senate fiscal staff worked more closely with certain DHS staff on estimates without pursuing formal fiscal notes. After several discussions, legislative and executive staff agreed that all requests would be formalized with actual bill draft language and a formal note request into the system.

### **Consolidated Notes**

As shown in Table 7, below, DHS-only notes typically take longer than consolidated notes to complete. While the average number of days between assignment to DHS and the agency's sign-off are similar for both types of notes, DHS-only notes require more days from the agency's sign-off to the lead EBO sign-off. These averages do not consider a note's complexity or possible different steps between consolidated and DHS-only notes.

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<sup>17</sup> The 2009-10 Senate had 240 completed fiscal notes, of which 89 were for different versions of the same bill. Stated another way, 193 unique Senate bills produced 240 completed notes. One bill with four versions had four completed notes, three bills had three versions and three notes each, 38 bills had two versions and two notes each and 151 bills had one version and one note each.

**Table 7. Average agency days and average total days to complete by session and type of bill**

Session	Consolidated notes	Agency days	Total days	DHS only notes	Agency days	Total days	Total notes
2001-02	158	15	17	79	15	22	237
2003-04	88	8	11	83	12	18	171
2005-06	175	9	12	104	11	19	279
2007-08	128	10	14	10	10	25	138
2009-10	153	11	12	141	12	17	294
<b>Total</b>	<b>702</b>	<b>11</b>	<b>13</b>	<b>417</b>	<b>12</b>	<b>19</b>	<b>1,119</b>

Agency days are the average number of days from fiscal note assignment to agency signed off. Total days are the average number of days from fiscal note assignment to completed (lead EBO signed off). A day is 24 hours and includes weekends and holidays.

DHS completed 1,468 fiscal notes during the 2001-02 to 2009-10 sessions. The preceding table excludes 349 completed notes with:

- No agency signed off date (45 DHS-only notes from 2007-08);
- A completed date that precedes the assigned date or agency signed-off date (48 DHS-only notes from 2007-08);
- Agency or total days less than a quarter day (eight hours) or greater than 80 days<sup>18</sup> (89 notes); and
- Duplicate year, bill title, assigned date, agency signed-off date and completed date between a House note and Senate one so only one of the notes is included (167 duplicates are excluded).

The excluded notes are half consolidated and half DHS-only. Nearly all of the 2007 DHS-only notes are excluded (97 of 107 notes). Examples of excluded notes are:

- A fiscal note's status is completed but has no agency signed-off date and the agency status is no data or preliminary data (2007 H0175-0: MinnCare Vets Income Definition).
- An amended bill's fiscal-note assigned date occurred one year after the completed date (2007 S3322-5A: State Hlth Care Cnty Based Purch Req).
- DHS signed off on the note within two hours of assignment but the completed date is 47 days later (2005 H0009-0: Consumer-Driven Health Plan Fed Tax).
- A referred-to-committee bill's fiscal note was completed almost a year after it was assigned (2005 H2405-0R: Otter Tail Cty Nursing Fac Ma Rate).
- A House fiscal note's bill title and assigned, agency signed off and completed dates exactly match a Senate fiscal note's (2001 S1630-0R and H1962-0R: Nursing Home Bed Moratorium Except).

Excluding these notes typically changed the average agency and total days by one to two days except for the 2001-02 and 2007-08 session notes, where the averages significantly changed.

<sup>18</sup> Extending beyond one session.

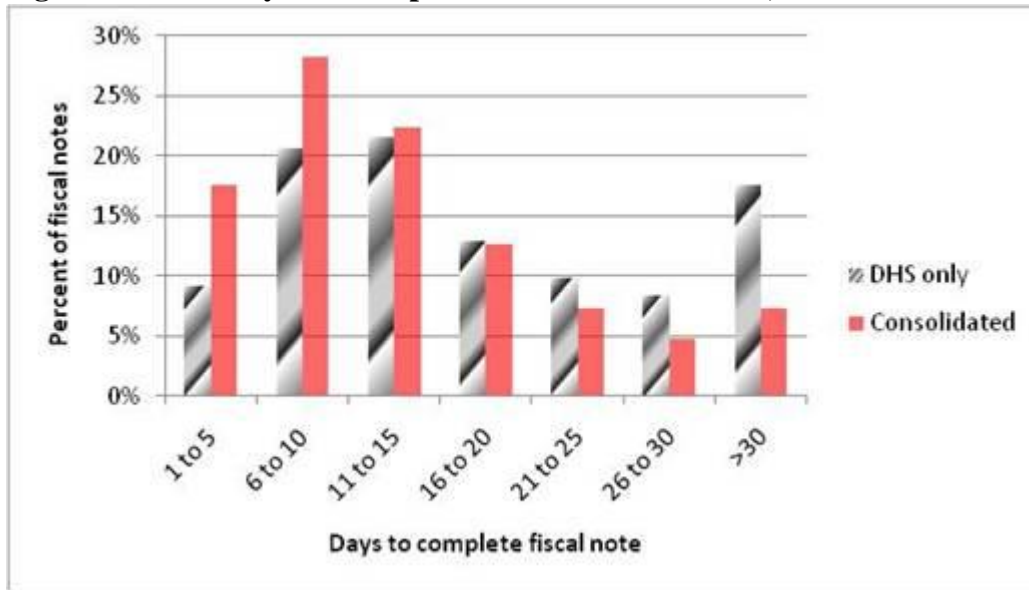
**Table 8. DHS-only bills: Percent of notes completed by number of days to complete**

Days to complete	2001-02	2003-04	2005-06	2007-08	2009-10	All sessions
1 to 5	6%	10%	9%	10%	11%	9%
6 to 10	16%	23%	21%	20%	21%	21%
11 to 15	19%	22%	18%	10%	26%	22%
16 to 20	10%	14%	15%	10%	12%	13%
21 to 25	13%	7%	9%	0%	11%	10%
26 to 30	13%	8%	9%	20%	5%	8%
>30	23%	16%	19%	30%	13%	18%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
<b>Notes</b>	<b>79</b>	<b>83</b>	<b>104</b>	<b>10</b>	<b>141</b>	<b>417</b>

**Table 9. Consolidated bills: Percent of notes completed by number of days to complete**

Days to complete	2001-02	2003-04	2005-06	2007-08	2009-10	All sessions
1 to 5	4%	27%	18%	19%	24%	18%
6 to 10	27%	30%	35%	21%	27%	28%
11 to 15	20%	19%	22%	28%	22%	22%
16 to 20	21%	10%	9%	11%	11%	13%
21 to 25	9%	5%	7%	9%	6%	7%
26 to 30	8%	2%	5%	5%	3%	5%
>30	11%	7%	5%	6%	7%	7%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
<b>Notes</b>	<b>158</b>	<b>88</b>	<b>175</b>	<b>128</b>	<b>153</b>	<b>702</b>

**Figure 3. DHS-only bills compared to consolidated bills, all sessions**



**Number of inactivated requests and average number of days elapsed before inactivation**

In addition to the above totals, it appears that DHS staff completed upwards of 30 fiscal notes each session (except for 2007-08) that were inactivated. The 2001-02 through 2009-10 sessions had 360 DHS inactivated notes; 155 had a signed-off status, indicating DHS had completed the note before inactivation. DHS-only notes were more likely to be inactivated than consolidated ones. More timely updating of the FNTS by legislative staff (Recommendation 10) and better communication between the Legislature and agency staff should reduce some of this phenomenon.

The average days to complete vary from session to session, likely due to the small number of inactivated notes each session. Across all sessions, the consolidated and DHS only notes have almost the same average days to complete (15 days versus 14).

**Table 10. Days to complete: Consolidated and DHS-only**

Session	Consolidated	Average days	DHS only	Average days	Total notes
2001-02	14	25	25	19	39
2003-04	7	8	28	13	35
2005-06	16	11	19	16	35
2007-08	5	6	8	6	13
2009-10	6	16	27	12	33
Total	48	15	107	14	155

The average number of days is calculated from agency assignment to agency sign-off for all fiscal notes with an agency sign-off date and agency status of agency signed-off or EBO signed-off. A day is 24 hours and includes weekends and holidays.

DHS-only notes range from 54 percent to 37 percent of DHS’ total signed-off notes. The 2003-04 and 2009-10 sessions had the highest proportion of DHS-only notes.

**Table 11. Number of consolidated notes vs. DHS-only ones**

Session	Consolidated	DHS only	Total	DHS only as a percent of total
2001-02	225	138	363	38%
2003-04	127	151	278	54%
2005-06	255	157	412	38%
2007-08	159	95	254	37%
2009-10	179	195	374	52%
<b>Total</b>	<b>945</b>	<b>736</b>	<b>1,681</b>	<b>44%</b>

Fiscal Notes with agency or EBO signed-off status. No data and preliminary data notes are excluded. All bill numbers and versions are unique.

## Considerations in preparing DHS Fiscal Notes

Many of the following factors that need to be taken into account when preparing a fiscal note necessarily have to be analyzed in sequence, not in parallel, adding more time to the process.

### Information systems considerations

When implementing a legislative proposal requires making changes to the major information technology (IT) systems that support the operations of human services programs at DHS and in every county, the corresponding fiscal note must account for the time and costs involved in modifying the major systems. Any law changes that affect benefits to individuals or payments to providers are implemented through DHS’ major payment systems:

- MMIS “provides centralized claims processing/payment for the Minnesota Health Care Program and [supports] ... managed care contracts [and] conducting eligibility determination.”<sup>19</sup>
- MAXIS “issues more than \$65 million/mo. in cash and food assistance. In FY08, MAXIS determined eligibility for financial assistance, food support, and health care benefits for more than 500,000 Minnesotans. [It] provides a single point of data entry for 5,500 state, county, nonprofit agency and tribal staff to administer 14 different cash, food, and health care assistance programs.”<sup>20</sup>
- PRISM issues child support payments directly to clients and supports Medical Assistance, Child Care, MFIP as well as Child Support Enforcement.<sup>21</sup>

<sup>19</sup> “2009 Portfolio of DHS Systems and Selected Technology Applications,” Office of the CIO, Department of Human Services, p. 35.

<sup>20</sup> Ibid. p. 33.

<sup>21</sup> Ibid., p. 49.

- SSIS provided case management support to county social workers and state adoption workers, “tracking cases involving 272,000 annually.”<sup>22</sup>

These legacy systems are challenging to reprogram, as their code is decades’ old. Programmers who work in these languages (COBOL, for example) are scarce.

Also, because literally billions of dollars flow through the systems, mistakes resulting from rushed implementation could be significant. Therefore, DHS fiscal notes include the costs of making system changes because this operational cost is not negligible. Moreover, because these system changes may take months, they have a significant impact on the savings or costs of proposed legislative changes.

The analysis required to provide time and cost estimates for system changes requires a thorough understanding of system functionality. Program staff analyze the proposal to identify system implications for eligibility types, data elements, changes in legal notices to clients, background processing, periodic processing, panel changes, table changes, system edits, etc. Analysts also must have a good sense of the time and effort that has been required to design, code, and test similar changes in each of these areas in the past, as the turnaround time on system estimates for fiscal notes is too short to allow in-depth analysis of the changes a new proposal would require.

The department’s approach with respect to one computer system, the MAXIS eligibility and benefit payment system, has been to pull together a team of experienced business analysts, system analysts/programmers, and software testers to estimate the work required in each of these areas. Regarding this study’s directive to evaluate the effort and cost needed to provide access to a separate, legislative office to prepare fiscal notes, DHS staff who do this work do not think that an outside source could do the type of analysis required to generate a system estimate without having worked on the system for a significant time.

In short, to estimate IT costs for program changes, one needs both an in-depth understanding of the technology and a program/policy expertise. This is most often a function of more than one person and requires considerable knowledge and experience.

## **Operational considerations**

An entirely different analysis is needed to determine how DHS will implement proposed legislation within its own organization. Program changes can affect staffing levels and other resources required to implement changes both immediately and over the long term. Nuances of these calculations included the following observations, “At a certain point, rate reductions can lead to an increase in administrative costs because we have to monitor more of what’s going on. The Medicaid state plan requires us to monitor access; so, our responsibility increases.”

Regarding cost absorption, the fiscal note statute makes clear that agencies need to “include the costs that may be absorbed without additional funds.”<sup>23</sup> DHS and other agencies have been able

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<sup>22</sup> Ibid., p. 58.

<sup>23</sup> Minn. Stat. 3.98, cited in “Fiscal Note Process: Policies and Procedures, Chap. 1” MMB, Nov. 2009, p. 1.

to absorb certain implementation costs in previous years and indicated as such on their fiscal notes. DHS and other agencies receive guidance on this question from MMB. In the past few biennia, MMB has generally directed agencies to not absorb costs, unless the new work being proposed is an extension of a current activity that would not displace other activities in the existing budget. DHS staff report:

Operational costs are a moving target. Because we've taken administrative cuts for the past two to three years, we have no cushion to absorb any new proposals or studies, as well-intentioned as they may be. Where we may have said 'yes' to a change or requirement a few years ago, indicating no cost impact, we can't now.

Indeed, one of the issues that concerns Members is the seeming inconsistency of what DHS says they can absorb at different points in time. Another state agency interviewed for this project spoke to this issue as well, and handles it this way: "As a practice, we never include on the note that we can absorb the cost, because it means picking and choosing bills we like. We need to be neutral."

DHS staff also said that it is essential to have a thorough understanding of the mechanics of how programs administer benefits and pay providers. In addition, fiscal note analysis reflects a strong understanding of how counties operate, what operational changes they would have to make, and how long those would take, to fully implement statutory changes to programs that they provide on behalf of the State.

## **Federal considerations**

Interviewees across DHS, MMB, and the Legislature all highlighted the importance of knowledge and expertise regarding federal human services law and funding requirements.

### **Federal law**

In preparing a fiscal note, DHS staff will determine whether the change is allowable under existing federal law, or whether the state will have to request a waiver, for example, to change eligibility requirements for Medical Assistance. If a waiver is required, that can take a year to obtain from the governing federal agency, delaying implementation of the proposed legislation.

### **Maintenance of Effort (MOE)**

Maintenance of effort is "a requirement that states maintain a specified level of spending or eligibility or service coverage in the area for which the state is receiving federal funding in order to receive the federal funds. There are also MOEs at the county level, where in order to be able to receive state funding in an area, counties must maintain a specified level of county spending in the area for which there are state appropriations.

In terms of the federal stimulus and health care reform bills, the 'E' in MOE means maintenance of eligibility for MA. This kind of MOE is really more like a penalty that the state will be assessed if it cuts eligibility in its public MA program. For example, as a condition of receiving stimulus funds in the MA program, the state is not allowed to make certain reductions in the



eligibility from what had been in effect at a base point in time. If it reduces eligibility below that base year level, it is not eligible for the additional stimulus funds paid into the MA program.”<sup>24</sup>

## **Accounting and finance considerations**

Staff also discussed technical considerations related to cash flow and the mix of state and federal funding required for some program changes. From a basic accounting perspective, a fiscal note related to eligibility changes or for savings may involve refinancing, where federal funds are used in lieu of General Fund dollars. “We work with accounting staff to make sure whatever the change can be done at the very fiscal level – to not violate federal reporting requirements or cause a cash flow issue.” In addition, financing of some of the forecasted programs also involves ensuring that the funding mix is done correctly, to maintain maintenance of effort and other federal requirements.

## **Cross-program considerations**

One DHS interviewee observed that “people don’t go away.” That is, if eligibility changes in a health care program, beneficiaries who lose eligibility will likely still have needs that will drive them to another program, or take them temporarily out of the “system” until their condition deteriorates, perhaps making them eligible for more costly care in another program at a later time. Part of the policy analysts’ work is predicting whether benefits recipients will move to other programs. Or, for example, DHS may be asked to provide a fiscal note on savings to Medical Assistance if chiropractic care is no longer covered. While that benefit change may be a straightforward calculation, DHS also must consider that at least some of the MA recipients will use more of the remaining covered services, which will reduce the overall savings.

## **Economic forecasting considerations**

The following section highlights some of the nuances or factors that complicate forecasting in the context of fiscal note preparation.

### **Dynamic forecasting**

The statute governing fiscal notes requires all Minnesota state agencies to evaluate direct impacts – how many participants are in an activity; the number who may be affected by a program change; and the resultant fiscal impacts, positive or negative, programmatic and operational. Forecasting is based on the first level of behavior. For example, the Minnesota Family Investment Program (MFIP) “is the state’s welfare reform program for low-income families with children.”<sup>25</sup> If eligibility requirements for MFIP participation change, such that secondary education does not fulfill the law’s work requirement, DHS will forecast how many current participants may leave the MFIP program.

In analyzing fiscal impacts, the department intentionally does not estimate and include secondary effects of policy changes, or, “dynamic forecasting.” So, in the above example, DHS would not

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<sup>24</sup> DHS staff, e-mail communication, December 2010.

<sup>25</sup> “The Minnesota Family Investment Program (MFIP),” DHS website, Dec. 4, 2010.

[http://www.dhs.state.mn.us/main/idcplg?IdcService=GET\\_DYNAMIC\\_CONVERSION&dDocName=id\\_004112&RevisionSelectionMethod=LatestReleased](http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&dDocName=id_004112&RevisionSelectionMethod=LatestReleased)

predict the extent to which participants who don't complete their secondary education are not able to find a decent-paying job or a job at all, and therefore stay in the program longer. The fiscal note statute is silent regarding secondary impacts or dynamic forecasting. However, interviewees from MMB and the Legislature agree that it has been a long-standing policy that fiscal notes not include secondary impacts, because they are speculative.

## **Professional judgment calls**

In the context of preparing fiscal notes, DHS is often viewed by some at the Legislature as being “overly conservative” with regard to a bill’s potential savings. Staff assert that they are being “appropriately conservative,” given that they can’t go back to the Legislature for additional funding if their analysis is faulty, or overly optimistic.

At a more fundamental level, though, staff expressed their commitment to the integrity of their analysis and professions; they view the fiscal note process as “a textbook, budget exercise, not an exercise to endorse a concept,” and that the assumptions and numbers must be data- and research-based. If DHS staff don’t have existing Minnesota data or other research that supports a desired fiscal projection, they will not take what they consider a “leap of faith,” even if it intuitively makes sense that savings will materialize.

In instances when Members or their staff have brought new studies to consider, DHS staff have reviewed them, and in some cases, changed their analysis. One example involved an increased use of seatbelts resulting in savings to Medical Assistance. “They had two studies, we read them; they were valid. When we did the fiscal note, we provided savings. But then when we gave it to MMB, they wouldn’t sign it, as they said that we couldn’t book secondary effects. So, we’re not always cold water!” Reports & Forecasts staff noted that in addition to their own research, they are always willing to review studies and research brought forth by legislators or staff.

A program area that adds great complexity to fiscal notes is Medical Assistance (MA). Staff offered an example of expected savings from improved diabetes treatment. Most of the diabetics enrolled in DHS programs are elderly, so they already receive Medicare in addition to MA. Medicare pays most of their hospital and physician bills and MA becomes, in effect, a Medicare supplement. Savings from improved diabetes treatment would be mostly in hospital and physician costs, so the savings would be mostly to Medicare and not MA. Another area concerns the difference between the reimbursement rates of public medical programs compared to commercial rates. Staff explained that many basic care rates have been frozen for a decade so that although there may be areas to save money in a commercial environment, DHS rates don’t contain as many potential savings because the operating margins are already thinner. Staff said that easy solutions, low-hanging fruit, etc. to save money are long-gone.

However, they anticipate that given the state’s current \$6.2 billion budget deficit, they will “see a lot of pressure to book savings that might not be real.” Further complicating this pressure, other staff anticipate the difficulty of having to analyze:

brand new ideas that we have no experience with. It’s the challenge with federal health care reform; it will push the questions beyond the data and service provision experience that we have. We know our populations and

have a good feel for what things cost; it's going to be a challenge for us if we don't have data to support the fiscal note analysis.

An experienced observer of the process noted:

The old models don't work anymore. Today, the Legislature will often come up with a new idea. Because it has never been done or tested, no one knows what will happen, or what it will cost because it is very difficult to test the result. This is what is happening now, and there will be differences of opinion between the legislators and the agency staff. Where do you land when people disagree? These aren't straightforward times. We are adding more complexities to an already complex arena, and the challenge is heightening.

## Scope constraints

Different expectations for fiscal notes also are illustrated by the State Health Improvement Program legislation. The fiscal note reflected the program's costs, grants and administration. However, DHS did not establish a savings figure based on anticipated health benefits. For example, grants were awarded to schools for playground equipment to increase children's play/exercise-time.<sup>26</sup> Intuitively, a reasonable person could expect fiscal among other benefits from this program. However, DHS can only project and quantify costs and savings from existing data, studies, and research from similar programs in other states, etc.

