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# Fiscal Notes

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*This publication provides information on fiscal notes and their role in the legislative budget process, including how to request and review fiscal notes.*

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## **What Is a Fiscal Note?**

Fiscal notes put a price tag on proposed legislation and are very important in the legislative process. A fiscal note should be an objective opinion on the change in expenditures and revenues that will result if a bill is enacted. Legislators need this information to make informed decisions on proposed legislation. A fiscal note may influence if a bill passes, if it fails, or if changes need to be made to the bill to adjust the cost or revenue. Not all bills need a fiscal note.

Minnesota Statutes, Section 3.98 addresses fiscal notes. This legislation states that the head or chief administrative officer of each department or agency of the state government, including the Supreme Court, shall prepare a fiscal note at the request of the chair of the standing committee to which the bill has been referred, or the chair of the House Ways and Means Committee, or the chair of the Senate Committee on Finance.

M.S. 3.98 requires fiscal notes “where possible” to do the following:

- Cite the effect in dollar amounts
- Cite the statutory provisions affected
- Estimate the increase or decrease in revenues or expenditures
- Include the costs which may be absorbed by the agency or program without additional funds
- Include the assumptions used in determining the cost estimates
- Specify any long-range implications
- The fiscal note may comment on technical or mechanical defects in the bill but shall not express opinions concerning the merits of the proposal

The statute goes on to require the distribution of fiscal notes to the chairs of the Ways and Means Committee of the House of Representatives, the Finance Committee of the Senate, the standing committee to which the bill has been referred, the chief author and to the Commissioner of Minnesota Management and Budget (MMB). It further requires MMB to set up a uniform procedure to govern departments in complying with the statute, putting MMB in charge of the process to produce fiscal notes.

## **2012 Statutory Changes - Types of Fiscal Notes**

In response to recommendations made by the Legislative Auditor in a program evaluation of the fiscal note system, the legislature enacted a new section in the state data practices act providing for, in addition to regular fiscal notes, both unofficial and confidential notes. Minnesota Statutes, Section 13.64 was amended to add a section which defines an “unofficial fiscal note” as one requested on behalf of a legislator for draft language for a bill which has not been introduced. The new section specifies that if the request for an unofficial fiscal note is accompanied by a directive from the requester that the data in the unofficial note be classified, that the data on the request, the bill draft and the unofficial fiscal note are private data on individuals or nonpublic data. The information is available to the requester and may be released publicly by them. However, the information also becomes public if used subsequently for an introduced bill or any legislation, including amendments or a proposed bill subsequently offered by any legislator. MMB does not proactively publish confidential notes when identical language is proposed but will use the data to inform discussion on the legislation or complete a new fiscal note request as needed. There has been relatively limited use of confidential fiscal notes so far.

## **How to Request a Fiscal Note**

In the House of Representatives, fiscal notes are requested through the relevant fiscal analyst or the committee administrator for the Ways and Means Committee. These are the only people authorized to initiate requests in the Fiscal Note Tracking System (FNTS). Committee administrators for both policy and finance committees should work with the appropriate fiscal analyst to determine when fiscal notes are needed and how requests will be made.

## **Fiscal Estimates and Informal Fiscal Notes**

At times the author of a bill may want to know the fiscal impact of a proposal before it is introduced as a bill. That member should discuss the proposal with the appropriate fiscal analyst. The fiscal analyst may be able to estimate the fiscal impact or discuss the proposal with agency staff informally in order to make a rough estimate of the fiscal impact.

It is also possible to obtain an informal fiscal note on the draft of a bill. As mentioned above, 2012 statutory changes allow authors to request that these fiscal notes remain confidential prior to introduction of the language as a bill. The author of the bill should provide the fiscal analyst with the proposed legislation which is then sent to the appropriate agency or agencies for their input. The author and the fiscal analyst (and no one else if it is a confidential note) will be notified when the fiscal note is ready.

## **The Fiscal Note Process**

Minnesota Management & Budget (MMB) manages the formal fiscal note process. Once they receive a legislative request through the FNTS system for a fiscal note, the bill is reviewed and assigned to the appropriate state agency or agencies. Agency staff then completes the fiscal note using program rules, formulas, assumptions about how the proposed legislation will be used or implemented, etc. 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, the note is forwarded by e-mail to the chief author, the committee chair, and the fiscal analyst for the area. Agencies usually have five working days to complete a fiscal note. This time frame can be much shorter if the note is requested as an emergency or when committee deadlines are approaching. It may also be much longer for complicated or multi-agency fiscal notes. Authors should request a fiscal note as soon as legislation is in a final or near final form. However, some bills will go to multiple committees with substantive changes at each stop. In these cases it may be better to wait to request a fiscal note until most changes have occurred to avoid wasting agency staff time preparing several fiscal notes that are not relevant to the final bill. Legislative fiscal analysts can help authors determine the need for, and best timing of, fiscal note requests.

Completed fiscal notes are posted to the MMB web site (<http://mn.gov/fnsearch/>). The posting is done two days after the individuals listed above have received their e-mail copies, giving the author time to review the note before it is widely released. Fiscal notes from past legislative sessions are also on the web site.

**Does the Legislature have to abide by the numbers that the agencies use in fiscal notes?**

The Legislature is not obligated by either law or rule to use the estimates in a fiscal note. The fiscal note is considered *advice* to the Legislature on what the Executive Branch thinks are the costs associated with new legislation.

Many of the cost estimates contained in fiscal notes are straight-forward (for example, a bill may appropriate a specified amount for a grant program). However, a fiscal note may state that the agency administering a program will incur additional costs. The finance committee considering the agency's budget may decide that the agency already has enough resources to administer the program and choose not to appropriate additional funds for program administration.

Similarly, there may be assumptions on program usage, rollout timelines, or formulas that assign costs to parts of a program that may be more subject to discussion. The Legislature may choose to change or disregard fiscal estimates in some cases, however, this will usually be a source of close scrutiny and debate.

Effective dates are another area that affect fiscal notes and can cause debate between the Legislature and the Executive Branch agencies. The Department of Human Services in particular has in recent years incorporated lengthy delays in the assumed effective dates of legislation because they are not able to implement IT system changes within the effective date proposed in the legislation. Delaying effective dates causes fiscal impacts to be realized later and push cost estimates further out in the planning horizon or even beyond it. This has been a fairly major source of concern with Department of Human Services fiscal notes in recent years.

**Fiscal Notes Format**

A fiscal note can be very simple or it can be very complicated. For example, a fiscal note can be as short as two pages and involve only one agency, or the fiscal note may involve many agencies and run several pages. A good example of the latter is the 2013 session fiscal note for HF 5 enacting MNsure. It was 47 pages long, included nine agencies, went through five separate versions and involved multiple state funds.

A fiscal note is structured to include both a summary page and additional narrative pages. The narrative pages describe the bill, detail the assumptions that are used to develop cost and revenue estimates, may address any local impacts, include any formulas that are used, and document references and data sources used in the note.

***Single Agency Fiscal Note***

If only a single agency is involved, the fiscal note starts with a summary page that shows the net impact to the state. This first page consists of a table listing net expenditures and revenues by fund, and shows the net cost or savings to the state (expenditures minus revenues). The summary page

also includes a box that shows if there is a fiscal impact to the state, local units of government, fees or departmental earnings, and tax revenue. Finally, the summary page also shows the number of full time equivalents that will be needed to administer the proposal. The fiscal note displays this for both the current biennium and for the next biennium. Following this first page, narrative pages describe in further detail how the cost and revenue estimates were derived by listing the assumptions and formulas used.

**Consolidated Fiscal Note**

If the fiscal note involves more than one agency, it is called a consolidated fiscal note. For consolidated fiscal notes, the first page will provide summary information for all agencies involved. Following the overall summary page, each agency will also have its own summary page and page(s) that will list the assumptions and formulas that it used to determine the agency figures.

The following table gives a more detailed look at the components included in a fiscal note.