An interviewee familiar with Minnesota Revenue's revenue analysis process (discussed in the "Other Agencies" section) said that Revenue doesn't use dynamic modeling, either. "If there's a lower tax rate, that's straightforward. But the effect on jobs, taxes? No; Revenue won't analyze or say there are secondary effects unless it's well-documented. This was agreed to: no dynamic modeling. It's too speculative, too slow. [Legislators] moan and groan, but they know that's how it's scored."

In addition, the time horizon for the fiscal note is four years at the most (trending out to the next biennium) for budgeting purposes. Benefits or savings from policies that may be realized in a longer time horizon are not able to be captured through the fiscal note tool, by statute. A few interviewees noted that the Congressional Budget Office can "go out 20 years; they have huge regression models to come up with cost avoidance. [Fiscal note] rules are much more strict and limited; we can only deal with primary fiscal impact, in the current biennium and the tails." Some interviewees acknowledged the gap, such as quantifying the long-term benefits of childhood programs; and they empathized with legislative frustrations. One noted that the State's now-defunct Minnesota Planning would have been an appropriate resource to research and advise on policies' long-term implications for the state.

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<sup>26</sup> ISD 197 newsletter, email newsletter, November 24, 2010.

## Forecasting challenges, a policy example

An MFIP program change that was implemented in 2009 illustrates the complexity and difficulty in forecasting for new programs. Unknown factors such as the future economic environment and predicting a given population's behavior in that environment make forecasting a risky endeavor. Given the laws that govern entitlement programs (if a person meets program eligibility requirements, the state is obligated to provide benefits), DHS staff said that they consistently provide what they consider "appropriately conservative" fiscal estimates so that the state is not left with an unexpected short-fall for entitlement benefits. In the instance described below, the fiscal note predicted higher costs than actual, reflecting the difficulty of forecasting, particularly for new programs without historical data to which staff can refer.

The Work Benefit Program (WBP) is a newly implemented program (October 2009) which [DHS] fiscal noted in the 2007 session. The original program was to be implemented in February 2009, and would pay \$75/month for up to 24 consecutive months following MFIP/DWP exit, as long as participants worked a certain number of hours per month.

In 2007, while a number of states had proposed programs similar to WBP, there were no fully implemented programs to draw data from. [DHS] had solid data on the number of potentially eligible cases in terms of monthly closings from MFIP/DWP. In general, however, [DHS does] not have data on employment or earnings after families leave MFIP/DWP. That meant [DHS] had no direct data to apply to estimate which cases would meet the work requirement, at what rate they would take-up the benefit, and how long they would use the program. [DHS staff] made assumptions based on relevant data when possible, and otherwise relied on what seemed reasonable to [forecasting] and MFIP policy staff.

The original 2007 fiscal note is no longer relevant, as program implementation was pushed back to October 2009, and 2009 and 2010 session changes reduced the benefit level. The fiscal estimates of the WBP have been adjusted for these changes, using essentially the same methodology as the original fiscal note. It should also be noted that economic conditions deteriorated between the original fiscal note of the 2007 session and implementation; but with no program experience, it was unclear what impact the recession would have on this program.

Although the program is not fully phased-in yet, DHS has one full year of program data. Cases and payments were 34 percent below projections for the first year of the program (Oct09-Sep10). Somewhat fewer cases opened each month than projected, but the bigger factor appears to be cases are not staying on WBP as long as projected. Given the lack of data on what happens to MFIP/DWP cases after they leave the program, the expected length of stay on WBP was one of the biggest sources of uncertainty in the projections.<sup>27</sup>

DHS staff reported that there have not been significant deviations to the adjusted forecasts over the past few biennia, nor has the agency had to make large operational or programmatic adjustments to respond to inaccurate fiscal notes. These staff noted that, for fiscal years 2001 to 2010, DHS has budgeted General Fund programs with 97.3 percent accuracy, comparing end of session estimates to actual expenditures for the following fiscal year.

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<sup>27</sup> E-mail communication from DHS Reports & Forecasts unit, December 2010.

## **Fiscal Note process issues**

The following issues were raised during interviews as particular areas of concern and as opportunities for process improvements. Items in this section also provide more context for the recommendations summary and time tracking data at the beginning of the report.

### **Use of the Fiscal Note Tracking System**

Legislative staff do not consistently enter all bills in or update the FNTS, which creates several negative impacts. First, MMB staff are not aware of the bill and cannot begin their analysis of it or work with DHS staff as assumptions are discussed. This forces EBOs to try to understand a complex note at the end of the process with very little time. Second, if there are several amended versions of a bill, and accompanying fiscal note, in play, staff at both DHS and MMB may be spending time on a version that has become irrelevant at the Legislature, if the FNTS hasn't been updated to make a version inactive.

However, staff at both the Legislature and DHS explained that when language is changing hourly, as often at the end of session when the omnibus bill is being compiled, the process, and entry into the FNTS, necessarily breaks down. In these times, some at DHS take the process off-line, and provide fiscal advisories. Ultimately, not having the fiscal note in the system has created delays, as staff in the three agencies have scrambled shortly before committee hearings to enable MMB staff to review the final fiscal note and sign off.

One interviewee observed that the FNTS was designed when the process was slower and more open. When staff at DHS and the Legislature are working outside of the FNTS environment, either in providing technical assistance, fiscal advisories, or updated fiscal notes on rapidly changing language, FNTS is not reflecting the true work effort. Therefore, DHS is often cast in a bad light for not completing a fiscal note on a defunct version of a bill.

The FNTS does not capture the level of detail regarding due-date hour that this project would have needed to report on the number of fiscal notes that made precise deadlines or not. In addition, to the extent that the FNTS is not used consistently or in a timely manner, it likely is not able to provide an accurate reporting of the events at that level of detail.

And, in the thick of session, deadlines can become fluid, as bills that had previously been lower priority are moved to the fore, or negotiations result in a new variation of a fiscal note already in process, making the deadline for that one less pressing or often irrelevant.

MMB recognizes the need to replace FNTS and has identified the replacement of this system as something that will be pursued, resources permitting, after the development of a new budget system is complete.

## Unclear bill language

Partly because of the policy complexity, bill language that the department receives from the Legislature often needs clarification and re-writing. After the clock has started on the fiscal note request, DHS staff report often spending considerable time trying to understand the author's intentions and clarifying the specific implications of the bill necessary to develop the fiscal note.

Common problems that DHS staff need to resolve prior to compiling the fiscal note include:

- Terms need to be defined;
- The intent of the bill is unclear or does not match the intent otherwise indicated by the author;
- There are federal issues that need to be addressed in the bill;
- The proposal has impacts on other programs or populations that are not addressed in the language of the bill. It does not appear that the author has considered those impacts;
- It is not clear whether the author expects to receive federal matching funds;
- The bill needs to be modified to incorporate the intent to address managed care contracts;
- It is not clear which populations are intended to be affected by the proposal and whether the author has considered those impacts;
- The implementation dates for the proposal are not feasible; and
- Literal blanks in the bill need to be filled in.

Interviewees said that usually when the Legislature's nonpartisan staff drafted bill language, it was complete and technically sound. Certain legislative staff were praised for their depth of knowledge and expertise in policy and how to write Minnesota statutes. On the other hand, interviewees reported that some bills that were drafted by other legislative staff and external stakeholders lacked the specificity needed to cost out a fiscal note, or were otherwise off the mark in terms of feasibility, federal law, or understanding of how programs are administered.

## Unintroduced bills

A number of interviewees thought that introduced bill language is in "better shape" than that of un-introduced bills. One reason is that the introduced bills have usually gone through the Legislature's policy committees, and therefore been vetted, reshaped, and include the specificity required to prepare a fiscal note. Some interviewees noted that it used to be a practice to only do fiscal notes on introduced bills that have passed out of the policy committees, and that the volume and quality of fiscal note requests were more manageable then.

Interviewees provided reasons why some Members may prefer un-introduced bills in various situations. While a bill is in the development stage, the Member may want more information before exposing the language for public review, feedback, and other aspects of the political process. Members also may know that a bill will not advance, but they may want the fiscal note information for a variety of other reasons; and the Member may want fiscal note information at a point in the legislative process when it doesn't make sense to introduce a new bill.

There was a significant increase in the number of un-introduced bills requiring fiscal notes during the 2009-10 session, as shown in Table 6 (page 29). Part of this dynamic seems to have resulted from MMB formalizing what had been in some cases an informal process, by requiring entry for all fiscal note requests into the FNTS. Interviewees expressed a number of theories about how and why the process change came to be. MMB staff explained that a well-intentioned and diligent EBO wanted more time to review and understand bill language and subsequent fiscal notes, instead of receiving what had been done completely offline at the end of the process. Keeping in mind some legislative preferences for upfront work on un-introduced bills, the separate number series was created in FNTS to track the work.

The result was that some of the information that had been given more informally to legislators and staff by DHS staff now went through the entire fiscal note process and resulted in a formal fiscal note. A number of interviewees commented that the statute governing fiscal notes specifies “introduced bills,” and that bills that are not introduced are not supposed to receive a full fiscal note. The informals had many disclaimers and no effective date assumptions, and according to some, “it wasn’t a problem.” An interviewee concluded, “By formalizing the informals, it encouraged the legislators to submit more requests to definitely get something back.”

However, some at DHS welcomed the increased formality, as numbers that may have been provided as draft or based on certain assumptions, or in meetings, were sometimes used out of context, resulting in the department needing to back-track, change numbers, and adding to confusion and mistrust between the Legislature and DHS.

Interviewees explained the important nuance that fiscal notes coming from the department reflect the department’s and therefore the executive branch’s stance, which helps to insulate individual DHS staff members from difficult positions. The fiscal note is an objective document compiled by a multitude of department staff and reviewed by another department. To provide more informal numbers in an environment not marked by overall mutual trust between the branches could place individual civil servants at risk.

## **Multiple versions of bills**

Amended versions of bill language are an inherent and necessary part of the legislative process. It is important to understand the impacts that they have on fiscal note development, and to consider options that would enable DHS and MMB staff to respond more efficiently.

Amendment changes may affect one line in several pages of bill language; if the changes are not flagged by a fiscal analyst, then agency staff are reviewing the bills line by line looking for changes, which can be time-consuming, depending on the length of the bill. DHS staff explained that even seemingly small changes can have significant impacts, given the number of people affected and amount of funding involved. Here, many interviewees said that it would be a significant improvement to have language changes visibly flagged in amended bills.

While DHS interviewees said that legislative staff usually notify them about which version of a bill is still in play, staff may be working on fiscal notes for several iterations of the same legislation at any given time, especially toward the end of the legislative session when changes can be made every few hours. To add to the complexity, it’s not always the latest version of the

bill that makes it to committee; and, there may be multiple versions of the same bill (and fiscal notes for each) from the House and Senate. It is at this point that several interviewees said that the fiscal note process breaks down. Clear and timely communication among staff in the three organizations at this point is essential to maximize staff efforts, with legislative staff taking the lead to update agencies' staff.

## **Resource constraints**

The short legislative session means that most fiscal note work takes place during a compressed time period, work that can only be addressed by a certain number of DHS staff with specific skill sets, knowledge, and experience. Often, when particular policy issues are in play, all of the fiscal note work goes to the few staff people who have that particular expertise. These staff have full-time work assignments the rest of the year, work that gives them the expertise to prepare fiscal notes and provide technical assistance.

Staff in all three organizations may work around the clock to turn around timely fiscal notes. An EBO noted in an interview, "DHS may sign off at midnight, and I am doing my work at 1 AM." Some interviewees said that they experienced overnight delays because MMB staff didn't sign off on a note until the morning it was due. In those instances, DHS and Legislative staff may have worked "more" around-the-clock than MMB staff. The larger issue is obviously the schedule demands of the legislative process.

However, adding more staff, either full-time or part-time, was not viewed as a panacea. Interviewees reported that part-time staff wouldn't make sense because it would be too difficult to find qualified staff to work only four months out of the year. New full-time administrative staff, in a time of program cutbacks, wasn't considered the best use of state resources, either.

This report's recommendations for process improvements and shifting significant technical assistance responsibilities to legislative staff are intended to free up more DHS staff time to focus on fiscal note preparation.



## Recent streamlining efforts at DHS

In the summer of 2009, the Health Care Administration staff analyzed their fiscal note development process in an event called a kaizen, a continuous improvement tool used to reduce wasted time and effort in work processes.<sup>28</sup> Staff mapped out their current and proposed future processes (Appendix B). By analyzing and determining the value (or non-value) of each step in the process, staff eliminated some wait time and reduced the number of tasks and hand-offs. Data from the FNTS (for all of DHS, not just HCA) shows decreased processing time from the pre-kaizen legislative session in 2009 to the post-kaizen session in 2010. See below.

### 2009 fiscal notes days to complete compared with 2010 fiscal notes (kaizen effect)

**Table 12. Average agency days and average total days to complete by session**

Session	Notes	Agency days	Total days
2009	159	13	17
2010	135	9	12
Total	294	11	15

Following the kaizen event, HCA developed the fiscal note checklist (below) to track their work and assignments. It illustrates the many policy and administrative areas, staff, factors, and tasks that comprise fiscal note preparation.

Another high-value improvement mentioned by a number of staff was the development of a standing meeting several times a week during fiscal note season, among cross-disciplined staff (including different administrations, as relevant) who would be involved in preparing a given fiscal note. Staff described the benefits, “We discuss what the fiscal note is about, what data will be needed, and we get going on data acquisition. The benefit is that we’re on the same page with assumptions and data, and we don’t spend time getting the wrong data.”

The current process still includes wait times and multiple sign-offs. HCA staff explained that working on fiscal notes is one of many responsibilities that all staff involved have, and that there necessarily will be some wait time as staff are managing programs, responding to other state and federal requests and requirements, and addressing other fiscal notes.

In 2005, CCA mapped their fiscal note process and identified areas to improve efficiency. (See process maps in Appendix D.) Efforts included clarifying multiple roles and responsibilities among CCA staff in the compilation of fiscal notes, a review of the approval process, and addressing data acquisition problems that resulted in time lags. Continuing Care has been working for years to address data problems, resulting from having to rely on legacy database systems that were specifically designed to make payments, not to provide information on populations and programs.

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<sup>28</sup> Minnesota’s Enterprise Lean website, Dec. 4, 2010. <http://www.lean.state.mn.us/glossary.htm>

Health Care Administration fiscal note checklist (August 11, 2009)

- 1. Bill Number: \_\_\_\_\_/Version: \_\_\_\_\_
- 2. Bill Description: \_\_\_\_\_
- 3. Priority level: \_\_\_\_\_

Contacts

- 4. Division lead: \_\_\_\_\_
- 5. Key staff contacts:
  - Health Care Eligibility and Access \_\_\_\_\_
  - Health Care Operations \_\_\_\_\_
  - Health Services and Medical Management \_\_\_\_\_
  - Managed Care Purchasing and Payment Policy \_\_\_\_\_
  - Performance Management and Quality Improvement \_\_\_\_\_
- 6. Other administrations to include: \_\_\_\_\_
  - Continuing care
  - CFS                       SOS
  - Chemical and Mental Health       FOD

Impacts

- 7. Programs Impacted
  - MA \_\_\_\_\_
  - Families and Children       IMD
  - Elderly Disabled       MA-EPD
  - Family Planning       DMIE
  - Noncitizens
  
  - GAMC \_\_\_\_\_
  - Regular GAMC       GHO
  - Transitional MinnesotaCare
  
  - MinnesotaCare \_\_\_\_\_
  - Federal match
  - State funded
  
  - Non-entitlement grant \_\_\_\_\_
  - Other \_\_\_\_\_
- 8. Service delivery systems affected
  - Managed care \_\_\_\_\_       Fee-for-service \_\_\_\_\_
- 9. Systems impact
  - MAXIS \_\_\_\_\_
  - MMIS \_\_\_\_\_

10. Impact on administrative costs

- FTEs \_\_\_\_\_
- MNCARE ops admin. \_\_\_\_\_
- Mailing of notices \_\_\_\_\_
- Training \_\_\_\_\_
- PT contracts \_\_\_\_\_
- Other nonsalary costs \_\_\_\_\_

11. Federal Approval:

- Is there a federal match? \_\_\_\_\_
  - Is federal approval required? \_\_\_\_\_.
- Waiver \_\_\_\_\_
- State Plan Amendment \_\_\_\_\_
  - Assumed timeline for obtaining federal approval \_\_\_\_\_

Actions

12. Assumptions:

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13. Implementation date: \_\_\_\_\_

14. Information needed by reports and forecasts

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Data elements:

- Major program(s):
- Base year for program data:
- Date of Service or warrant date:
- Fee-for-service, managed care or both
- Category of services
- Exclusions
  - Provider type
  - Cross-overs/TPL

15. Tasks and deadlines:

	Task	Staff Contact	Deadline
Policy Staff			
Systems			
Admin. Staff			
Federal Relations			
Reports and Forecasts			
Other			

16. Follow-up needed with legislator/staff/advocacy group: \_\_\_\_\_

# Evaluation of the option to create an independent office at the Legislature

The study's legislative directive sought detailed information regarding "the financial costs, staff resources, training, access to information, and data protection issues" if an independent legislative office were created to prepare human services fiscal notes.

In the course of interviewing staff in all three organizations (and in the other state agencies included for this review), it became quickly apparent that most did not think a new office would be an optimal solution to address Members' and legislative staff concerns about fiscal notes, even while acknowledging those concerns as valid. Comments across the three organizations included:

- "[Legislative staff] don't have the data or expertise. [They] have never worked with [the federal Centers for Medicare and Medicaid Services (CMS)]; how would CMS respond to [them]?"
- "Unless the office was sufficiently staffed, they would be playing MMB's current role, asking George Hoffman how much would it cost for this group of people, how would this change health care spending? So, I'm not sure what would be gained other than if there's a concern about whether MMB is a neutral state agency."
- "Concerns about timeliness and accounting for future savings – I'm not sure if an independent office helps with any of that. It could be just moving where the crisis hits. Right now, the agencies are getting beat up. This new office could be called out, 'Why are you so slow?'"
- "Even though the fiscal staff in the House and Senate are nonpartisan and provide objective advice, they work mostly with the chairs and major party. If they did the fiscal note process, it would heighten the need for objectivity. Members wouldn't always be happy with what [staff] would estimate. It's important to think about the organization, culture, responsibilities and lines of authority. If I spent more time thinking about it, why only the budget staff? The question would need to be, 'how do we want our nonpartisan professional services delivered?' That kind of question needs to be more global."
- "A separate office would take years; they would have to move DHS staff, or at least the economists. But [the economists] need input from the policy people. [They] need to match the trends they see with what policy people know."
- "Part of it is that they wouldn't know what questions to ask; it's not just data and forecasting; they need program familiarity. They would still need DHS input; it would be harder to do it in a timely manner."
- "DHS would still need to do assessments; that would lead to conflicting forecasts and battling economists – which one is more reliable, and why?"

Quite a few interviewees thought that a separate office would be duplicative or at least another layer, and not a good use of resources.

As Management Analysis researched other states and learned about their models, it seemed that there were degrees of legislative ownership for fiscal notes, strongly tied to their state’s budget preparation ownership and processes, as described in the “Other States” section, below. Management Analysis recommends adapting the features of these models, as well as Minnesota agencies’ and Legislative staff recommendations discussed herein, that best respond to the root causes of growing frustrations and process break-downs. Our primary recommendation from this research is to increase nonpartisan legislative staff capacity to provide Members with technical assistance, at the pre-fiscal note stage of bill development.

To meet this study’s directive and respond to questions about an independent legislative office, the following information is provided: staffing cost estimates (based on data from DHS and the Legislative Coordinating Commission); information system requirements and costs; analysis of data practices considerations; and other organizational considerations.

**Financial cost and staff resources estimates**

In 2010, in response to a House fiscal note request to DHS, pertaining to moving the fiscal note function (section 3.98, subdivision 5) to a “legislative budget office division” at the Office of the Legislative Auditor, DHS prepared a fiscal note for staffing costs related to the technical preparation and drafting of fiscal notes.<sup>29</sup> The legislation was not enacted. The fiscal note includes staff costs based on a 2009 level of effort, with adjustments that reflect the impacts of federal funds. No costs beyond the staff costs were provided.<sup>30</sup> The relevant results of this estimate for this purpose are described in Table 13, below:

**Table 13. April 27, 2010 DHS Staffing Cost Estimate**

DHS Fiscal Notes: Estimated Level of Effort April 27, 2010		
1	2009 Session Fiscal Notes (Approx.)	375
2	Estimated Average Hours to Complete	12
3	Total Staff Hours (375 x 12)	4,510
4	Personnel* Cost Per Hour	\$53
5	<b>Estimated DHS Personnel Costs</b>	<b>\$240,646</b>
6	<b>Less: Central Office Federal Financial Participation @ 40%</b>	<b>(\$ 96,258)</b>
7	<b>DHS Non Federal Share</b>	<b>\$144,387</b>

\*Personnel costs include salary and state-paid benefits using a 30 percent factor for benefit costs.<sup>31</sup>

<sup>29</sup> Amending Section 1. Minn. Stat. 2008, section 3.971, subdivision 2.

<sup>30</sup> The figures reflected in this table differ from the fiscal note provided to the Legislature by DHS in the last session, as that fiscal note was reduced to 90 percent of the cost, excluding FFP, under the assumption that DHS would provide 90 percent of the funding needed for OLA to take over the fiscal note function. (DHS was not informed how the other 10 percent would be funded.) As this study does not get to the level of detail of how such a transfer would be funded, we took that line out of the model.

<sup>31</sup> Executive and legislative benefit cost structures are essentially the same. A 30 percent factor for benefit costs has been identified by the DHS’ budget director and has been adopted in comparing LCC and DHS personnel costs.

Federal Financial Participation (FFP) (line 6) would not be available for any work being done outside of DHS. DHS staff explained that DHS is the designated state agency that administers a portfolio of federal programs. This designation gives them the ability to earn federal reimbursement for a portion of associated administrative costs, including costs associated with the preparation of fiscal notes. The federal government has not designated any state Legislature or judiciary as an entity able to administer federal programs or participate in FFP. The federal regulation prohibiting the claiming of FFP for costs incurred by the State Legislature is found in OMB Circular A-87. Under Attachment B, Section 19 general costs of government are unallowable, including salaries and expenses of the Office of the Governor, State Legislature and the judicial branch.<sup>32</sup>

In summary, where the DHS non-federal share to do fiscal notes would cost the department \$144,387, it would cost an outside office \$240,646, or approximately \$96,000 more given these assumptions.

Management Analysis requested that DHS, as a part of this study, take a broader view of the work involved in developing fiscal notes so that costs would go beyond more technical staff time to include policy, legal, data and other technical and related work.<sup>33</sup> Based on this more expansive view, DHS estimated that they spend an average of 52.9 staff hours per fiscal note. In addition to this revised “all-in” estimate are total “technical assistance” staff estimates reported by the three administrations that handled the bulk of the fiscal note requests for the 2009 session:

Health Care Administration	3,865 total hours
Continuing Care Administration	2,334 total hours
Children and Family Services Administration	200 total hours

Every two years, DHS forecasts the percent of anticipated Federal Financial Participation. For the next biennium (2012-2013), DHS estimates that the FFP will be reduced from 40 percent to 35 percent. Using the revised 52.9 staff hours per fiscal note, coupled with the previous assumptions in the first chart and the reduction in FFP, DHS fiscal note costs are estimated in Table 14, below.

**Table 14. Revised DHS Fiscal Notes: Estimated Level of Effort**

1	2009 Session Fiscal Notes (Approx.)	375
2	Estimated Average Hours to Complete	52.9
3	Total Staff Hours (375 x 52.9)	19,838
4	Personnel* Cost Per Hour	\$53
5	<b>Estimated DHS Personnel Costs</b>	<b>\$1,051,388</b>
6	<b>Less: Central Office Federal Financial Participation @ 35%</b>	\$ 367,986
7	<b>DHS Non Federal Share</b>	<b>\$ 683,402</b>

\*Personnel costs include salary and state-paid benefits using a 30 percent factor for benefit costs.

<sup>32</sup> DHS staff email communication, Nov. 30, 2010.

<sup>33</sup> Statutory directive for this study, in Laws 2010, 1<sup>st</sup> Sp. Sess., Ch. 1, Art. 19, sec. 20.

Management Analysis also asked the Legislative Coordinating Commission (LCC) for cost information. While the LCC did not provide a total cost estimate, it did provide staffing cost data.<sup>34</sup> As noted, the House, Senate, and the LCC each has its own salary ranges for fiscal staff.<sup>35</sup> The average ranges, not including state-paid benefits, for the House and Senate are:

Fiscal Analyst I \$54,000 to \$98,000  
Fiscal Analyst II \$66,000 to \$118,000  
Fiscal Analyst III \$72,000 to \$130,000

Using the midpoint of these fiscal analyst salaries (\$92,000), plus the 30 percent factor used for state-paid benefits to DHS employees, would represent an hourly wage of \$57.50 per hour, compared to the revised \$53 per hour figure used by the department.

Applying the LCC hourly rate of \$57.50 to the revised total fiscal note hours calculated by the department of 19,838 fiscal note hours would cost approximately \$1,140,685, compared to a department cost of \$683,402, assuming that the 35 percent federal off-set would not be available to an outside office.

The LCC preliminary estimate notes the following additional considerations:

- If DHS continues to prepare budget forecasts (as opposed to the new legislative staff) then DHS will likely continue to need most of the staff they currently have.
- It is likely that the staff of the legislative fiscal note office would initially need to have access to very knowledgeable fiscal and program staff at DHS so that the notes accurately reflected anticipated costs.
- The legislative fiscal note staff would need to have access to detailed DHS program data, and may need access to the DHS data warehouse.

### **IT implications**<sup>36</sup>

DHS has over 250 information systems and applications. Generally, data from any of them could be aggregated for reporting out, albeit at varying levels of automation, complexity, time and cost. DHS has some systems that provide “canned” reports that aggregate data to date; others do not. Depending on the inquiry, an existing report may meet the information need. If it does not, IT staff resources to write an ad hoc report against source (nonpublic) data may be required.

Fiscal notes are prepared using data from the DHS Data Warehouse for:

- Changing eligibility or payment rates for non-health care forecast. Some non-forecast programs use program eligibility and benefit data from MAXIS and DHS forecast data;
- Changing eligibility for MA or GAMC use eligibility data from MAXIS, service payment information from MMIS, and DHS forecast data;
- Changing eligibility for MinnesotaCare use data from MMIS and DHS forecast data;

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<sup>34</sup> Memo to Management Analysis, “Legislative fiscal note office,” Legislative Coordinating Commission, November 15, 2010.

<sup>35</sup> Benefits for legislative staff are similar to those for unclassified executive branch employees.

<sup>36</sup> From DHS staff comments, email communication, December 2010.

- Changing payment rates to long-term care facilities. These rates also use payment data from MMIS, the DHS forecast, Nursing Facility cost and statistical reports collected through the provider portal, and internal spreadsheets maintained by Nursing Facility staff; and
- Child support obligee and obligor data from PRISM

### **Data Warehouse**

Developing a fiscal estimate requires extensive knowledge of all databases and the inter-relationships between them. Analysts gathering this information are knowledgeable about business operations, can navigate specific data models which can contain upwards of 100+ tables (which can change as legislation imposes new rules), and know how to use access tools like BIQuery or SAS and write SQL, if needed. A particular fiscal note analysis often requires specific data from a variety of sources. For example, a fiscal note on a proposal to change parental fees would require data from the DHS Parental Fee Financial System, from the MAPS IA Data Warehouse, and from the DHS Data Warehouse.

With respect to fiscal notes on forecast programs, when the analysis needs to incorporate more detailed information than is in the DHS forecast data, department staff use program and business operations experts to help frame the questions that will be asked of the department's data experts. The data experts extract the raw data to get information for the economists to produce the fiscal note estimate.

### **Other DHS data resources**

Fiscal notes in some areas can require data that is not in the DHS Data Warehouse. Examples are fiscal notes that affect:

- Child care development changes use databases on child care providers;
- Licensing (e.g., estimating the cost of licensing new types of service, or of changing license fees) uses data from the Licensing Information System; and
- Foster care and adoption assistance services and payment rates use data from SSIS.

### **Cost estimate to access DHS databases**

In estimating costs related to providing access to these databases to an outside legislative office that would complete human services fiscal notes, DHS considered a model of how it provides access to counties. DHS does not charge counties for access to the data in the DHS Data Warehouse. However, counties either purchase their own query tool for someone who has spent six months or longer being trained and certified on the data (this assumes they already have extensive familiarity with the business operations and transactional data flow from the county view), or they access parameterized reports and are responsible for managing an Identity Management environment on their end.

DHS staff developed these reports to address the most basic reporting needs, not the depth of analysis required for fiscal notes. Whether working on fiscal notes or basic reporting needs, DHS staff work with county staff to provide access rights to the DHS Data Warehouse data as appropriate. DHS staff in various programs within the department spend significant time training county staff on how to use the data in the DHS Data Warehouse and on using data tools.



For public use and to better support government transparency, Data Warehouse staff have already looked into providing public access to some reports using as much of existing infrastructure as possible. To develop a robust web portal that would allow more dynamic reporting than just a parameterized report offers would likely cost \$100,000 plus \$40,000/year maintenance plus staff time to maintain the reporting environment.<sup>37</sup> (This estimate does not include any DHS staff costs to prepare summary data reports; nor does it include costs for DHS staff to provide training on how to use the data in the DHS Data Warehouse.)

### **Data Privacy considerations<sup>38</sup>**

Assuming designated legislative staff would have access to the same data resources that current DHS staff have (all of the databases currently accessed to prepare fiscal notes), the Office of the Legislative Auditor's (as a proxy for a legislative office) existing authority to access and use private data may not be sufficient.

Most information systems at the department contain private data. Security roles also are not monolithic across systems and many would certainly involve viewing private data. Further, system roles/security are designed so that access is not generally limited to aggregate (summary) data. This is done intentionally, in part to recognize that staff who do analysis for fiscal notes need to access and review individual level data (private data) to confirm or clarify analysis of aggregate data.

One difficult issue concerns giving data access to people outside DHS (and outside the Child Safety and Permanency Division in DHS, for that matter). SSIS data is very complex and requires a thorough understanding of program, policy, and data structure. In order to get an outside staff person up to speed on how to query the data, SSIS staff reported that they would need to spend much more time than if they did it themselves. PRISM data also is accessed through the data warehouse. Again, that data is very complex and requires in-depth knowledge of program policy and data structure.

Additional privacy considerations identified by DHS staff include:

- Ensuring the proper handling and safeguarding by its employees, subcontractors, and authorized agents of protected information collected, created, used, maintained, or disclosed on behalf of DHS. This responsibility would include ensuring that employees and agents comply with and are properly trained regarding data privacy laws.
- Complying with the “minimum necessary” access and disclosure rule set forth in the federal HIPAA and the state MGDPA. The collection, creation, use, maintenance, and disclosure of protected information shall be limited to “that necessary for the administration and management of programs specifically authorized by the Legislature or local governing body or mandated by the federal government.” *See*, respectively, 45 C.F.R. §§ 164.502(b) and 164.514(d), and Minn. Stat. § 13.05 subd. 3.

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<sup>37</sup> A web-based information portal is a secure window for a public user to access the data DHS allows them to see, without letting them see restricted data.

<sup>38</sup> DHS staff comments, email communication, December 2010.

- Immediately notifying DHS upon receipt of a request to release private data.
- Reporting to DHS any privacy or security incidents involving this data.

### **Using Avatar to prepare payment for services fiscal notes**

Fiscal notes relating to care and services provided in SOS and MSOP treatment programs deserve special note. Avatar is an electronic integrated Patient Management system that includes a Healthcare Medical Record (EMR), Patient Billing and Accounts Receivable system. Avatar includes information for both State Operated Services and the Minnesota Sex Offender treatment programs. This system requires a significant amount of personal and private information that is classified under Health Insurance Portability and Accountability Act (HIPAA) as private information.

Information related specifically to patient demographics, medical history, legal status, financial status and responsible parties are maintained in this system. This information is used to bill healthcare claims to all payers including Medicare, Medicaid, commercial insurance and other third party payers. Information in the system is by patient level and includes their medical, behavioral diagnosis history as well as information related to the clinician reporting for all episodes of care received by the patient.

DHS staff use Avatar information when preparing fiscal notes that affect payment for services, changes in services for individuals with certain legal status requirements and other questions that require a review of clinical or service specific payment structures.

Obtaining information from this system for a fiscal note related to DHS State Operated Services typically requires the expertise of a DHS team, which includes a clinical staff person, Health Information coder, financial analyst, SOS policy expert and an Avatar trained programmer. Each of these individuals has limited access to the information contained in the system based on the HIPAA privacy rules.

According to DHS staff, to provide an outside group access to Avatar would require the vendor to develop a system “portal” that would insure that the data privacy requirements are met and the security of the system and data are maintained. It would also require the vendor to develop a data repository that would allow for the summarization of information that may be required. Avatar is proprietary software that would require a contract for work to be done by the vendor, NetSmart Technologies, to develop access for such a portal. There would be development costs, annual user fees (based on the cost of development and the number of users) and an ongoing maintenance and support fee to upgrade the portal when changes are made to the Avatar system. This would need to be negotiated with the vendor, as this type of portal access is not currently available for Avatar.

### **Federal legal requirements**

It is common practice for a fiscal note preparer to access DHS’s program databases to obtain the specific information regarding the program and its recipients or participants, necessary to assess the fiscal impact of proposed legislation.

The data accessed in this process could be data that is classified as “private;” “nonpublic;” or “confidential,” including protected health information, welfare data, licensing data, mental health data, chemical dependency records, etc. The collection, retention, and disclosure of such data are governed by federal and state law. A review of these laws does not uncover an applicable exception for disclosing these data types to a legislative office for the purpose of preparing fiscal notes.

However, both federal and state laws allow these types of data to be disclosed if another statute specifically authorizes the access. *See* 45 CFR § 164.512(a); Minn. Stat. § 13.46, subd. 2(a)(6). The enactment of a statute that clearly authorizes a new legislative office to view all necessary information would be necessary to allow the legislative office the same type of access to DHS data that current DHS fiscal note preparers have. DHS would also require a data sharing agreement with the legislative office.

# Other Minnesota Agencies

The fiscal note practices of the Departments of Public Safety and Education and the revenue analysis process of Minnesota Revenue were reviewed to determine if there were any practices that might applicable the human services fiscal note process.

**Selection**

The Minnesota Department of Education (Education) was selected as a peer agency because it completes a significant number of fiscal notes; and their notes require forecasting, a prominent feature of DHS’ analyses. The Department of Public Safety (DPS) was selected as it is considered to have a regimented, consistent process. Generally, MMB and legislative staff found that MDE’s and DPS’ fiscal notes were completed in a timely manner and provided the quality of information desired by the Legislature.

A review of Minnesota Revenue’s revenue analyses also was undertaken to determine whether this process – as distinguished from the fiscal note process – contained any useful practices that could be adopted for fiscal notes. Also, because Minnesota Revenue is engaged in forecasting – an aspect of DHS’ notes that sets them somewhat apart – this topic was explored further to identify promising practices. However, interviewees thought that the manner and method of forecasting state revenues is dissimilar to DHS’ program forecasting. An interviewee explained, “Revenue has very good models; Revenue is like a factory; the tax code works like a model. There are many more interactions at DHS regarding programs. People migrate to different benefit sets; there are many moving parts. Tax policy is more straightforward.”

**Number of Fiscal Notes for the Departments of Public Safety and Education for the past five sessions**

The three agencies’ relative proportion of notes varied each session within a predictable range of 33 percent, Department of Education; 45 percent, DHS; and 20 percent, Public Safety.

**Table 15. Comparison of total fiscal notes by three agencies**

Agency	2001-02	2003-04	2005-06	2007-08	2009-10	Total notes
MDE	326	239	348	418	360	1,691
DHS	441	298	475	366	528	2,108
DPS	60	177	192	210	273	912
Total	827	714	1,015	994	1,161	4,711
MDE	39%	33%	34%	42%	31%	36%
DHS	53%	42%	47%	37%	45%	45%
DPS	7%	25%	19%	21%	24%	19%
Total	100%	100%	100%	100%	100%	100%

### **Preparing and delivering fiscal notes**

Agencies rely on a number of staff to prepare, assign, complete, edit, revise and post fiscal notes. All of the interviewed agencies have internal training programs for their staff to maintain a knowledgeable base of fiscal note expertise. They also have established processes for disseminating and prioritizing work on fiscal notes, although, similar to DHS, one agency noted, “many times, they’ll ask for notes that never get a hearing. This is challenging to prioritize. We try to ask, ‘will it go to a hearing?’ If not, we won’t prioritize that fiscal note.”

Although legislators might – from time to time – seek an informal note for unintroduced legislation, these agencies stated that their established practice is to not complete a fiscal note until a bill is assigned a House or Senate file number. One interviewee commented on informal fiscal notes:

If you want to know the impact of a bill, then you should ask through the FNTS. ...  
Once a number is out there, it sticks. [And] if anything, [agencies] need to be consistent in this game, not all over the map. There is no easy way to file your fiscal note if there is an informal version and then a formal request comes through; you don’t know which one is in the final bill.

Time lag in the preparation of fiscal notes is associated with the Word format used for fiscal notes and the on-line storage of draft notes. Similar to DHS, interviewees indicated that they would like to see the fiscal notes done in Excel spreadsheets rather than in Word, as it is much easier to calculate costs and also to verify math as the fiscal note moves within the agency.

Many agencies do not store their draft fiscal notes on-line because they are immediately viewable by others outside the agency. Therefore, agencies have created shadow systems for drafting and reviewing fiscal notes before posting them. These shadow systems are less efficient than the virtual on-line storage system for notes, resulting in delays. One interviewee recommended that agencies be given a password, or exclusive read-rights for preparing fiscal notes, and that the note would be available on-line to the fiscal analyst on its due date.

### **Formulae-driven fiscal notes**

A majority of DPS’ and Education’s notes are the result of applying established cost formulae. For example, in the case of Education, agreed-upon formulae for counting pupils at the state level, as differentiated from the district level, has made the process of completing fiscal notes easier. This, however, wasn’t always the case. Approximately ten years ago, prior to the establishment of a commonly accepted formula for counting pupils the Legislature, Education and school districts were not in agreement on this issue.

In formulae-driven fiscal notes, the Legislature’s fiscal analysts provide major analysis. One fiscal analyst familiar with this indicated that in cases where legislation changes the number of pupils for a particular program, she is capable of undertaking the needed analysis, inserting the called for change in pupil levels caused by the legislation, and generating a fiscal result. In practice, the fiscal analyst will often confirm this fiscal note outcome with agency counterparts to ensure they are in agreement.

Similarly, Public Safety's Driver and Vehicle Services Division uses a generally accepted cost formula for projecting the cost and revenue forecasts for the designer license plates we see on our roadways.

The availability and use of consistent data by these agencies, and the Department of Revenue, as discussed below, highlight a key difference with DHS. As described above, many programmatic areas of DHS rely heavily on legacy data systems that were designed as payment systems and not designed to provide detailed program information on populations and sub-populations. Although DHS has developed a complex system of what are essentially workarounds, and has a cadre of experienced analysts who can data-mine the systems, there are necessarily inherent inconsistencies in data definitions, how the systems are queried, and a host of other factors. This complexity is compounded by the (organizational) size of DHS, the number of interconnected programs, and the amount of money that flows through the department. In contrast, Education describes their process as "razzle dazzle," characterized by a database which they "all use consistently" to "objectively project costs." Interviewees noted that "the key is consistent use of data, more so than accuracy; although we do think we have a set of good forecast data – the budget forecast and the same data as the Legislature."

### **Consolidated and omnibus bills**

Echoing DHS' observations, two common challenges facing the comparison agencies were cases where the legislation involves multiple agencies or when a final fiscal note is requested for an omnibus bill.

In the case of a multi-agency bill, there are times when one of the agencies assigned to complete a part of the note has a minor role and therefore places a lower priority on the activity. In this instance, if a lead agency has completed its fiscal note responsibilities, it is no longer able to advance the process, even though the fiscal analyst has not received a final note. When consolidated fiscal notes are behind schedule due to the failure of one agency to respond, agencies suggested that MMB to play a more prominent role in determining when and whether a preliminary note should be provided to the fiscal analyst and communicate that action to the affected agencies.

A fiscal note for omnibus bills presents a unique challenge for an agency that has completed multiple fiscal notes on various parts of that bill throughout the session. Creating these fiscal notes is not simply a matter of adding up all the previous fiscal notes on discrete proposals. Rather they require agency staff to take an additional step of looking for and costing out interaction effects among the various provisions. Additionally for DHS, where provisions would require DHS to make various changes to the major computer systems it relies on for county administration and/or service payments, those changes must be properly sequenced and accounted for by the fiscal note. For example, one provision in an omnibus bill might increase a payment rate for a particular service. If another provision in the omnibus reduces the number of people who are eligible for the service, the fiscal note must analyze and report the net effect of increasing the payment rate for a service that fewer people will be receiving.