<b>Summary Sheet</b>	
<b>Headings</b>	<b>Description</b>
The heading will read either <b>fiscal note</b> or <b>consolidated fiscal note</b> .	A <b>fiscal note</b> involves only one agency while a <b>consolidated fiscal note</b> means the note involves more than one agency.
<b>Bill Number</b>	Shows the bill number and version. How to determine what version of a bill the fiscal note was prepared for:  HF 0000 – 0 Bill as introduced HF 0000 – 1E First Engrossment HF 0000 – 1CE First Committee Engrossment HF 0000 – 1UE First Unofficial Engrossment HF 0000 – 1A First Amendment
<b>Completion Date</b>	The date the fiscal note was signed off as completed by Minnesota Management & Budget.
<b>Agencies</b>	A list of the agency or agencies impacted by the legislation.
<b>Fiscal Impact</b>	A table in the upper right corner of the fiscal note. The table indicates at a glance if the bill has a fiscal impact at either the state or local level, if the bill involves fees or

<b>Summary Sheet</b>	
<b>Headings</b>	<b>Description</b>
<b>Fiscal Impact Cont.</b>	departmental earnings, and if the bill involves tax revenue. If any of these factors are met, a box will be checked.
<b>Expenditures</b>	Estimated cost of the bill, presented by fund and agency
<b>Amount Agency is Able to Absorb</b>	Identifies costs the agency is able to absorb within its existing funding level.
<b>Net Expenditures<sup>1</sup></b>	Expenditures less the amount the agency can absorb.
<b>Revenues</b>	Any revenue that the bill may bring in, listed by fund and by agency.
<b>Net Cost or Savings to the State</b>	Revenues are subtracted from the expenditures to determine the net cost or savings to the state. This is done by agency and by fund.
<b>Total Cost or Savings to the State</b>	Shows the net impact to the state. If more than one agency is listed, this combines them by fund. The fiscal implications will be for five years during the first year of a legislative session, and for four years during the second year of a legislative session.
<b>Full Time Equivalents</b>	The number of full time equivalent staff positions. A full-time equivalent position is 2,080 hours per year

<b>Supporting and Narrative Pages</b>	
<b>Bill Description</b>	A brief description of the part of the bill that will create a fiscal impact.
<b>Assumptions</b>	A list of the assumptions used to determine the impact of the bill.
<b>Expenditure and/or Revenue Formula</b>	Any formulas that are used to come up with the numbers in the fiscal note.
<b>Long-term Fiscal Considerations</b>	Addresses whether the fiscal impact will continue beyond the initial forecast period.

<sup>1</sup> Remember all dollars in the fiscal note are in thousands (10=10,000)

<b>Supporting and Narrative Pages</b>	
<b>Local Government Costs</b>	Local government's costs, if any, should be identified and explained.
<b>References/Sources</b>	The person who had input into the fiscal note. Also includes any studies and references that were used to determine the fiscal implications of the bill.
<b>Agency Sign-off</b>	The name and phone number of the agency contact and the agency fiscal note coordinator. These are the appropriate agency staff to answer questions about the content of the fiscal note.
<b>Executive Budget Officer (EBO) Comments</b>	The EBO from the MMB approves the fiscal note and may make comments on its contents.

## **Local Impact**

Often legislation will impact local units of government. The fiscal note manual requires any local government costs to be included in fiscal notes. However, many agencies simply check the box on the summary page showing that there is a local impact, but do not actually calculate the local costs.

Determining local costs is perhaps one of the more difficult areas in the fiscal note process. Local costs, if included, tend to be less accurate because they are much more difficult to estimate. A good example of a local impact is a bill that involves harsher criminal penalties. These penalties may have an impact on the local corrections system (more jail beds, county attorney time, etc.).

A separate process was established by the legislature to request a formal local impact note. Even though this statute for local impact notes (see M.S. 3.987-3.989 for the local impact note statute) is separate from the fiscal note legislation, it still views local impact statements as part of the fiscal note process. The chair or the ranking minority member of either legislative Tax Committee, or the Committees on Ways & Means/Finance can request a local impact note. MMB has worked with local units of government to improve the collection of local fiscal impact information. The Department has established two committees to deal with the local impact; a county local mandate advisory committee and a city local mandate advisory committee.

The same individuals that receive fiscal notes will receive the local impact statements. Local impact notes are more complicated to produce and take longer to complete than fiscal notes.

## **Revenue Estimates for Tax Bills**

Fiscal notes are not generally requested for tax bills unless the tax changes proposed in the bill are likely to have significant administrative costs. The revenue impact of a tax bill is summarized on a Revenue Analysis prepared by the Research Division at the Department of Revenue as authorized covered in Minnesota Statutes, Chapter 270C.11, Subd. 5. A revenue analysis shows how a bill would change total tax collections; it does not include an estimate of the administrative costs of



implementing the changes. To request either a revenue analysis or a fiscal note for a tax bill, contact one of the fiscal analysts assigned to the House Tax Committee. Completed revenue estimates can be found on the Department of Revenue web site:

[http://www.revenue.state.mn.us/law\\_policy/Pages/Revenue-Analyses.aspx](http://www.revenue.state.mn.us/law_policy/Pages/Revenue-Analyses.aspx)

## How to Review a Fiscal Note

Fiscal notes are difficult to do because they project into the future. The person reviewing the fiscal note should be critical. Agencies are often under pressure to complete fiscal notes in a very short time frame and mistakes sometimes are made. Also, some agency staff may not be adequately trained in preparing fiscal notes. Many times the agency is providing its best guess. Other times agency staff may come up with a range, but since a range can not be used in the fiscal note, a number in that range will be used in the fiscal note. There is often a perception that cost estimates are affected by whether the agency or the Governor are favorable to the idea or not. This is not usually demonstrable but authors should question assumptions that do not match the intent of the bill and work to clarify language that is ambiguous or being misinterpreted. Fiscal analysts can be helpful in clarifying these issues with agencies during the process.

Fiscal notes should be reviewed for accuracy, completeness and objectivity. When reviewing a fiscal note, consider several key points:

- Do the parties that are completing the fiscal note understand the author's intent? Agencies may have a different interpretation of the author's meaning, and this can affect the accuracy of the numbers.
- Are the assumptions clearly stated? If several agencies are involved in the fiscal note, are the assumptions the same for all agencies involved? The connection between the assumptions and the fiscal impact must be clear and logical.
- Does the fiscal note assume that the provisions of the bill will be carried out in the most efficient manner?
- Do the numbers look reasonable and realistic? Are the formulas correct?
- Do the assumptions take into account relevant budgetary, economic, social and demographic factors, and does agency staff take into account the latest research in the area? These factors are important because they could change the assumptions.<sup>2</sup> Agencies are encouraged to make

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<sup>2</sup> A good example of this was the three-strikes legislation (if an individual has a third conviction for a violent felony he or she will go to prison for life). Several members felt the bed impact numbers were too high. House fiscal staff supplied the Sentencing Guidelines Commission with recent research on several states that had enacted this type of legislation. Because of this, Sentencing Guidelines cut their estimated bed impact in half.

assumptions and estimate costs even when uncertainty exists. The assumptions should be carefully reviewed to determine if the most likely scenario is selected.

- Does the fiscal note address future spending outside the current biennium (called tails)? At times, costs will be minimal the first year but will accelerate in future years.
- Is a local impact included? The local impact is an important part of the fiscal note and should be included whenever needed.
- If agencies are requesting new staff positions, the first year costs could be less than future costs because not all positions will be filled the day the bill takes effect. Also, are agencies using the appropriate step of the salary range for positions?
- If the legislation is creating a grant program and the agency is claiming administrative expenses, are these reasonable or even needed? Past experience shows a big difference for administrative expenses in fiscal notes.
- Are all agencies that may be impacted included? MMB will send the fiscal note request only to the agencies they think are effected and may have missed an agency.
- Is the agency working on the latest amended copy of the bill, and is the fiscal note for the amended bill? This can be easily determined by looking at the summary page that includes the bill number and version (for example, HF200-3E is the third engrossment of House File 200).
- Any questions or concerns on fiscal notes should be directed to the appropriate fiscal analyst for further research on the issue.