Similar to the feedback from DHS and MMB, for omnibus bills, agencies would appreciate a “heads up” highlighting whether there are intended legislative changes within the omnibus bill that go beyond the bills for which fiscal notes were previously written.

### **Revenue Analysis by Minnesota Revenue**

Revenue analyses are prepared by Minnesota Revenue for the Legislature, Governor and other entities. A revenue analysis shows the direct impact of a state tax law change on state tax revenue over the four year period included in the financial forecast window.

Like fiscal notes, revenue analyses are used to help legislators make informed decisions on proposed legislation and are also important to the policy-making process. This process was reviewed to determine whether it has any features that could be adapted/used to improve the human services fiscal note system.

Revenue analyses are quite clear about what they *do not include*:

- The impact on the overall level of economic activity (such as job creation, employment, investments, and consumer spending);
- The change in the cost of state tax administration, although the analyses include an indicator as to whether or not administrative costs would be affected;
- The change in federal taxes (property taxes and, in some cases, other local taxes *are* included)

What is most interesting about the Revenue snapshot is the level of trust and the collaboration between the Revenue staff and the Legislature’s Tax Committee staff, reflected in interview comments. An observer commented:

Legislative staff and Revenue’s tax research staff – both have longevity – and they work with each other all of the time. There is a good-sized research group at Revenue and experienced fiscal and research staff at the House and Senate. They have a long term working relationship with each other and communicate all through the process. They have been through so many governors, Legislatures, and committee chairs that they tend not to react to politics and work the numbers.

A Revenue newsletter details the relationship:

The House and Senate each have their own research arms, but the tax numbers and models they use come from Revenue – and there is a high degree of cooperation. Though Revenue is part of the executive branch, [Tax Research Director Paul] Wilson says, ‘I think we work for the Legislature as much as the Governor.’ Minnesota is not unique in this regard, but few states enjoy as collaborative a relationship between legislative- and executive-branch researchers.

Also for this project’s purposes, “This approach means lawmakers and the Governor work from the same data and economic models. It helps avoid needless duplication of efforts or arguments over multiple sets of base numbers, as in some other states.”

Regarding the relationship between the two staffs:

... as the recently concluded session shows, there is plenty of room for debate about the merits or drawbacks of various tax proposals. One key of the system's success is that legislators and their staff know they can get objective analysis from Revenue. 'We may make mistakes,' says Wilson. 'But we don't make politically motivated mistakes.'

Interestingly:

And the details of some requested estimates stay confidential unless lawmakers release them publicly or introduce a bill based on their proposals. That confidentiality is especially important when legislators are weighing proposals that may not match those of the Governor – or each other. This 'firewall' has been in place for many years, says Deputy Commissioner Dan Salomone. '[It] is well-accepted by all parties at the Legislature.'<sup>39</sup>

An indication of the difference in relationships between Revenue staff and the Legislature and DHS staff and the Legislature is that although Revenue published a prioritization list that placed individual legislators' requests relatively lower on their list, DHS staff were reportedly heavily criticized for submitting their own priority list in a memo to their legislative committees.

The Department of Revenue distributes a document entitled "Ways to Help Us" to the Tax committees at the beginning of each session. This document contains a number of tips on how to best work with the agency to prioritize and secure needed revenue analyses. (Appendix E)

### **Relationship with the Legislature**

All three comparison agencies report good communications with the fiscal analysts of their respective committees throughout the legislative session. Moreover, some staff within the agencies had previously worked for the Legislature or MMB. This breadth of experience has provided a perspective on the workings of the other branch of government and engendered trust.

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<sup>39</sup> "Revenue's researchers: Beyond the numbers," Larry Mastbaum, "renews: A publication of the Minnesota Department of Revenue," page 11.



# Models in Other States

Additional description of research of other states' models, including a national overview and best practices review of other states' fiscal note processes is in Appendix G, in response to the legislative directive for this study to examine other states. Following is a summarization and highlights of major findings from more detailed research of three states (Wisconsin, Maryland, and Washington State), and potential for application and improvement to Minnesota's model.

## Wisconsin

Wisconsin is considered a "legislative" model by NCSL standards because they have the authority to prepare fiscal notes, along with the executive branch. They also take an active or directive role in fiscal note review, as described below.

Their nonpartisan Legislative Fiscal Bureau (LFB) is the budget shop for the Legislature and plays a number of key roles in the fiscal note/budget process. For example, when a bill comes before the Legislature's Joint Committee on Finance (Joint Committee), the LFB writes an advisory document that summarizes the bill's fiscal effect. Nothing goes to the Governor for signature except through the Joint Committee and the LFB. This summary document provides history and context, and explains the agency's fiscal estimates and the reviews up to that point. The LFB conducts a critical analysis of the information presented in the fiscal estimates and acts as an independent source of fiscal information and a second opinion.

The LFB has flexibility to evaluate the available information and may not necessarily use the information as presented in fiscal estimates. The Joint Committee can ask the LFB to revise the fiscal estimates, and would have the original agency fiscal estimate available for its deliberations. The LFB is a nonpartisan office and was described in an interview as being comparable to the Congressional Budget Office.

When a bill draft has what the agency considers to be technical defects, per standards described in the Legislature's "Fiscal Estimate Manual," there is a formal process for agency communication with the Legislature, namely, through a "technical memo" that is given to the Legislature's staff who forwards it to the fiscal note requester or bill author.

Dollar ranges are provided when specific estimates can't be provided.

Bills with no fiscal impact require a fiscal estimate narrative, explaining why there is no impact.

Similar to Minnesota, interviewees said that it is difficult to reasonably expect that generalists – referring to fiscal analysts in the executive or legislative branch budget agencies – would be able to put together the best original fiscal estimates. The budget agency analysts can be responsible for reviewing fiscal estimates or drafting new or revised versions, but are not part of the executive branch agencies that have direct programmatic responsibilities and in-depth policy and fiscal knowledge and information. They are removed from needed first-hand knowledge and usually from direct access to some important and necessary information.

It was noted in an interview that the need for access to not-public information would be unusual, and data needs more likely would be for de-identified, summary data. Contracts between third-parties – for example in health care provider networks and for managed care organizations can be not-public information and may be unavailable to budget agency staff.

Similar to Minnesota, nonpartisan legislative staff are more generalists than policy experts, and can be moved around as needed to meet demand.

With regard to prioritization, in Wisconsin, the Legislature and Governor's Office sometimes come to agreement on priorities for fiscal estimates and so instruct the agency staff. This likely was made possible by the Governor's Office and both the Senate and Assembly being controlled by the same party in 2009-10. Leadership and staff in both branches presumably developed a collaborative working relationship and shared similar policy priorities, thus simplifying work for staff analysts, relative to Minnesota.

LFB staff take a more directive role with agency staff in the development and review of fiscal estimates. Fiscal analysts in the LFB need to know the human services and health programs within their realm of responsibilities to the extent that they can:

- Critically and independently evaluate fiscal information presented to them,
- Formulate appropriate questions, and
- Know how to access relevant additional information when necessary – in order to ensure quality of the final fiscal estimates and narratives and prepare summaries for the Joint Finance Committee.

The LFB role as an independent second opinion with respect to the state agency fiscal estimate submissions extends to substantially revising or supplementing original fiscal estimates when that is deemed appropriate to aid the Legislature.

The LFB makes a regular practice of following up with the agencies to make sure that agency staff have included sufficient explicit data, assumptions, and the process for arriving at the fiscal estimate results. In some cases this requires that the LFB staff use some or different data or methodology. Information sources are verified as part of the review process. The budget staff also reviews the agency interpretation of the legislation to ensure it is consistent with LFB conclusions. Additional issues might be spotted and follow-up with the agency needed to address those. The LFB staff may also contact others outside government or in the federal government, for example for uncertainties that appear in the federal laws. Good ongoing communications with the Legislature helps to align expectations overall and for triage/prioritization when the workload becomes heavy.

## Maryland

As context, Maryland has a very different budget model from Minnesota. The Governor introduces a budget, and the Legislature can only cut or constrain it. According to staff:

The total revenue available for the session is determined by an independent agency elected by the citizens called the Comptroller. The revenue budget is by statute, a consensus budget, provided to the Comptroller by the Governor and Legislative department. There is a single forecast accepted by both branches.

In terms of legislative support regarding fiscal notes, Maryland has a very strong Legislative model. They have a separate Office of Policy Analysis (OPA) within the Department of Legislative Services. The OPA has 144 non-partisan staff that support the Maryland General Assembly providing a comprehensive range of legislative budget support services, including all budgeting, committee work, fiscal notes, and legislative drafting. Interviewees noted that legislators do not have a separate cadre of partisan staff support. A Member may have a legislative or administrative assistant, but all policy-related legislative support work is done by the Department of Legislative Services. Staff noted that although fiscal staff have separate responsibilities from those of policy staff, “it’s very well coordinated,” characterized by a high degree of communication and collaboration.

The Fiscal and Policy Analysis section, in the Office of Policy Analysis, Department of Legislative Services, analyzes operating and capital budgets, processes budget bills, prepares fiscal notes, and provides staff support to the fiscal committees and various statutory and special committees of the Maryland General Assembly.<sup>40</sup> Sixteen staff from this section work specifically on fiscal notes and are supported by four managers. The Fiscal and Policy Analysis also collects and reports local government financial information; prepares forecasts of revenues and expenditures; conducts management studies and program evaluations; researches and reports on fiscal policy issues, taxation, operation of governmental units and programs, and the fiscal relationships of state and local governments.

The office prepares fiscal and policy notes. A fiscal and policy note prepared on a bill contains:

- A summary of the bill;
- An estimate of the fiscal impact of the bill on the revenues and expenditures of state and local governments during the year in which the bill is to become effective and for the next four years following that year;
- An overview of relevant existing law;
- An assessment of the bill’s economic impact on small businesses; and
- A fiscal and policy note may also incorporate background information about the bill’s introduction or associated programs and policies.

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<sup>40</sup> The Department of Legislative Services is part of the legislative branch of Maryland government. <http://www.msa.md.gov/msa/mdmanual/07leg/legser/html/legser.html>. The organizational structure of the department: <http://dls.state.md.us/data/tabs/org/OrganizationalChart.pdf>. Maryland government also includes the executive branch Department of Budget & Management. <http://www.msa.md.gov/msa/mdmanual/11dbm/html/dbm.html#organ>

Maryland statutes specify that a committee may not vote on a bill unless a fiscal note accompanies the bill.

The Executive Director of the Department of Legislative Services directs the preparation by the department of a fiscal note for every bill.<sup>41, 42</sup> Notes are assigned to Fiscal and Policy Note Analysis office analysts based on subject area. The analyst examines the bill drafting file and contacts the bill drafter, committee staff, and budget analysts for relevant information.

The analyst contacts affected state agencies, local governments, and others that may have relevant information. State and local units of government are required to promptly provide any information required by the department for preparing a fiscal note. The analyst conducts additional research – library, reports, Internet, etc. In addition, the analyst reviews all information and asks questions as needed for additional or clarifying information. An interviewee noted that, “there is a close working relationship between the legislative staff and the executive branch staff; it is a relationship that’s been built over time. We know that we can pick up the phone and work out issues; we work well together despite the politics at the higher levels.”

The analyst develops revenue and expenditure projections based on various sources and models in the office.

Small business impact statements are required for all legislation.<sup>43</sup>

- For executive branch department bills or administration bills, the administration provides the small business impact statement, which is attached to the fiscal and policy note prepared by the Legislature’s Fiscal and Policy Analysis office.

The Department of Legislative Services states its concurrence or disagreement with the small business impact statement.

- For other bills, the Department of Legislative Services develops the small business impact statement. Fiscal and policy notes must include a rating of the impact on small businesses – either minimal/none, or “meaningful.”<sup>44</sup>

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<sup>41</sup> From two documents called Fiscal and Policy Notes Overview (presentation materials 2009):

[http://dlslibrary.state.md.us/publications/OPA/P/FPNOpres\\_2009.pdf](http://dlslibrary.state.md.us/publications/OPA/P/FPNOpres_2009.pdf) and [http://dlslibrary.state.md.us/publications/OPA/P/FPNO\\_2009.pdf](http://dlslibrary.state.md.us/publications/OPA/P/FPNO_2009.pdf).

<sup>42</sup> Fiscal note requirements are specified in 2010 Maryland Code. State Government. Title 2. General Assembly. Subtitle 15 – Legislation. Section 2-1505 – Fiscal notes and waivers.

<http://www.michie.com/maryland/lpext.dll?f=templates&fn=main-h.htm&cp=mdcode>

<sup>43</sup> For purposes of the impact statements, small business is defined in statute as a corporation, partnership, sole proprietorship, or other business entity that: is independently owned and operated, is not dominant in its field, and employs 50 or fewer full-time employees.

<sup>44</sup> For further information about the analysis required for “meaningful” impacts, see *Fiscal and Policy Notes Overviews*, above.

A letter requesting a state agency response is sent as soon as the bill text is available. The response is due in five days. If a committee chair decides to expedite a bill hearing, then the agency response is due as soon as possible. As in Minnesota and elsewhere, staff note that, “timely agency responses are a critical part of getting notes to committees as required by law.”

Prior to the legislative session, agencies are given instructions on how to respond to requests. An agency must provide any relevant information they may have, even if not directly affected by the bill.<sup>45</sup>

The volume of work is 2,000 bills during a session over 13 weeks. The 15 staff work on 20-25 fiscal notes each week during the session. Staff report that “many notes are very easy.” Bills introduced on the first day of the session allow a lot of time to get the notes done. The analysts also work with the bill drafters, so work can start on the notes even before the bill is filed. The analysts have access to all the files the bill drafters have, so it is easier to understand the intent of the author. Also, bills by the Governor are filed by a certain deadline, meaning that analysts can get started on them early.

### **Staff expertise development**

Interviewees said that the expertise of the fiscal and policy analysts has been built over time. Interviewees report that, initially, the analysts rely on the agency. Over time, this shifts to the analysts group.

Nonpartisan staff develop policy expertise in large part through staffing and involvement with legislative committees. The analysts group also staffs statutory workgroups, some of which meet frequently. Along with that, there is professional development; NCSL committee membership; and attendance at the national Medicaid directors meetings to learn about other states’ perspectives, for example. In the off-session, staff also conduct large-scale research projects and write white papers, including research on other states’ practices. “The analysts are hard core; they are learning about health care and human services policy year round,” which gives them the depth of expertise found at the agency level.

In high-profile subject areas, the Department sometimes seeks outside help, for example, the department has contracted with university staff to provide analyses on controversial, politically-charged topics. Staff note that “this kind of work can be done in-house, but it takes time, and is not doable during the final days of a session.”

## **Washington State**

Washington State has a model very similar to Minnesota’s. Their Office of Financial Management receives fiscal note requests from the Legislature and routes them appropriately. In most cases, the Legislature wants the fiscal note available at least 24 hours before a scheduled hearing, and OFM assigns the due date to meet that deadline *and* to allow the agencies at least 72 hours from the time the request is received. Sometimes hearings are scheduled prior to the assigned due date, so agencies are directed to watch hearing dates. Washington staff reported that the “crunch time” for OFM generally occurs at the start of the legislative session, as many bills

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<sup>45</sup> From *Fiscal and Policy Notes Overviews*, above.

are introduced at the very start of session, and staff get to work on fiscal-noting them right away. Toward the end of the legislative session when there is the “normal rush,” OFM analysts work closely with the legislative committees and budget analysts.

State agencies prepare fiscal notes. Assumptions underlying the fiscal note must be shared with other agencies that prepare fiscal notes on the same legislation, so that the resulting consolidated fiscal note will become a cohesive package. The lead agency has been directed to record its assumptions in the Internet Fiscal Note System (MMB’s FNTS equivalent) as soon as possible, so that the other agencies can access it quickly.

The OFM analyst may contact an agency with questions or request a revised fiscal note. OFM must approve fiscal notes for form, accuracy, and completeness, then distribute the fiscal note to the Legislature.

Legislators request fiscal notes on draft bill language as well as bills that have been introduced. The OFM may get a call from the Legislature to re-visit assumptions in a fiscal note that has gone to the Legislature, but it is not common. The OFM processes more than 5,000 fiscal notes for a session with 30 budget analysts. Human services fiscal notes comprise about 1,500 in an average session.

Human services program fiscal note drafting and review considerations are not much different from the fiscal notes in other program areas. Additional observation: there is sometimes greater “wobble room” (or more reasonable options) in terms of how the requirements of some human services bills may get implemented. In that sense, it can be more difficult to get to precise dollar estimates. In some cases, that is why some legislators are more frustrated with human services program fiscal notes, similar to Minnesota. There also can be difficulties in estimating the impacts on local units of government. Overall, it can be difficult to project that estimates will be “accurate” in some human services fiscal notes.

Very similar to Minnesota, human services program changes frequently require changes to information systems and technology. Staff encounter major difficulties in estimating those costs because of the complexity and ambiguities that exist. Another layer of difficulty is that the OFM analysts are generally not well-versed in evaluating IT change costs.

When OFM assigns fiscal note preparation for a bill to more than one state agency, one of the agencies is always designated as the lead. The lead agency has a lead analyst who is responsible to set up the essential assumptions for the use of all of the participating agencies and copy it into the fiscal notes information system so that it is available for use by all of the participating agencies. Sometimes the agencies don’t agree on all of the assumptions, and that has to be worked out among the agencies. Complete resolution of those issues may not be practical in some instances.

The OFM Budget Division has a small central operations group that has general oversight for the fiscal note process – that is, oversees, provides guidance, and advises, to make sure it all works well. This Operations Section is separate from the program sections that include the analysts.

This group also prepares the fiscal note instructions in documents noted above for the Legislature and state agencies.

As OFM puts together the information for a consolidated fiscal note from several agencies, the OFM analyst can comment on inconsistencies in assumptions or note that different assumptions are needed. About ten percent of bills require extra analyst time to get the agencies in agreement or otherwise resolve the issues of differences.

The OFM discourages use of ranges in fiscal notes. Staff note that the tendency could be for legislators to pick either from the high end or the low end, depending on their preference for the outcomes, and this is seldom useful.

The fiscal impacts can be called “indeterminate” in a fiscal note; however, the OFM prefers statements of options and an explanation of the underlying variables and drivers. If fiscal impacts really are incapable of being determined, then more explanation of the issues leading to that conclusion are expected.

Agencies are directed to not distribute fiscal notes directly – OFM must review, approve, and make the formal distribution. However, agencies may share draft fiscal notes with legislative staff to assist communications. Such drafts should be coordinated with the OFM analyst and clearly marked as drafts rather than approved fiscal notes.

## **Conclusions from other states**

The review of other states’ practices for preparing and reviewing fiscal notes to ensure accuracy and independence revealed a range of preferred methods and procedures. States have a variety of ways to promote good fiscal estimates, and most provide instructions/guides that explain requirements from statutes, legislative rules, and other good practices that have been developed, to those who prepare and review the estimates.

Conclusions from the study of other states’ practices include the following:

1. Fiscal note preparation and review practices differ among the states. As shown in the NCSL survey data, other states have a variety of structural models, practices, and procedures for preparing fiscal notes.
2. Other states’ practices for preparing human services fiscal notes appear essentially the same as for other program areas. Overall, the same methods and procedures that ensure independence and accuracy for fiscal notes in any program area pertain equally notes prepared for human services bills. Some specialized background in specific program areas is expected for analysts in any program area for which fiscal notes are prepared or reviewed. That expertise often is developed over time.
3. The fiscal notes preparation and review process is part of, and inseparable from, the larger budget process in the states. A strong legislative budget agency (Maryland is the example used in this review) also has greater direct responsibilities and controls over the fiscal notes processes. A legislative budget agency may also not have that full extent of responsibilities and rely to a greater extent on the executive budget agency (Wisconsin is the example here).

Another basic model is to rely on state agencies to prepare an initial fiscal note, followed by reviews primarily the responsibility of the executive budget agency, with legislative evaluation and follow-up (Washington and Minnesota are the examples).

From available information from interviews, there does not appear to be any inherent superiority of one model or another across all the states. However, the legislative models are in the great majority among the states.<sup>46</sup> The practices in the states to ensure quality fiscal notes were essentially the same without regard to whether the responsible entity was an executive branch or a legislative branch budget agency.<sup>47</sup>

4. The basic framework and guidelines for analysts to ensure “accuracy and independence” and reliable fiscal notes are usually well-stated in guidebooks published by states. Washington and Wisconsin, for example, had good explanations of process, fiscal note guidance, and instructions for use of automated fiscal note systems. However, there are enough variations in states’ practices and structures that reviewing several versions of guidelines provides useful insights.

Many statements of guidance are admonitions to preparers rather than strictly an attempt to list the steps that ensure accuracy.

5. Suspicions of partisanship and lack of trust as problems underlying fiscal notes’ credibility and credibility of reviews came up in occasionally in interviews, but there was no apparent relationship to any certain budget or fiscal note practices.
6. The questions of “independence” were apparently related to the perceived quality of original fiscal note information from state agencies and a sufficient review and corrective function when needed. None of the other states interviewees for this study offered the opinion that a legislative budget office provided better service for fiscal notes than an executive branch budget office – or vice versa. There may have been unstated assumptions that legislative staff would be more removed from executive branch influence or bias, but there were also questions about how legislative staff would respond to a legislator’s influence or bias. Trust and good communications were highly valued.

Interviews with other states also highlighted the following practices that contribute to the creation of high quality and timely fiscal notes :

- Good communications and trust between the executive and legislative branch staff involved in fiscal note preparation and review.
- Sufficient people resources, particularly during periods of high workload.
- Clear, detailed instructions/guidelines for fiscal note preparation – which were very similar among states that were recommended for this study.<sup>48</sup>

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<sup>46</sup> As described in the National Conference of State Legislatures survey results in Appendix F.

<sup>47</sup> The conclusion is based on reviews of information available online from summary reports relating to budget processes, many states’ fiscal notes instruction manuals, and from a handful of interviews, but does not represent an exhaustive inquiry of all states.

<sup>48</sup> Guidelines and instructions for those states are presented in summary form in this section. Additional insights



- Reliance initially on state agencies staff (who have the in-depth program expertise and direct data access) to work with budget agency instructions and to provide either the draft fiscal information for budget agency staff or the original fiscal note.
- Nonpartisan and thorough review of the original information from state agencies and others, with sufficient access to underlying data, assumptions, and methods for calculations.
- Well-trained, experienced, and generalist budget analysts, but with sufficient program-specific background. For human services program areas, Medicaid expertise was most often mentioned.
- Information systems for fiscal notes that facilitates all aspects of preparation, reviews, approvals, and transmittals.

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were provided by two states that looked at improvement options for their fiscal note processes and structure.

# Appendix A

## Interview Guides

Interview questions evolved through the course of the study, as the project team became better-versed in the subject matter and focused the interviews on the most relevant issues. However, these guides served as a starting point and illustrate the scope of the project.

### **DHS Staff** **Interview Questions**

1. Please provide an overview of the major process steps in developing your fiscal notes.
  - How many FTEs work on fiscal notes in your area?
  - What were some of the changes to the process as a result of your recent kaizen, and how do you see that affecting timeliness and quality for the next session?
2. What do you think works well within the process, what are some strengths of the system?
3. Where do you see inefficiencies? If you were to do a process improvement exercise from beginning to end, what points in the process would you target? Where does the fiscal note “sit” waiting for something to happen? Where are there bottlenecks, where are there multiple approvals, etc.?
4. How do you handle end of the session crunch times for fiscal notes, and crunch times around committee deadlines? How do you ensure timeliness and quality of fiscal notes during these periods?
5. How do you handle legislative requests for fiscal note-like information that don’t go through the formal FN process? What are the risks and benefits of having a less formal sub-process?
6. What could DHS/your administration do to improve either the process or quality of the fiscal notes?
7. What could the Legislature do?
8. What could MMB do?
9. What do you think would be the benefits and drawbacks of creating a separate office to prepare fiscal notes, located at the Legislature?

## **Legislative Staff Interview Questions**

1. Please describe the process to request fiscal notes from DHS.
  - a. To what extent is the standard process (entry into the FNTS) usually followed for fiscal notes?
  - b. What else do you do? (e.g., do you usually call DHS or MMB staff?)
  - c. Please describe the circumstances in which work-arounds (e.g., fiscal advisories, informal notes) are requested.
  - d. Have they proven “good enough?” How do you know?
  - e. To what extent have “preliminary” fiscal notes vs. “completed” (signed off by MMB) notes been sufficient? Have there been any significant mishaps?
  - f. How do you evaluate quality in general? What do you look for? What are some red flags?
  - g. To what extent are the narratives in the notes useful?
  - h. To what extent do you use the “fake bill” function to get a fiscal note, and under what circumstances?
2. What do you think works well within the fiscal note process, what are some strengths of the system? Where and what is the value added at major points in the process?
3. Where do you see inefficiencies? If you were to do a process improvement exercise from beginning to end, what points in the process would you target?
4. What could DHS do to improve either the process or quality of the fiscal notes?
5. What could the Legislature do?
  - a. Can legislative staff do more to help triage or prioritize the FN requests?
  - b. What is the potential for increasing the capacity of legislative staff to provide more technical assistance to Members, informal fiscal notes, “ballparks” or ranges, etc., prior to requesting a formal fiscal note from the executive branch? What specifically could legislative staff do if provided the resources? In addition to staffing, what would you need?
6. What could MMB do?
7. What do you see as the benefits and risks of creating a separate office to prepare fiscal notes – either centralized at DHS or a legislative office in lieu of DHS/the executive branch?
8. What other implications should be considered, based on your experience with existing, comparable research offices at the Legislature, and from your knowledge of other states’ experiences with their Legislature-based fiscal note offices?
9. What else should I be aware of, or keep in mind, while conducting this project?

**Legislators**  
**Interview Questions**

1. What problems and concerns led to the study requirement (for example, timing, process, completeness; perceptions of accuracy, objectivity, and independence; other aspects of quality)?
2. Are you concerned with fiscal notes prepared *throughout* DHS or from particular program areas (i.e. Healthcare)? Are there more issues with consolidated notes than with notes that come from only DHS?
3. What is essential for you to be confident in the fiscal note process' integrity and accuracy? Can you recall any examples of what you thought were particularly informative or controversial fiscal notes, as measured against your criteria for independence and accuracy?
4. Which agencies, if any, have fiscal notes that you consider independent and accurate? What are the relevant features of those processes?
5. What do you see as the benefits and risks of creating a separate legislative office to prepare fiscal notes?
6. What, if any, concerns do you have about this project?
7. How would you measure this project's success?
8. What else should we be aware of, or keep in mind, while conducting this project?

## **MMB Staff Interview Questions**

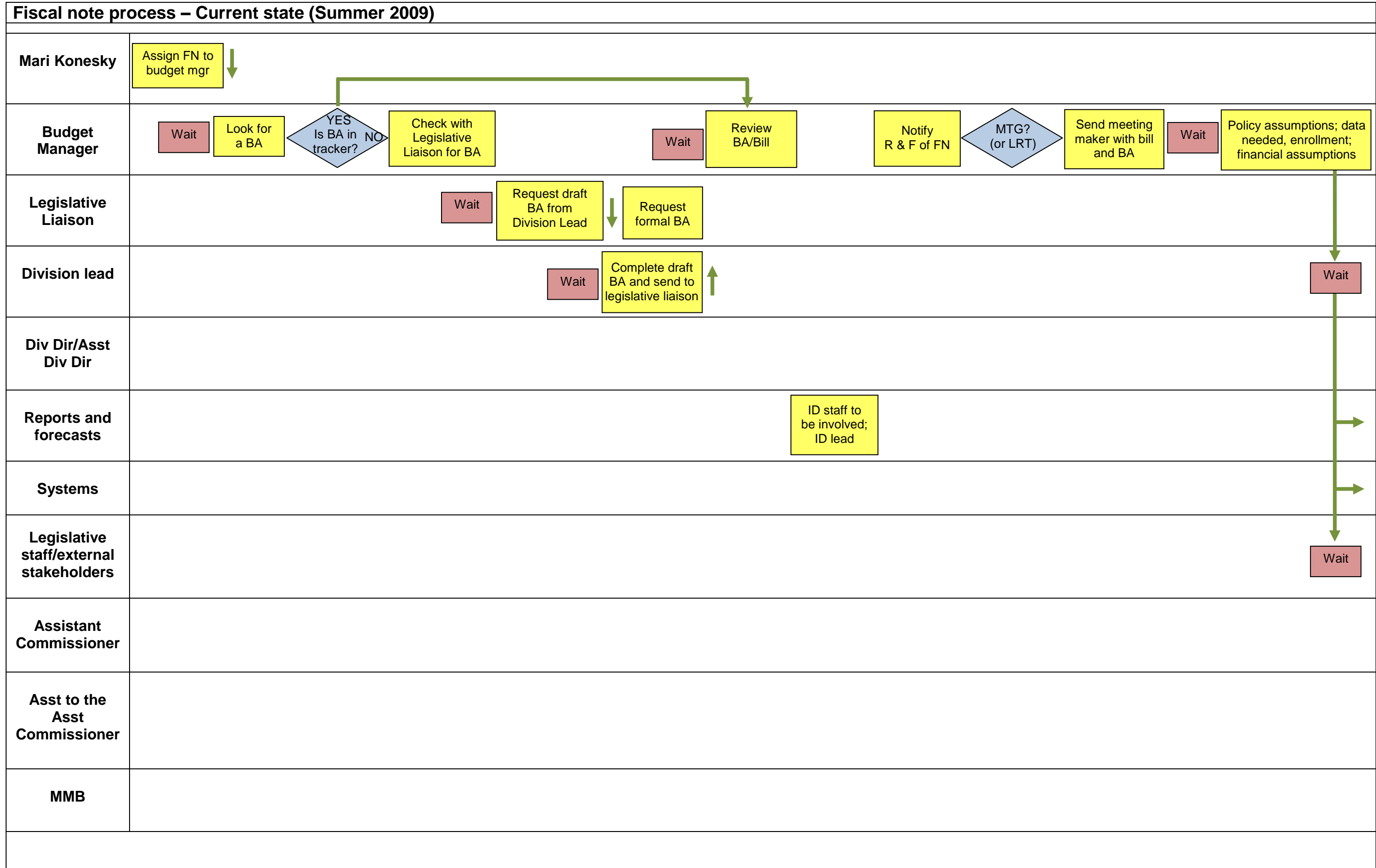
1. Which areas of DHS do you work with?
2. Describe your role in the fiscal note process – when, why, how, etc. you interact with DHS staff and Legislative staff to get fiscal notes completed.
3. How do you quality-check the draft fiscal notes from DHS? What do you look for? What are red flags? How do you know that a fiscal note is objective, based on sound data and reasonable assumptions, etc.?
4. How do you prioritize which fiscal notes get completed ahead of others, or other work on your plate?
5. What do you think works well within the process, what are some strengths of the system? Where and what is the value added at major points in the process?
6. Where do you see inefficiencies? If you were to do a process improvement exercise from beginning to end, what points in the process would you target? Where does the fiscal note “sit” waiting for something to happen? Where are there bottlenecks, where are there multiple approvals, etc.?
7. What could DHS do to improve either the process or quality of the fiscal notes?
8. What could the Legislature do?
9. What could MMB do?
10. What do you think would be the benefits and drawbacks of creating a separate office to prepare fiscal notes, located either centrally in DHS or at the Legislature?
11. What else should I understand about the fiscal note process to conduct this project?

# Appendix B HealthCare Administration Process Maps

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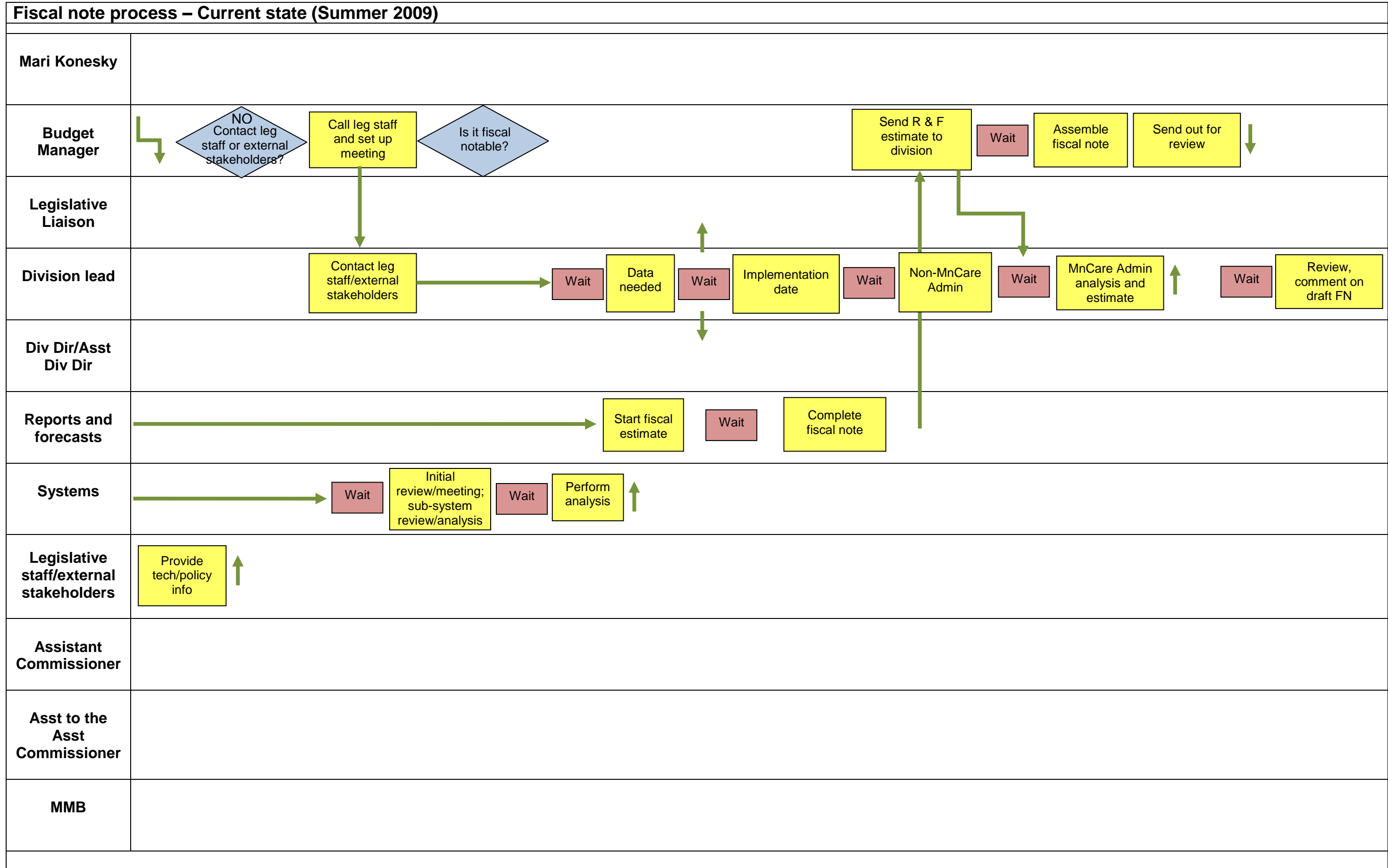


# Appendix B HealthCare Administration Process Maps

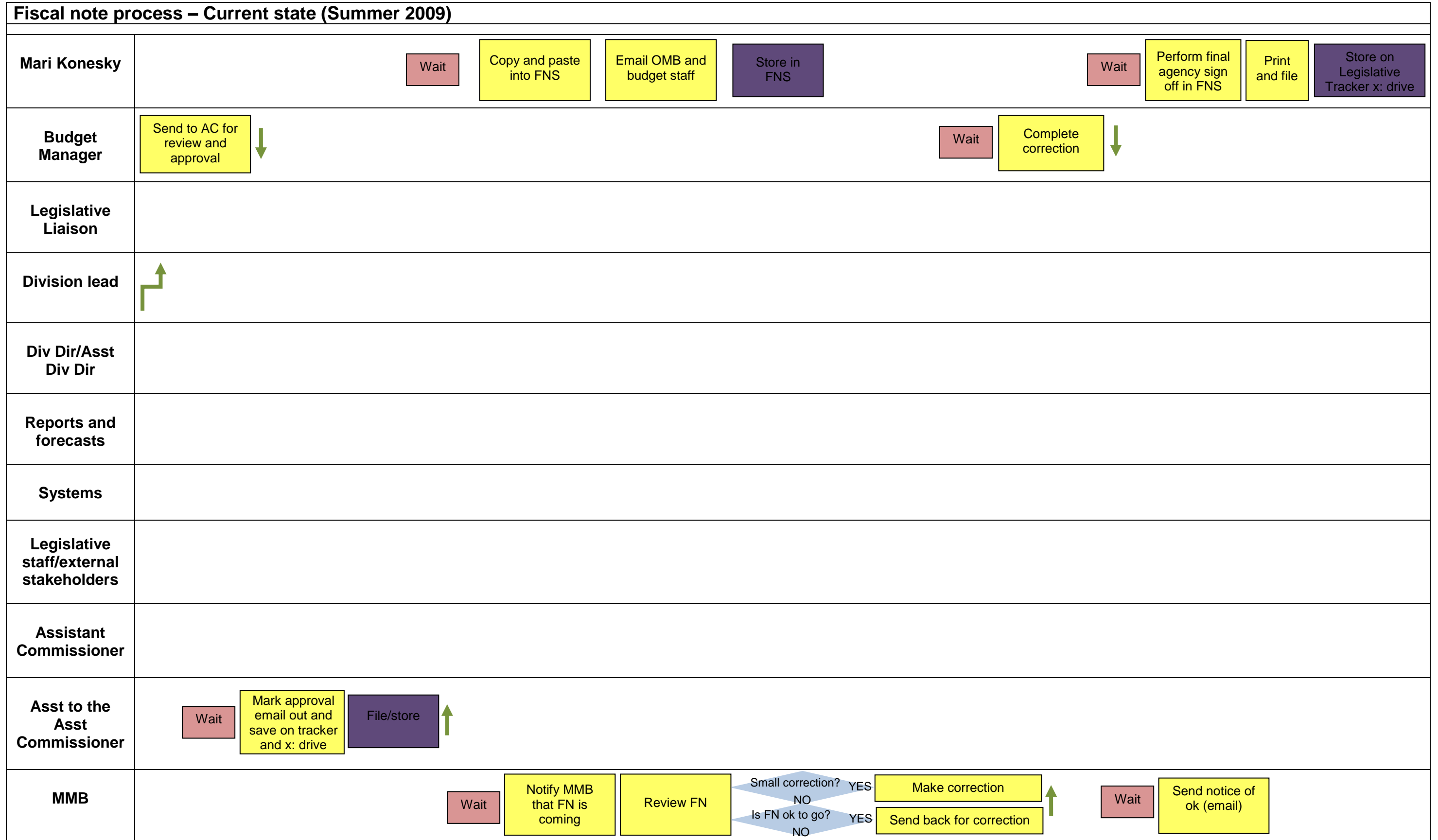
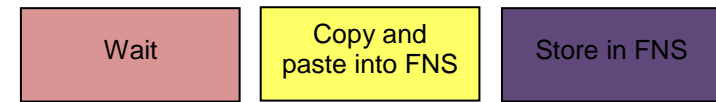
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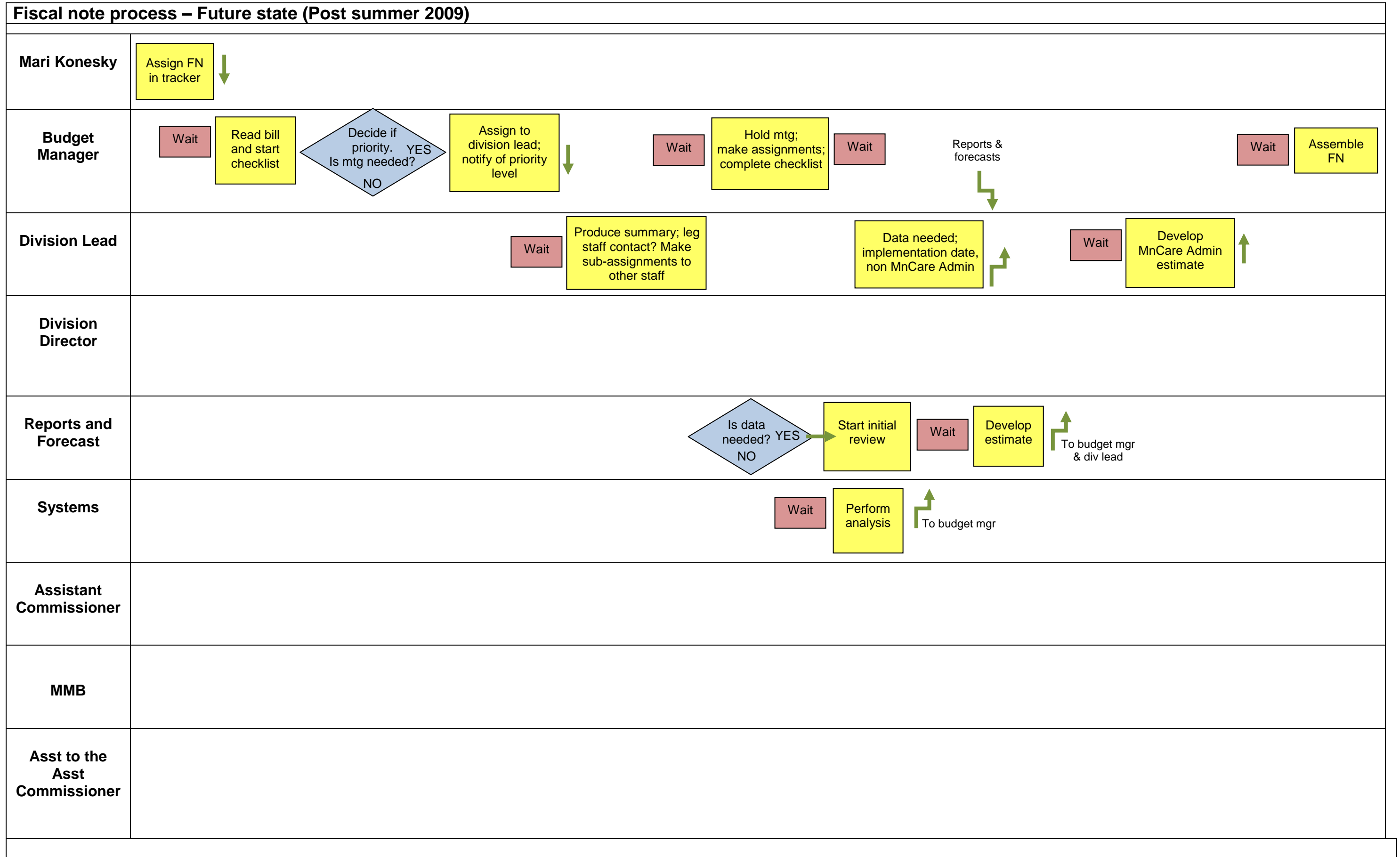