### **Statistics on Fiscal Notes<sup>3</sup>**

During the 89th Legislature (2015-16 sessions), there were 1,611 fiscal notes requested by legislative staff. Of these 825 were requested by the House and 786 were requested by the Senate. This is the total number of individual requests, many of these were assigned to more than one agency.

Of the 1,611 requests, 77 percent were completed, 21 percent were inactive, and 2 percent were incomplete. Also, 130 notes (8 percent) were revised, possibly more than once.

### **Fiscal Note Requests**

In the 2015-16 sessions, 10 agencies had more than 100 fiscal note requests during the two year period. Requests for these high volume agencies is shown in the table below.

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<sup>3</sup> Fiscal note statistics are from FNTS and do not include confidential notes.

<b>Agency</b>	<b>2015-16 Fiscal Notes Assigned</b>
Human Services	434
Public Safety	228
Health	173
Supreme Court	154
Transportation	148
Revenue	148
Education	144
Natural Resources	122
Minnesota Management & Budget	121
Commerce	114

### **How Can The Process Be Improved?**

Fiscal notes can put a strain on agency resources since it takes staff time to complete a fiscal note. Legislators and legislative staff can help the process by requesting fiscal notes only on those bills that have a fiscal impact. If a bill has no fiscal impact and a fiscal note is still requested, the agency must complete a fiscal note and explain in the assumptions why there is no fiscal impact. In the program evaluation report on the fiscal note system the Legislative Auditor has many suggestions to help improve the quality of fiscal notes and the process of producing them. Many of these recommendations have been acted on or are ongoing on the part of legislative and agency staff. The report recommended:

#### ***Legislative Changes***

- Clarify in law the definition of a fiscal note.
- Require that bills usually have fiscal notes or revenue estimates before finance or tax committee votes on passage.
- Facilitate development of clear bill language and fiscal notes by communicating with agencies early in the process on complicated legislation.
- Provide agencies with advance notice of hearings where fiscal notes may be used.
- Have legislative fiscal analysts provide information to agencies whenever possible.
- Ensure that legislative staff is properly trained on the fiscal note process.
- Amend statute to change the requirement to “cite the statutory provisions affected” to a requirement that fiscal notes include a brief summary of the bill.
- Establish links on the legislative website to local impact notes.

#### ***Agency Changes***

- Make stronger efforts to discuss local impacts in fiscal notes.
- Make sure that fiscal notes are understandable to general readers.
- Seek more clarity from legislators or legislative staff on bill language and assumptions.

### **Minnesota Management & Budget Changes**

- Ensure that agencies clearly and adequately explain, justify and document estimates in fiscal notes.
- Improve instructions to agencies on areas such as absorbed costs, secondary impacts, local costs, and costs/savings for unprecedented, large scale or complex proposals.
- Improve oversight of multi-agency fiscal notes for timeliness and consistency.
- Establish a default due date for fiscal notes that is longer than five working days.
- Consider developing an alternative format to use when showing the impact of pension bills.

Generally, in order to have the fiscal note process work best and to ensure that they have the proper fiscal notes or revenue estimates when they need them, legislators should remember:

- If it is unclear if a bill has a fiscal implication and needs a fiscal note, contact the fiscal analyst for the committee. The fiscal analyst can determine if there is a fiscal impact and if a fiscal note is needed.
- Request fiscal notes only on bills that are actually moving through the committee process.
- If a fiscal note is needed, request it as soon as possible, preferably as soon as it is known that the bill will receive a hearing.

### **References**

1. *The Fiscal Note Policy and Tracking System Manual*, MMB, [https://www.mn.gov/mmb/assets/fnts-policy-manual\\_tcm1059-127570.pdf](https://www.mn.gov/mmb/assets/fnts-policy-manual_tcm1059-127570.pdf)
2. Money Matters, *A Glossary of Fiscal Terms and Acronyms*, December 2014, <file:///C:/Users/dberg/Downloads/14glossary.pdf>
3. *Fiscal Notes Evaluation Report*, Office of the Legislative Auditor, February 2012, <http://www.auditor.leg.state.mn.us/ped/2012/fiscal.htm>