# Appendix B HealthCare Administration Process Maps



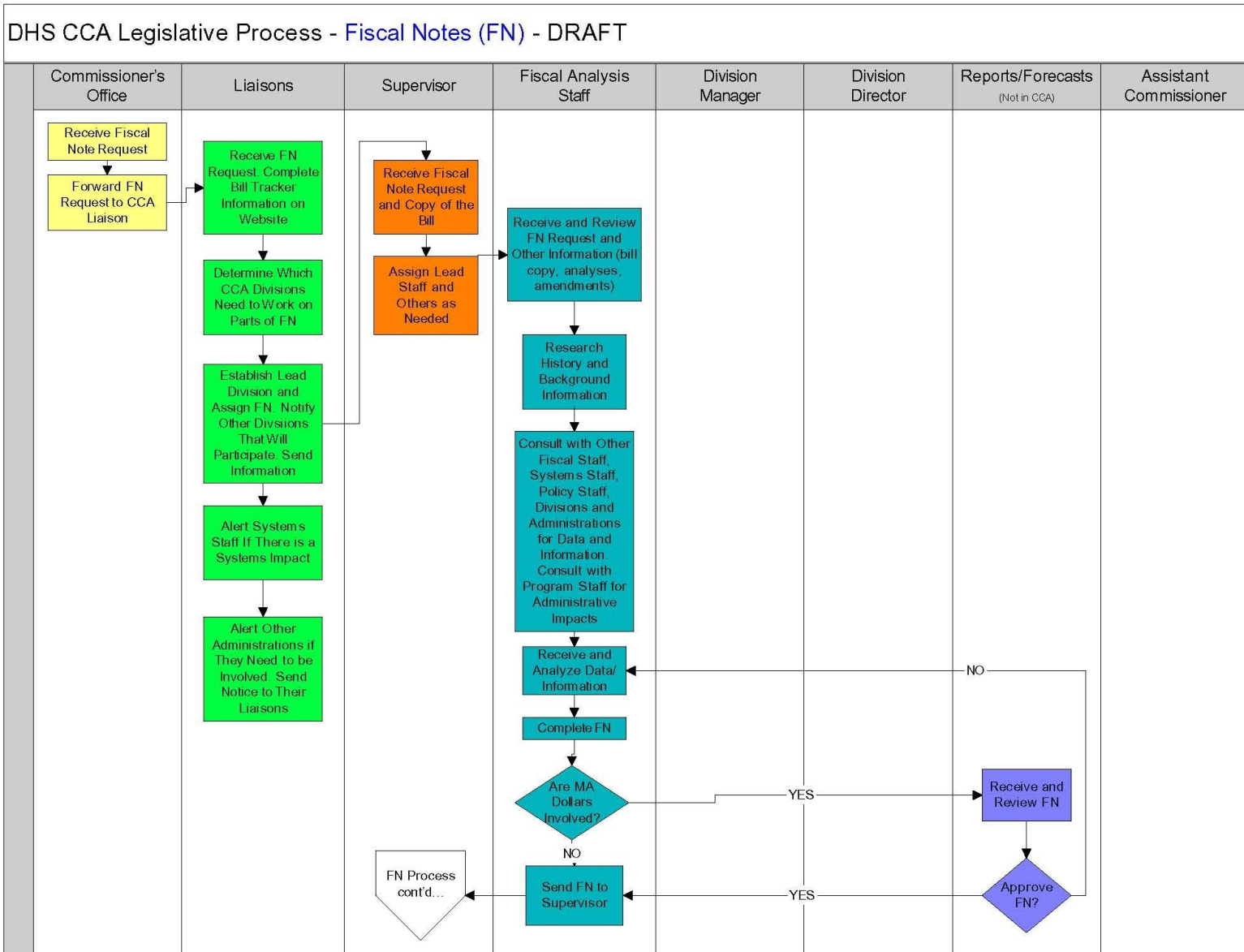


# Appendix B HealthCare Administration Process Maps

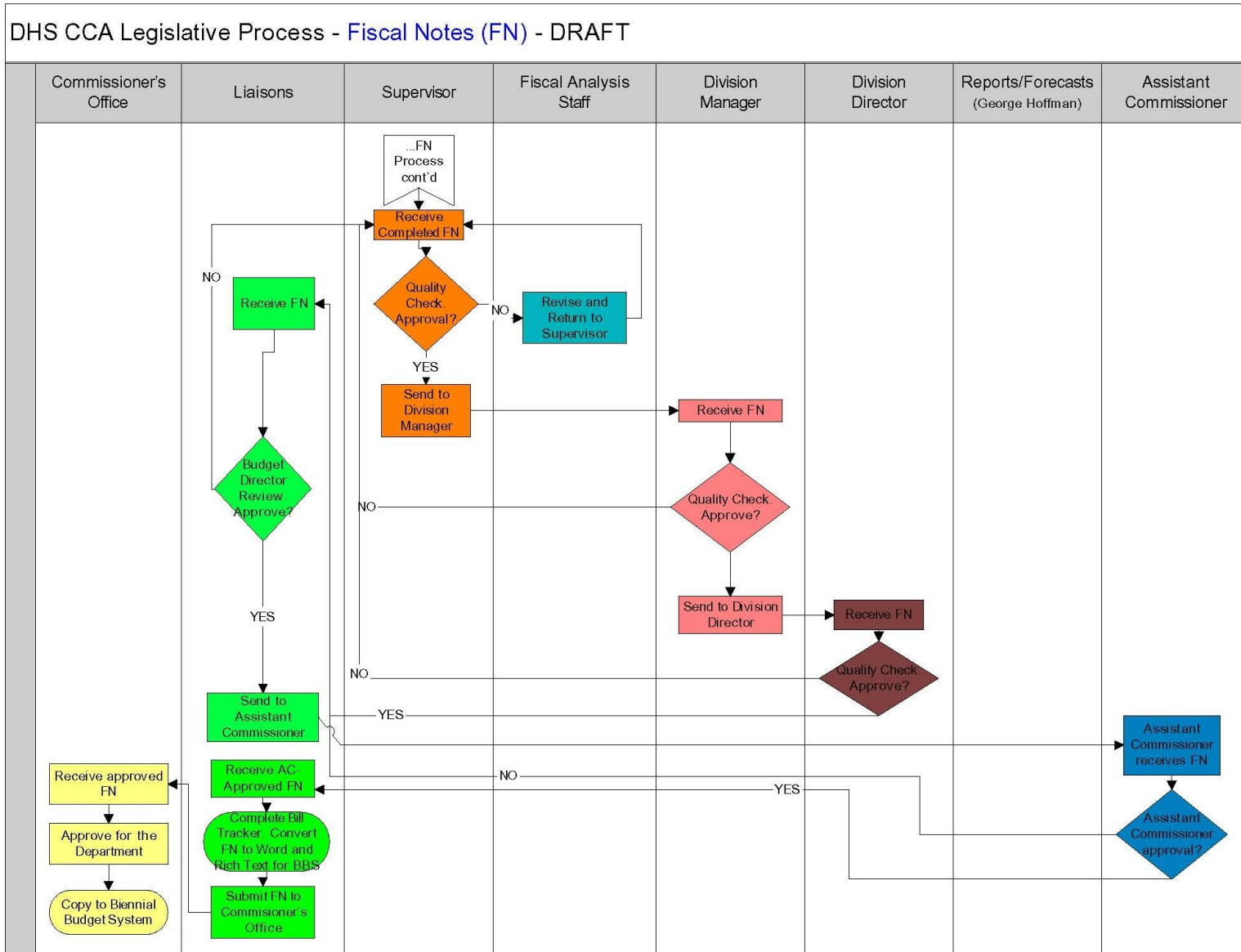




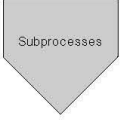

# Appendix C Continuing Care Administration Process Maps



# Appendix C Continuing Care Administration Process Maps



# Appendix C Continuing Care Administration Process Maps

DHS CCA Legislative Process - Fiscal Notes (FN) - Subprocesses - DRAFT								
Commissioner's Office	Liaisons	Supervisor	Fiscal Analysis Staff	Division Manager	Division Director	Reports/Forecasts (George Hoffman)	Assistant Commissioner	COMMENTS / NOTES
								

# Appendix D

## Minnesota HealthCare programs income and asset guidelines

DHS-3461-ENG 4-10



### Minnesota Health Care Programs Income and Asset Guidelines Effective 7/1/09 through 3/31/10

MAXIS Standard			****				K*****		G***		E		E		C*		E**			
	MinnesotaCare \$48 Annual Premium		MinnesotaCare Adults without Children		MinnesotaCare Children to Age 21 and Families with Children		MinnesotaCare Covered Services No \$10,000 Inpatient Cap for Parents		MA Infants under Age 2		MA Children - Age 2 through 18		MA Children - Age 19 and 20		MA Adults with Children		MA Pregnant Woman		MA Elderly, Blind, Disabled (No spenddown)	
Family Size	150% FPG		250% FPG		275% FPG		215% FPG		280% FPG		150% FPG		100% FPG		100% FPG		275% FPG		100% FPG	
	Monthly	Annually	Monthly	Annually	Monthly	Annually	Monthly	Annually	Monthly	Annually	Monthly	Annually	Monthly	Annually	Monthly	Annually	Monthly	Annually	Monthly	Annually
<b>1</b>	1,354	16,248	2,257	27,084	2,482	29,784	1,941	23,292	2,527	30,324	1,354	16,248	903	10,836	903	10,836	NA	NA	903	10,836
<b>2</b>	1,822	21,864	3,037	36,444	3,340	40,080	2,612	31,344	3,400	40,800	1,822	21,864	1,215	14,580	1,215	14,580	3,340	40,080	1,215	14,580
<b>3</b>	2,290	27,480	Not Eligible		4,198	50,376	3,283	39,396	4,273	51,276	2,290	27,480	1,527	18,324	1,527	18,324	4,198	50,376	1,527	18,324
<b>4</b>	2,758	33,096	Not Eligible		5,056	60,672	3,954	47,448	5,146	61,752	2,758	33,096	1,839	22,068	1,839	22,068	5,056	60,672	1,839	22,068
<b>5</b>	3,226	38,712	Not Eligible		5,914	70,968	4,625	55,500	6,019	72,228	3,226	38,712	2,151	25,812	2,151	25,812	5,914	70,968	2,151	25,812
<b>6</b>	3,694	44,328	Not Eligible		6,772	81,264	5,296	63,552	6,892	82,704	3,694	44,328	2,463	29,556	2,463	29,556	6,772	81,264	2,463	29,556
<b>7</b>	4,162	49,944	Not Eligible		7,630	91,560	5,967	71,604	7,765	93,180	4,162	49,944	2,775	33,300	2,775	33,300	7,630	91,560	2,775	33,300
<b>8</b>	4,630	55,560	Not Eligible		8,488	101,856	6,638	79,656	8,638	103,656	4,630	55,560	3,087	37,044	3,087	37,044	8,488	101,856	3,087	37,044
<b>9</b>	5,098	61,176	Not Eligible		9,346	112,152	7,309	87,708	9,511	114,132	5,098	61,176	3,399	40,788	3,399	40,788	9,346	112,152	3,399	40,788
<b>10</b>	5,566	66,792	Not Eligible		10,204	122,448	7,980	95,760	10,384	124,608	5,566	66,792	3,711	44,532	3,711	44,532	10,204	122,448	3,711	44,532
<b>Add'l</b>	468	5,616	Not Eligible		858	10,296	671	8,052	873	10,476	468	5,616	312	3,744	312	3,744	858	10,296	312	3,744
<b>Asset Test</b>	No asset test for children.		No asset test for pregnant women and children. \$10,000 for household of one. \$20,000 for household of more than one.						None		None		None		• Adults with children: \$10,000 for hh of 1 • \$20,000 for hh of more than 1		None		• \$3,000 for a single person • \$6,000 for hh of 2, plus \$200 for each dependent	

FPG = Federal Poverty Guidelines  
 \* Pregnant Woman - Minimum household size of 2.  
 \*\* Persons with income over 100% FPG must spend down to 75% FPG.  
 \*\*\* Children 2-18 with income over 150% FPG must spend down to 100% FPG.  
 \*\*\*\* Parents with income over \$50,000 are ineligible for MinnesotaCare.  
 \*\*\*\*\* Infants under age 2 with income over 280% must spenddown to 100% FPG.

**Note: Income and asset guidelines change. Use this chart for general reference only. Refer to the Minnesota Health Care Programs Manual for the most current information.**

Next →

**Minnesota Health Care Programs Income and Asset Guidelines** Effective 7/1/09 through 3/31/10

MAXIS Standard	F		U*****		Q*****		W*****		S*****		H		H		V				
	Transition Year MA		MA Qualifying Individuals (QI)		MA Qualified Medicare Beneficiaries (QMB)		MA Qualified Working Disabled Individuals (QWD)		MA Service Limited Medicare Beneficiaries (SLMB)		MA Elderly, Blind, Disabled (with a Spenddown)		GAMC		GAMC Hospital Only Above 75% FPG		Family Planning Program		MA for Employed Person with Disabilities (MA-EPD)
Family Size	185% FPG		135% FPG		100% FPG		200% FPG		120% FPG		75% FPG		75% FPG		to 175% FPG		200% FPG		To qualify for MA-EPD, an individual must: • Be certified disabled by the Social Security Administration (SSA) or the State Medical Review Team (SMRT). • Be 16 to 65 years of age. • Be employed and have required taxes withheld or paid from earned income. • Have monthly earnings of more than \$65. • Meet the MA-EPD asset limit of \$20,000 per enrollee. • Pay a premium and • Pay an unearned income obligation, if required.
	Monthly	Annually	Monthly	Annually	Monthly	Annually	Monthly	Annually	Monthly	Annually	Monthly	Annually	Monthly	Annually	Monthly	Annually	Monthly	Annually	
<b>1</b>	1,670	20,040	1,239	14,868	923	11,076	1,825	21,900	1,103	13,236	677	8,124	677	8,124	1,580	18,960	1,805	21,660	
<b>2</b>	2,247	26,964	1,660	19,920	1,235	14,820	2,449	29,388	1,477	17,724	911	10,932	911	10,932	2,126	25,512	2,429	29,148	
<b>3</b>	2,824	33,888	2,081	24,972	1,547	18,564	3,073	36,876	1,851	22,212	1,145	13,740	1,145	13,740	2,672	32,064	3,053	36,636	
<b>4</b>	3,401	40,812	2,502	30,024	1,859	22,308	3,697	44,364	2,225	26,700	1,379	16,548	1,379	16,548	3,218	38,616	3,677	44,124	
<b>5</b>	3,978	47,736	2,923	35,076	2,171	26,052	4,321	51,852	2,599	31,188	1,613	19,356	1,613	19,356	3,764	45,168	4,301	51,612	
<b>6</b>	4,555	54,660	3,344	40,128	2,483	29,796	4,945	59,340	2,973	35,676	1,847	22,164	1,847	22,164	4,310	51,720	4,925	59,100	
<b>7</b>	5,132	61,584	3,765	45,180	2,795	33,540	5,569	66,828	3,347	40,164	2,081	24,972	2,081	24,972	4,856	58,272	5,549	66,588	
<b>8</b>	5,709	68,508	4,186	50,232	3,107	37,284	6,193	74,316	3,721	44,652	2,315	27,780	2,315	27,780	5,402	64,824	6,173	74,076	
<b>9</b>	6,286	75,432	4,607	55,284	3,419	41,028	6,817	81,804	4,095	49,140	2,549	30,588	2,549	30,588	5,948	71,376	6,797	81,564	
<b>10</b>	6,863	82,356	5,028	60,336	3,731	44,772	7,441	89,292	4,469	53,628	2,783	33,396	2,783	33,396	6,494	77,928	7,421	89,052	
<b>Add'l</b>	577	6,924	421	5,052	312	3,744	624	7,488	374	4,488	234	2,808	234	2,808	546	6,552	624	7,488	
<b>Asset Test</b>	None		• \$10,000 for a single person • \$18,000 for hh of 2		• \$10,000 for a single person • \$18,000 for hh of 2		• \$4,000 for a single person • \$6,000 for hh of 2		• \$10,000 for a single person • \$18,000 for hh of 2		• \$3,000 for a single person • \$6,000 for hh of 2, plus \$200 for each dependent		• \$1,000 per household		• \$10,000 for hh of 1 • \$20,000 for hh of more than 1		None		• \$20,000 per enrollee

\*\*\*\*\* \$20 disregard is included in totals

This information is available in alternative formats to individuals with disabilities by calling your agency at (651) 431-2670 or (800) 657-3739. TTY users can call through Minnesota Relay at (800) 627-3529. For Speech-to-Speech, call (877) 627-3848. For additional assistance with legal rights and protections for equal access to human services benefits, contact your agency's ADA coordinator.

# Appendix E

## Minnesota Revenue's "Ways to Help Us"

1. Give us as much warning as possible about bills that are likely to be heard.
2. Provide us with any information that will help us in setting priorities.
3. Send all revenue estimate requests through a limited number of staff (generally fiscal staff).
4. [List of staff names.] All [staff listed] should also receive all hearing notices.
5. It is best if phone requests are followed up by an email request.
6. Always send email if you are faxing language to us. (Attaching scanned documents is preferred.)
7. If a request is confidential, let us know that. Not that confidentiality may limit our access to information in some cases.
8. Make sure effective dates are clearly specified.
9. If the author will be making an author's amendment, let us know and we can do the estimate "as proposed to be amended." (This includes effective dates.)
10. Only estimates from our two offices are official. Be sure to check with us if anyone else at DOR provides an estimate.
11. Take care to make sure the revenue estimate you are using is the latest version and matches the current language of the bill.
12. In the few cases where a revenue estimate will not be available at the time of the hearing, we will let fiscal staff know. We would appreciate your checking to see that the author is aware that the revenue estimate will not be available at that time.
13. Help others remember the distinction between a revenue estimate and a fiscal note. Fiscal notes will not generally include revenue estimates, so requesting a fiscal note does not automatically trigger a request for a revenue estimate.
14. Remember that estimates from last session need to be updated.
15. When requesting information (other than revenue estimates), please send the email to one person only, with copies to others. This makes clear whose responsibility it is to reply.

Tax Research Division and Property Tax Research  
Minnesota Department of Revenue  
January 25, 2010



# **Appendix F**

## **Additional Information from Review of Other States Fiscal Note Practices – a national perspective and best practices reviews conducted by other states**

### **National Overview**

This report section addresses the study directive to “describe methods and procedures used by other states to insure independence and accuracy of fiscal estimates on legislative proposals for changes in human services.”<sup>49</sup>

Background research identified a range of models that other states use to respond to legislative requests for fiscal information on specific bills. They might be characterized as strong executive, strong legislative, and those in-between. All states rely on state agencies and other entities to provide essential fiscal note data and information, including for human services bills.

The presentation below includes an overview of models for fiscal note preparation used in the states; in-depth reviews of three states (Wisconsin, Washington, and Maryland) with respect to their practices, methods, and designs for ensuring accurate and independent results; a review of notable studies of fiscal note improvements in other states; and a summary of conclusions about the fiscal note process and practices as well as the features of design, methods, and practices that states use to “insure independence and accuracy of fiscal estimates.”

Much of the information presented here comes from reviews of documents obtained from the National Conference of State Legislatures and the National Association of State Budget Officers, reviews of states’ online information concerning fiscal notes, and interviews of selected states’ personnel who participate in the process of preparing and reviewing fiscal notes.

### **Background**

The executive and legislative branches of government operate in the structure of constitutional separation of powers with respect to operating budgets, capital budgets, debt management practices, tax expenditure budgets, and forecasting of revenues and expenditures. In this budget process – including with respect to creation and review of fiscal notes – the roles and responsibilities of executive branch agencies, executive budget agencies, and legislative budget agencies vary among the states.

In general, state agencies are required by laws to prepare fiscal notes for bills being considered by the Legislatures. As in Minnesota, these agencies have the programmatic expertise and direct access to data and information that is often required for the task. Fiscal implications of changes to large human services programs, for example, are frequently complicated, involve very large dollar amounts, necessitate understanding of cross-program impacts, and include input from a number of state agencies, local government, and others from outside government.

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<sup>49</sup> Laws 2010, 1<sup>st</sup> Sp. Sess., Ch. 1, Art. 19, sec. 20.

The National Conference of State Legislatures (NCSL) surveyed states in 1998-99 and characterized most states as having a *legislative* fiscal note office. The variation in practices among those states is noteworthy. Minnesota is among a minority of states that has an *executive* branch model, not a legislative model, as characterized in this study.

State laws and legislative rules may provide that a state agency, an executive budget agency, and/or a legislative budget agency may prepare fiscal notes. The typical fiscal note process, in simple terms, involves:

- A direction from the legislative branch for a fiscal note to be prepared in relation to a bill;
- Direction to one or more state agencies (and others if needed) to prepare information about the estimated fiscal impacts of the bill, consistent with guidelines and formats provided by the legislative and/or executive budget agencies;
- Reviews (a “second opinion”) and any needed follow-up actions that might include return of the note to the agencies for rework, revision, supplementation, or an additional note; and
- Approval of the fiscal note, summarization, and/or contexting by the budget agency and transmittal to the bill’s author/sponsor/active committee in the Legislature.

If authorized in law or legislative rules, the budget agency may prepare a revised version or an additional version of a fiscal note. Fiscal notes for bill amendments typically follow the same progression.

### **Fiscal notes overview – structures and practices**

A 2008 National Association of State Budget Officers (NASBO) report lists 42 states with a *legislative or executive branch budget agency* that includes fiscal notes as a part of its budget functions.<sup>50</sup> The range of states’ structural design and the practices for fiscal notes responsibilities are indicated by selected descriptions from the report:<sup>51</sup>

- The State Budget Agency performs the function in conjunction with other Office of Management and Budget agencies. (Indiana)
- The [executive] Budget Office . . . prepares fiscal notes as part of the Executive Budget process. Legislative fiscal agencies prepare fiscal notes as bills progress through the legislative process. (Michigan)
- The Budget Office is not responsible for all fiscal notes, just those related to the budget. The budget office does review all the fiscal notes passed by the Legislature before they are signed by the Governor. (Missouri)
- The legislative staff is primarily responsible for preparing a fiscal note on each bill; however, significant input from the budget agency and appropriate administrative agencies is given. (Louisiana)

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<sup>50</sup> *Budget Processes in the States*, National Association of State Budget Officers, Summer 2008, p. 9. <http://www.nasbo.org/LinkClick.aspx?fileticket=AaAKTnjgucg=&tabid=80>. States that do not have fiscal note responsibilities as part of their budget agency functions are Arizona, Colorado, Delaware, Hawaii, Iowa, New Hampshire, Oregon, and Tennessee.

<sup>51</sup> *Ibid.*, pp. 11-12.

- The Legislative Fiscal Office prepares official fiscal notes on legislation, but the Executive Budget Office also prepares them independently. (Alabama)
- The Legislative Budget Office is responsible for fiscal notes, not the Executive Budget Office. (Texas)

### **Fiscal notes in the states – 1998-99 NCSL survey and report**

A 1999 report published by the National Conference of State Legislatures (NCSL) describes in some detail the features of states' fiscal note practices and processes.<sup>52</sup> The report was based on the results of a survey of states, which had 40 respondents. Among the findings:<sup>53</sup>

- Thirty-four of the 40 respondent states reported they had *legislative fiscal offices* responsible for preparing fiscal notes. Six of the 40 respondent states (including Minnesota) assigned fiscal note requests to the applicable executive branch agencies.
- Twenty-nine of 40 respondents reported they had *full-time personnel* only. Seven had session-only staff in addition to full-time personnel. Four other states had incomplete information.
- Of 37 respondents to the question, 27 had a *centralized process for preparing fiscal notes* (“a formal hierarchical assignment, review and approval structure”). Six had a decentralized process (“informal assignment, review, and approval structure”). The other states had incomplete information.
- Of 37 respondents to the question, 15 had a formal, structured *prioritization process* for fiscal notes. Nineteen operated on a first-come, first-served basis in processing fiscal note requests.
- Of 38 respondents to the question, 28 did not *require fiscal notes on all bills*. Ten states required fiscal notes on all bills.

### **Overview comparison of Minnesota to three other states representing basic models**

Information from the 1999 NCSL fiscal note report allows selecting a few key features for comparing Minnesota's structure and processes to those of other states – in this case, Wisconsin, Washington, and Maryland.<sup>54</sup> The comparison states were suggested most often by interviewees because the states are said to have budget/financial systems that have many good fiscal and budgetary practices, represent basic models for fiscal note responsibilities, and differences and similarities that make comparisons with Minnesota useful.

Note that the text in the following table is from the NCSL report and may reflect a particular orientation of a particular person or persons who responded the survey from each state, as well as a summarization by the NCSL analysts.

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<sup>52</sup> *The Fiscal Note Process in State Legislatures*, published by NCSL (prepared by Violet Baffour, North Carolina General Assembly, Fiscal Research Division), (1999), <http://www.ncsl.org/documents/fiscal/FiscalNoteProcess.pdf> . The document has not been updated. However, a person interviewed from the NCSL suggested, in essence, that the basic information probably has not substantially changed for the states.

<sup>53</sup> *Ibid.*, first two pages of the report.

<sup>54</sup> *Ibid.*

**Table 1. Comparison of basic features of fiscal note processes among MN, WI, WA, MD**

	<i>Agency responsible for preparing fiscal notes</i>	<i>Process for preparing fiscal notes</i>	<i>Average number of fiscal notes prepared each session</i>
<i>Minnesota</i>	Affected state agencies	Decentralized process. Finance Dept [now Minnesota Management & Budget] Assistant Commissioner is designated fiscal note coordinator. Receives notice about fiscal note request, determines affected agencies and refers request for preparation. Fiscal note is returned to coordinator for review and entry into fiscal note system. Upon review and approval by Executive Budget Officer for Finance Dept, it is sent to the Legislature.	Approx. 1,200 in operating budget year; approx. 650 in capital budget year.
<i>Wisconsin</i>	Bureau of Financial Management responsible for research issues and work; estimate written in-house by staff of Dept. of Administration	Centralized process. The budget staff coordinate and perform research, move the draft to the review stage with the Division Administrator and the Secretary's office, then route the estimate to the State Budget Office, who send it back to the Legislature.	<sup>55</sup>
<i>Washington</i>	Fiscal note office in the Office of Financial Management (OFM)	Decentralized process. Assignment for writing fiscal note made to staff person with most expertise in area affected by bill. Staff person drafts note after consulting with other staff members or the supervisor. Once note is completed, author's supervisor reviews and approves the fiscal note. Agency's deputy director also reviews some fiscal notes.	Approx. 4,200 in the 105-day session; approx. 2,400 in the 60-day session.
<i>Maryland</i>	Department of Legislative Services	Information is requested from appropriate state agency(s). Analyst assigned to the bill reviews response for reasonableness and accuracy and may contact source for clarification or	2,500 first-readers, 750 third readers and enrolled bills.

<sup>55</sup> Information not provided in the report.

	<i>Agency responsible for preparing fiscal notes</i>	<i>Process for preparing fiscal notes</i>	<i>Average number of fiscal notes prepared each session</i>
		additional information. Responses are subject to considerable scrutiny. Received information is taken into account, but not always used when writing the fiscal note.	

As described in summary above, the primary responsibility for fiscal note preparation is different in each of the states – state agencies, a legislative budget office, and an executive branch budget agency.

Additional information about fiscal note processes and practices for Wisconsin, Washington, and Maryland is presented in a later section of this report.

### **All-states comparisons of fiscal notes practices**

#### **Fiscal note preparation**

Table 2 identifies the agency or agencies in each state that prepare fiscal notes (NCSL information).<sup>56</sup> The frame of reference, as shown in the second column, is the legislative fiscal offices. A number of states provide that more than one agency prepares fiscal notes. The primary comparison states – Minnesota, Wisconsin, Washington, and Maryland – are highlighted.

**Table 2. Legislative and executive agencies that prepare fiscal notes.**

<b>Fiscal note preparation Office or offices, (legislative fiscal office, executive branch fiscal agency, state agency, other legislative office)</b>	<b><i>Yes – fiscal notes prepared by legislative fiscal office</i></b>
<b>Alabama</b> Legislative Fiscal Office	Yes
<b>Alaska</b> Legislative Finance Division	No
<b>Arizona</b> Joint Legislative Budget Committee	Yes
<b>Arkansas</b> Bureau of Legislative Research	Yes
<b>Colorado</b> Joint Budget Committee	No: Legislative Council prepares fiscal notes. The Joint Budget Committee prepares separate analysis for Appropriations Committees.

<sup>56</sup> NCSL 1998-99 survey and report, *Table 9: Preparation of Fiscal Notes*.

<b>Fiscal note preparation Office or offices, (legislative fiscal office, executive branch fiscal agency, state agency, other legislative office)</b>	<b>Yes – fiscal notes prepared by <i>legislative fiscal office</i></b>
<b>Connecticut</b> Office of Fiscal Analysis	Yes
<b>Delaware</b> Office of the Controller General	Yes
<b>Florida</b> Division of Economic & Demographic Research	No: House and Senate Committee staffs
Florida Fiscal Responsibility Council	Yes
Florida House Finance & Taxation Committee	Yes
Florida Office of the Auditor General	No: the appropriate Senate and House Committees do, but the Office of the Auditor General often provides input.
Florida Senate Committee on Fiscal Policy	Yes
Florida Senate Committee on Fiscal Resource	Yes
Florida Senate Budget Committee	No: the Senate Fiscal Policy Committee hears substantive legislation that has a fiscal impact and prepares in consultation with Senate Budget Committee
<b>Georgia</b> Legislative Budget Office	No: Georgia State Auditor and Governor’s Office of Planning and Budget prepares fiscal notes.
<b>Hawaii</b> Senate Ways & Means Committee	None at present
<b>Idaho</b> Office of Budget & Policy Analysis	Yes, but only in appropriations bills
<b>Illinois</b> Economic and Fiscal Commission	Yes, but only on bills affecting this office.
Illinois Office of the Senate Minority Office	No: The entity that is responsible for will expend the proposed appropriation prepares the Fiscal Note.
Illinois Senate Majority Appropriations Office	No: Executive agencies that are affected or the Bureau of the Budget prepares the Fiscal Note.
<b>Indiana</b> House Democratic Fiscal Analyst	No: The nonpartisan Legislative Services Agency prepares fiscal notes.
Indiana Office of Fiscal and Management Analysis	Yes

<b>Fiscal note preparation Office or offices, (legislative fiscal office, executive branch fiscal agency, state agency, other legislative office)</b>	<b>Yes – fiscal notes prepared by <i>legislative fiscal office</i></b>
Indiana Senate Majority Fiscal Analyst	Legislative Services prepares nonpartisan Fiscal Notes. The Senate Majority Fiscal Analyst Office prepares more partisan Fiscal Notes.
<b>Iowa</b> Legislative Fiscal Bureau	Yes
<b>Kansas</b> Legislative Research Department	No: Kansas Division of the Budget prepares fiscal notes
<b>Kentucky</b> Office of Budget Review	Yes
<b>Louisiana</b> House Fiscal Division	No: The Louisiana Legislative Fiscal Office prepares fiscal notes.
Louisiana Legislative Fiscal Office	Yes
■ <b>Maryland</b> Office of Policy Analysis	Yes
<b>Maine</b> Office of Fiscal & Program Review	Yes
<b>Massachusetts</b> House Ways and Means Committee	Yes
<b>Michigan</b> House Fiscal Agency	Yes
Michigan Senate Fiscal Agency	Yes
■ <b>Minnesota</b> House Ways & Means Committee	No: The Department of Finance [now Minnesota Management & Budget] coordinates and the executive branch agencies prepare the Fiscal Notes. While the Minnesota House Ways & Means Committee doesn't have responsibility for preparing Fiscal Notes, an increasing responsibility has been to analyze Fiscal Notes and ask agencies to justify numbers.
<b>Minnesota</b> Senate Fiscal Policy Analysis	No: The Department of Finance [MMB] prepares fiscal notes.
<b>Minnesota</b> Senate Taxes & Tax Law Committee	No: The executive branch prepares fiscal notes.
<b>Mississippi</b> Joint Legislative Budget Office	Yes
<b>Missouri</b> House Appropriations Committee	No: The Oversight Division of Joint Committee on Legislative Research prepares fiscal notes.
Missouri Oversight Division	Yes
Missouri Senate Research Staff	No: The Oversight Division Joint Committee on

<b>Fiscal note preparation Office or offices, (legislative fiscal office, executive branch fiscal agency, state agency, other legislative office)</b>	<b>Yes – fiscal notes prepared by <i>legislative fiscal office</i></b>
	Legislative Research prepares fiscal notes.
<b>Montana</b> Legislative Fiscal Division	No: The governor’s budget office prepares fiscal notes.
<b>Nebraska</b> Legislative Fiscal Office	Yes
<b>Nevada</b> Fiscal Analysis Division	Yes and No: the Nevada Fiscal Analysis Division prepares local government fiscal notes and compile state agency fiscal notes from the response of state agencies
<b>New Hampshire</b> Office of Legislative Budget Assistant	Yes
<b>New Jersey</b> Legislative Budget & Finance Office	Yes
<b>New Mexico</b> Legislative Finance Committee	Yes
<b>North Carolina</b> Fiscal Research Division	Yes
<b>North Dakota</b> Legislative Council	No: Each agency, upon Legislative Council request, prepares fiscal notes.
<b>Ohio</b> Legislative Budget Office	Yes
<b>Oklahoma</b> House Fiscal Division	Yes
Oklahoma Senate Fiscal Division	Yes: The Oklahoma Senate Fiscal Division prepares fiscal impact analyses of legislation, but “notes” are not attached to bills.
<b>Oregon</b> Legislative Fiscal Office	Yes
Oregon Legislative Revenue Office	Yes revenue impacts
<b>Pennsylvania</b> Senate Appropriations Committee	Yes
Pennsylvania Senate Minority Appropriations	Yes
<b>Rhode Island</b> House Fiscal Staff	Yes
<b>South Carolina</b> Senate Finance Committee	No: The Board of Economic Advisors and the Budget Division of the Budget & Control Board
<b>South Dakota</b> Legislative Research Council	Yes



<b>Fiscal note preparation Office or offices, (legislative fiscal office, executive branch fiscal agency, state agency, other legislative office)</b>	<b>Yes – fiscal notes prepared by <i>legislative fiscal office</i></b>
Tennessee Office of Legislative Budget Analysis	No: Fiscal Review Committee
Texas Legislative Budget Board	Yes
Utah Legislative Fiscal Analyst Office	Yes
Vermont Joint Fiscal Office	Yes
Virginia House Appropriations Committee	No: The Virginia House Appropriations Committee analyzes executive department impact statements and changes them if it disagrees with them.
Virginia Senate Finance Committee	No, except when there is a question about the accuracy of executive agency analysis. Otherwise the Department of Planning and Budget (an executive agency) prepares them.
■ Washington House Appropriations Committee	No: Fiscal Notes are prepared by a state agency then reviewed and approved by the governor’s budget agency.
Washington House Finance Committee	No: Executive agencies prepare Fiscal Notes.
Washington Senate Ways & Means Committee	No: The Governor’s budget office and state agencies prepare Fiscal Notes.
West Virginia Legislative Auditor’s Office	No: The executive agency affected by or that will administer the proposed legislation prepares the fiscal note.
■ Wisconsin Legislative Fiscal Bureau	Yes, on a limited basis
Wyoming Legislative Service Office	Yes

### Legislative reviews of executive branch fiscal notes

The NCSL survey also provided information about legislative reviews of fiscal notes prepared by executive agencies – including whether the Legislature *modifies or replaces* executive branch fiscal notes and whether the executive and Legislature develop *consensus* fiscal notes. Table 3 summarizes the information.<sup>57</sup> Minnesota and the comparison states – Wisconsin, Washington, and Maryland – are highlighted.

<sup>57</sup> NCSL 1998-99 survey and report, *Table 13: Legislative review of fiscal notes prepared by executive agencies.*

**Table 3. Legislative branch reviews of fiscal notes prepared in the executive branch.**

<b>State Legislative Offices that review executive agency fiscal notes</b>	<b>Executive branch prepares fiscal notes</b>	<b>Legislature reviews executive fiscal notes</b>	<b>Legislature modifies or replaces executive fiscal notes</b>	<b>Legislature and executive develop consensus fiscal notes</b>
<b>Alabama</b> Legislative Fiscal Office	No	No	No	No
<b>Alaska</b> Legislative Finance Division	Yes	Yes	Yes	No; occasionally
<b>Arizona</b> Joint Legislative Budget Committee	No	No	No	No
<b>Arkansas</b> Bureau of Legislative Research	Yes	Yes	No	No
<b>Colorado</b> Joint Budget Committee	No	No	No	No
<b>Connecticut</b> Office of Fiscal Analysis	No (only regulations)	No	No	No
<b>Delaware</b> Office of the Controller General	Yes	No	No	No
<b>Florida</b> Division of Economic & Demographic Research				No
Florida Fiscal Responsibility Council	Yes	Yes	Yes	No
Florida House Finance & Taxation Committee	No	No	No	Yes
Florida Office of the Auditor General				
Florida Senate Committee on Fiscal Policy	Yes	Yes	Yes	No
Florida Senate Committee on Fiscal Resource	Yes	Yes	Yes	Yes on revenue notes
Florida Senate Budget Committee	Yes	Yes	Yes	No
<b>Georgia</b> Legislative Budget Office				Yes
<b>Hawaii</b> Senate Ways & Means Committee	No	No	No	No
<b>Idaho</b> Office of Budget & Policy Analysis	Yes	Yes	Yes	No
<b>Illinois</b> Economic and Fiscal Commission	Yes	Yes	No	No

<b>State Legislative Offices that review executive agency fiscal notes</b>	Executive branch prepares fiscal notes	Legislature reviews executive fiscal notes	Legislature modifies or replaces executive fiscal notes	Legislature and executive develop consensus fiscal notes
Illinois Office of the Senate Minority Office	Yes	Yes	No	No
Illinois Senate Majority Appropriations Office	Yes	Yes	No	No
<b>Indiana</b> House Democratic Fiscal Analyst	Yes	No	No	No
Indiana Office of Fiscal and Management Analysis	Yes	No	No	Yes
Indiana Senate Majority Fiscal Analyst	Yes	Yes	Yes	Yes
<b>Iowa</b> Legislative Fiscal Bureau	No	No	No	No
<b>Kansas</b> Legislative Research Department	Yes	Yes	No	No
<b>Kentucky</b> Office of Budget Review	No	No	No	No
<b>Louisiana</b> House Fiscal Division	No	No	No	No
Louisiana Legislative Fiscal Office	Yes	Yes	Yes	No
■ <b>Maryland</b> Office of Policy Analysis	No	No	No	No
<b>Maine</b> Office of Fiscal & Program Review	No	No	No	No
<b>Massachusetts</b> House Ways and Means Committee	No	No	No	No
<b>Michigan</b> House Fiscal Agency	Yes, sometimes	Yes	No	No
Michigan Senate Fiscal Agency	No	No	No	No
■ <b>Minnesota</b> House Ways & Means Committee	Yes	Yes	In a few cases	Not officially but in effect this happens
<b>Minnesota</b> Senate Fiscal Policy Analysis	Yes	Yes	Not directly but informally yes	Yes
<b>Minnesota</b> Senate Taxes & Tax Law Committee	Yes	Yes	No	Yes, informally

<b>State Legislative Offices that review executive agency fiscal notes</b>	Executive branch prepares fiscal notes	Legislature reviews executive fiscal notes	Legislature modifies or replaces executive fiscal notes	Legislature and executive develop consensus fiscal notes
<b>Mississippi</b> Joint Legislative Budget Office	Yes	Yes	Yes	No
<b>Missouri</b> House Appropriations Committee	No	No	No	No
Missouri Oversight Division	Yes	Yes	Yes	No
Missouri Senate Research Staff	Yes	Yes	Yes	No
<b>Montana</b> Legislative Fiscal Division	Yes	Yes	No	No
<b>Nebraska</b> Legislative Fiscal Office	Yes	Yes	No	No
<b>Nevada</b> Fiscal Analysis Division	Yes	Yes	Yes	No
<b>New Hampshire</b> Office of Legislative Budget Assistant	No	Not applicable	Not applicable	Not applicable
<b>New Jersey</b> Legislative Budget & Finance Office	Yes	Yes	Yes	No
<b>New Mexico</b> Legislative Finance Committee	Yes	Yes	Yes	No
<b>North Carolina</b> Fiscal Research Division			Yes	No
<b>North Dakota</b> Legislative Council	Yes	Yes	Yes	
<b>Ohio</b> Legislative Budget Office	No			
<b>Oklahoma</b> House Fiscal Division	No	No	No	No
Oklahoma Senate Fiscal Division	Not applicable	Not applicable	Not applicable	Not applicable
<b>Oregon</b> Legislative Fiscal Office	Not applicable	Not applicable	Not applicable	Not applicable
Oregon Legislative Revenue Office				
<b>Pennsylvania</b> Senate Appropriations Committee	Yes	Yes	Yes	No
Pennsylvania Senate Minority Appropriations	Yes	Yes	No	No
<b>Rhode Island</b> House Fiscal Staff	Yes	Yes	Yes	No
<b>South Carolina</b> Senate Finance Committee	No	No	No	Yes

<b>State Legislative Offices that review executive agency fiscal notes</b>	Executive branch prepares fiscal notes	Legislature reviews executive fiscal notes	Legislature modifies or replaces executive fiscal notes	Legislature and executive develop consensus fiscal notes
<b>South Dakota</b> Legislative Research Council	No	No	No	No
<b>Tennessee</b> Office of Legislative Budget Analysis	Yes	No (Legislative staff reviews)	No	No
<b>Texas</b> Legislative Budget Board	Yes	Yes	No	No
<b>Utah</b> Legislative Fiscal Analyst Office	No	No	No	No
<b>Vermont</b> Joint Fiscal Office	Yes	Yes	Yes	Yes
<b>Virginia</b> House Appropriations Committee	Yes	Yes	Yes	No
Virginia Senate Finance Committee	Yes	Yes	Yes	No
■ <b>Washington</b> House Appropriations Committee	Yes	Yes	No	Yes
<b>Washington</b> House Finance Committee	Yes	Yes	Can reject	Informally
<b>Washington</b> Senate Ways & Means Committee	Yes	Yes	Yes	No
<b>West Virginia</b> Legislative Auditor's Office	Yes	Yes	No	No
■ <b>Wisconsin</b> Legislative Fiscal Bureau	Yes	Yes	Yes	No
<b>Wyoming</b> Legislative Service Office	Yes	Yes	Yes	Yes

### **Additional information about legislative fiscal note agencies**

Table 4 shows additional features of states' varied practices by agencies that prepare fiscal notes.<sup>58</sup> This variation is illustrated by (1) the number of *legislative* budget agencies that are *authorized to prepare fiscal notes*: Florida has four; Illinois, Michigan, Oklahoma, and Pennsylvania each has two; and the other states have either one (including Wisconsin) or none (including Washington and Minnesota), and (2) the *steps in the legislative process* when fiscal notes can be prepared. The primary comparison states of Minnesota, Wisconsin, Washington, and Maryland are highlighted.

**Table 4. Additional detail concerning legislative fiscal note offices.**

<sup>58</sup> NCSL 1998-99 survey and report, *Table 10: When the Legislative Fiscal Office Prepares or Revises a Fiscal Note.*

<b>State Legislative Offices that prepare fiscal notes, and timing</b>	<b>Introduction</b>	<b>Approp. Committee Assignment</b>	<b>Standing Committee Assignment</b>	<b>Committee Amendment</b>	<b>Floor Action</b>
<b>Alabama</b> Legislative Fiscal Office	Yes	Yes	Yes	Yes	Yes
<b>Alaska</b> Legislative Finance Division	(does not prepare Fiscal Notes)				
<b>Arizona</b> Joint Legislative Budget Committee	(No information)				
<b>Arkansas</b> Bureau of Legislative Research	(No information)				
<b>Colorado</b> Joint Budget Committee	(does not prepare Fiscal Notes)				
<b>Connecticut</b> Office of Fiscal Analysis	No	Yes	No	No	Yes
<b>Delaware</b> Office of the Controller General	No	Yes	Yes	Yes	Yes
<b>Florida</b> Division of Economic & Demographic Research	(does not prepare Fiscal Notes)				
Florida Fiscal Responsibility Council	No	Yes	No	No	No
Florida House Finance & Taxation Committee	Yes	No	Yes	Yes	Yes
Florida Office of the Auditor General	(does not prepare Fiscal Notes)				
Florida Senate Committee on Fiscal Policy		Yes	Yes	Yes	Yes
Florida Senate Committee on Fiscal Resource	No	No	Yes	Yes	Yes
Florida Senate Budget Committee	(does not prepare Fiscal Notes)				
<b>Georgia</b> Legislative Budget Office	(does not prepare Fiscal Notes)				
<b>Hawaii</b> Senate Ways & Means Committee	(does not prepare Fiscal Notes)				
<b>Idaho</b> Office of Budget & Policy Analysis	Yes	Yes	No	No	No
<b>Illinois</b> Economic and Fiscal Commission	Yes	No	No	No	No

<b>State Legislative Offices that prepare fiscal notes, and timing</b>	<b>Introduction</b>	<b>Approp. Committee Assignment</b>	<b>Standing Committee Assignment</b>	<b>Committee Amendment</b>	<b>Floor Action</b>
Illinois Office of the Senate Minority Office	(does not prepare Fiscal Notes)				
Illinois Senate Majority Appropriations Office	Yes		Yes	Yes	Yes
<b>Indiana</b> House Democratic Fiscal Analyst	(does not prepare Fiscal Notes)				
Indiana Office of Fiscal and Management Analysis	Yes	No	No	Yes	Yes
Indiana Senate Majority Fiscal Analyst	(prepares more partisan Fiscal Notes)				
<b>Iowa</b> Legislative Fiscal Bureau	Yes	No	Yes	Yes	Yes
<b>Kansas</b> Legislative Research Department	(does not prepare Fiscal Notes)				
<b>Kentucky</b> Office of Budget Review	Yes	Yes	Yes	Yes	Yes
<b>Louisiana</b> House Fiscal Division	(does not prepare Fiscal Notes)				
Louisiana Legislative Fiscal Office	Yes	Yes	Yes	Yes	Yes
■ <b>Maryland</b> Office of Policy Analysis			Yes		Yes
<b>Maine</b> Office of Fiscal & Program Review	Yes			Yes	Yes
<b>Massachusetts</b> House Ways and Means Committee	(No information)				
<b>Michigan</b> House Fiscal Agency		Yes	Yes		
Michigan Senate Fiscal Agency	No	Yes	Yes	Yes	Yes
■ <b>Minnesota</b> House Ways & Means Committee	(does not prepare Fiscal Notes)				
<b>Minnesota</b> Senate Fiscal Policy Analysis	(does not prepare Fiscal Notes)				
<b>Minnesota</b> Senate Taxes & Tax Law Committee	(does not prepare Fiscal Notes)				
<b>Mississippi</b> Joint Legislative Budget Office	No	No	No	No	No

<b>State Legislative Offices that prepare fiscal notes, and timing</b>	<b>Introduction</b>	<b>Approp. Committee Assignment</b>	<b>Standing Committee Assignment</b>	<b>Committee Amendment</b>	<b>Floor Action</b>
<b>Missouri</b> House Appropriations Committee	(does not prepare Fiscal Notes)				
Missouri Oversight Division	Yes	Yes	Yes	Yes	Yes
Missouri Senate Research Staff	(does not prepare Fiscal Notes)				
<b>Montana</b> Legislative Fiscal Division	(does not prepare Fiscal Notes)				
<b>Nebraska</b> Legislative Fiscal Office	No	Yes	Yes	No	Yes
<b>Nevada</b> Fiscal Analysis Division	Yes	No	No	Yes	No
<b>New Hampshire</b> Office of Legislative Budget Assistant	Yes	No	No	No	Yes
<b>New Jersey</b> Legislative Budget & Finance Office	No	Yes	No	Yes	Yes
<b>New Mexico</b> Legislative Finance Committee	Yes			Yes	
<b>North Carolina</b> Fiscal Research Division	Yes			Yes	Yes
<b>North Dakota</b> Legislative Council	(does not prepare Fiscal Notes)				
<b>Ohio</b> Legislative Budget Office	No	No	No	No	Yes
<b>Oklahoma</b> House Fiscal Division	Yes	Yes	Yes	Yes	Yes
Oklahoma Senate Fiscal Division	No	Yes	Yes	Yes	Yes
<b>Oregon</b> Legislative Fiscal Office	(No information)				
Oregon Legislative Revenue Office		Yes		Yes	
<b>Pennsylvania</b> Senate Appropriations Committee	No	Yes	No	No	No
Pennsylvania Senate Minority Appropriations	No	Yes	No	Yes	
<b>Rhode Island</b> House Fiscal Staff	No	No	No	No	No



<b>State Legislative Offices that prepare fiscal notes, and timing</b>	<b>Introduction</b>	<b>Approp. Committee Assignment</b>	<b>Standing Committee Assignment</b>	<b>Committee Amendment</b>	<b>Floor Action</b>
<b>South Carolina</b> Senate Finance Committee	No	Yes	Yes	Yes	Yes
<b>South Dakota</b> Legislative Research Council	Yes	Yes	Yes	Yes	Yes
<b>Tennessee</b> Office of Legislative Budget Analysis	(does not prepare Fiscal Notes)				
<b>Texas</b> Legislative Budget Board	Yes	No	No	Yes	Yes
<b>Utah</b> Legislative Fiscal Analyst Office	Yes				
<b>Virginia</b> House Appropriations Committee	(does not prepare Fiscal Notes)				
Virginia Senate Finance Committee	(does not prepare Fiscal Notes)				
■ <b>Washington</b> House Appropriations Committee	(does not prepare Fiscal Notes)				
<b>Washington</b> House Finance Committee	(does not prepare Fiscal Notes)				
<b>Washington</b> Senate Ways & Means Committee	(does not prepare Fiscal Notes)				
<b>West Virginia</b> Legislative Auditor's Office	(No information)				
■ <b>Wisconsin</b> Legislative Fiscal Bureau	No	No	No	Yes	No
<b>Wyoming</b> Legislative Service Office	Yes				

### Other states findings on accuracy and independence

Several states have conducted studies specifically addressing the need to improve the fiscal note processes in their states. Kansas and Montana seemed to have the most thorough analyses and are reviewed here for their recommendations. The subject of these evaluative reports was fiscal note preparation in total, and not only for human services fiscal notes.

**Kansas** The Legislative Division of Post Audit for the state of Kansas conducted a performance audit of the fiscal note process, resulting in a report released in early 2010.<sup>59</sup>

<sup>59</sup> *Performance Audit Report – Fiscal Notes: Determining Whether the Process for Preparing Fiscal Estimates in Kansas Could Be Improved*, Report to the Legislative Post Audit Committee by the Legislative Division of Post Audit, State of Kansas, April 2010. [http://www.ksLegislature.org/postaudit/audits\\_perform/09pa01a.pdf](http://www.ksLegislature.org/postaudit/audits_perform/09pa01a.pdf)

The report also identified three primary reasons why fiscal note estimates were different from actual expenditures for a selected set of past bills. Overall, the report noted, fiscal notes are more likely to be accurate the more concrete the actions being taken, the number of people being served, or the dollar amounts involved. Conversely, fiscal notes accuracy is less likely for bills that require significant assumptions or predictions, or for which there is a lack of data about how many entities might participate in a service or activity. The underlying reasons for the difference between estimates and actual expenditures noted in the report:<sup>60</sup>

- The Legislature or Governor significantly changed the scope or funding for the program, either in the same year as the bill passed (through amendments) or in subsequent years.
- The agency took actions that significantly changed the scope or funding for the program.
- The participation rate in the program or activity was significantly different from what the agency projected.

The Kansas report “compiled best practices for the fiscal note process and the actual content of fiscal notes from the National Conference of State Legislatures (NCSL), other states, and our own reasonableness assumptions.” They include:<sup>61</sup>

**Independently created:** Fiscal notes should be created or at least reviewed and approved by an independent agency or entity. Although it’s often necessary to obtain estimates or other key information from agencies affected by the legislation, an independent assessment of whether the estimate appears to be reasonable can help limit bias.

**Transparent:** Specifically, fiscal notes should:

- Include any underlying assumptions to allow an evaluation of the reasonableness of the assumptions and estimates
- Be complete
- Include sources of estimates

**Adjustable/Flexible:** Estimates should be presented in a manner that readily allows for revisions, reviews of assumptions, and other what-if scenarios.

**Accurate:** Fiscal notes should be accurate as possible, given the time available to make the estimate, the inevitable error in predicting the future, and the availability of relevant information.

**Well Written:** Fiscal notes should be factual, concise, and simply stated.

**Comprehensive:** Fiscal notes should address all reasonably foreseeable significant financial impacts, including any likely unintended consequences.

**Montana** A study was conducted in 2006 to determine how fiscal notes might be improved and provide better information to the Montana Legislature.<sup>62</sup> It included consideration of issues of

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<sup>60</sup> Ibid., p. 7.

<sup>61</sup> Ibid., pp. 17-18.

<sup>62</sup> *Findings of the Fiscal Note Work Group*, Report Prepared for the Legislative Council and Legislative Finance

location of the function within government and resource issues, among others. The study followed a survey of legislator satisfaction with the fiscal note process to identify issues that needed to be addressed.<sup>63</sup> The study, conducted by a broadly representative work group assisted by the Legislative Fiscal Office staff, reviewed changes in several categories: (1) structural changes to the process, (2) process or content enhancements, and (3) training and communications. The more notable options considered included:

**Move the fiscal note function out of the Governor’s budget office.** This option would move the budget function to another agency or independent unit, presumably in the Legislative branch. The analysis identified pros and cons:<sup>64</sup>

- Pros* Moves fiscal note function to agency that does not have a stake in the outcome  
Might improve the comfort level of legislators in fiscal notes  
Possibly better coordination between fiscal note completion and scheduling hearings
- Cons* Additional cost of staff to prepare fiscal notes  
The dependence on data and assumptions from affected agencies remains  
If positions are full-time, how would positions be utilized in the interim?  
If positions are temporary, potential recruitment problems  
Would need office space in or very close to the Capitol

The report noted that the fiscal note function should not be located in the Legislative Audit Division because of their need to maintain an “independence” from the agencies and programs that they audit. “It would not be appropriate for LAD to be estimating the fiscal impact of legislation that would someday be subject to an audit by the same group.”<sup>65</sup>

The two other divisions, Legislative Services Division and Legislative Fiscal Division “have extreme session workloads that correspond (in terms of the calendar) to the volume of work that the fiscal note preparation would require.” The need for additional staff was estimated at 5 to 6 FTE plus one FTE administrative support. The estimated cost would be in the range of \$300,000 to \$500,000 per year, assuming year-round staff. “If the decision were to hire session staff, finding individuals with the necessary skill set would likely be a problem.” It was not expected that the executive branch staff who currently prepare fiscal notes in the agencies would be available for transfer to a new fiscal note unit in the legislative branch. Although their workload would be reduced during the legislative session, these staff have additional responsibilities including preparing the executive budget proposal, monitoring budget during the session, and other oversight duties.<sup>66</sup>

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Committee, prepared by Jon Moe, Fiscal Specialist, Montana Legislative Fiscal Division, May 26, 2006.  
[http://leg.mt.gov/content/publications/fiscal/interim/financecmty\\_june2006/Fiscal\\_Note\\_Report.pdf](http://leg.mt.gov/content/publications/fiscal/interim/financecmty_june2006/Fiscal_Note_Report.pdf)

<sup>63</sup> *Fiscal Note Survey Results*, Montana Legislative Fiscal Division, 2006.

[http://leg.mt.gov/content/Committees/Administration/Legislative%20Council/2005-6/Work%20Group/fiscal\\_note\\_survey\\_results\\_summary.pdf](http://leg.mt.gov/content/Committees/Administration/Legislative%20Council/2005-6/Work%20Group/fiscal_note_survey_results_summary.pdf)

<sup>64</sup> *Ibid.*, p. 2

<sup>65</sup> *Ibid.*

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

The report noted that five to six analysts may not be sufficient, and pointed to the recent experience in Colorado. “The Colorado unit started with five but has expanded considerably.”<sup>67</sup>

The legislative perception of bias and inaccuracy was noted several times in this report. The question was asked whether moving the function to the legislative branch would solve those problems. Additionally, since the bulk of data used in compiling fiscal notes would still come from the state agencies, some legislators may still be suspicious of the content.<sup>68</sup>

**Establish an independent review of fiscal notes (in the Legislative Fiscal Office) during the session.** The Montana report evaluated the suggestion of hiring of one or two (possibly more) session-only legislative staff in the Legislative Fiscal Division for five months to review fiscal notes for the Legislature. The new staff could focus on fiscal notes that are challenged by the sponsor of proposed legislation, or other legislators, to limit the volume of reviews. The evaluation group noted these pros and cons:<sup>69</sup>

*Pros* Gives legislators the resource they need to validate information in the fiscal note  
May create a higher level of comfort for legislators with fiscal notes

*Cons* The cost may be \$50,000 per session for two session-only fiscal note staff  
Finding temporary staff with the necessary expertise might be a problem  
Could adversely affect timeliness, depending on how it is set up

**Increase staff resources (in the executive branch Office of Budget and Program Planning) to aid in timeliness and accuracy.** The Montana study considered adding session-only staff to the executive budget agency for the purpose of allowing more time to ensure accuracy and speed up the process. “In the past, OBPP has hired a former state employee with considerable fiscal experience to work with fiscal notes during a session, and reportedly it did help with the OBPP workload.”<sup>70</sup>

The Montana report also made proposals and evaluated *process and content enhancements*, as well as *training* and *communications*. Several of them are listed here for reference as good fiscal note practices.<sup>71</sup> It should be noted again that these items reflect proposals for improvements in the Montana fiscal note process at the time of the report in 2006.

### Process and content

- Show impact in years beyond the budget years.
- Simplify the fiscal note format.
- Add a brief narrative description of fiscal impact.
- Indicate “up front” in the fiscal note what changed in a revised fiscal note (amendment, change in assumptions, error in calculation, etc.)
- Add space in the fiscal note for the sponsor to comment on the fiscal impact presented.

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

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.* p. 3.

<sup>70</sup> *Ibid.*, p. 3.

<sup>71</sup> *Ibid.*, pp. 7-12

- State the facts and assumptions in a way that clearly differentiates them.
- Be clear in the fiscal note about uncertainties in data.
- Use ranges in fiscal impact when appropriate.
- [Provide] base document of data for fiscal note reference for legislators reading fiscal notes, so that data does not need to be repeated in every bill on the same topic.
- [Ensure that] a printed “data prepared” . . . appears when the fiscal note is printed out from the [automated database of fiscal notes].

### **Training and communications**

- Develop training strategies to help legislators better understand the fiscal note.
- Encourage sponsors to follow through on their disagreement with a fiscal note. Discuss with the OBPP [executive budget agency] when they disagree.
- [Ensure good] communications with the sponsor by the preparer [of the fiscal note].
- [Ensure good] communications between the drafter of legislation and the preparer.