

# FINDINGS OF THE FISCAL NOTE WORK GROUP

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A Report Prepared for the  
**Legislative Council**  
**and**  
**Legislative Finance Committee**

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## INTRODUCTION

The fiscal note is an important, albeit sometimes contentious, component of the legislative process. Simply stated, it provides legislators with an estimate of the potential financial impact of proposed legislation. By statute, fiscal notes are prepared by the Governor's Office of Budget and Program Planning (OBPP). During the 2005 Legislative Session, about 1,400 bills or resolutions were considered by the legislature and about 750 of those had fiscal notes prepared. Because the fiscal note is such an important part of the process, and because of concerns oftentimes expressed by members, the Legislative Council initiated a 4-member work group to study the fiscal note process and format, with the intent of determining how fiscal notes might be improved to provide better information to the legislature. The work group was formed with two members from the Legislative Council and two from the Legislative Finance Committee. Those members are:

Representative Dave Wanzenried (Chairman)	Legislative Council
Representative Michael Lange	Legislative Council
Representative John Sinrud	Legislative Finance Committee
Representative Tim Callahan	Legislative Finance Committee

Work group activities commenced in February 2006. For the first part of its work, the work group was given background information that included:

- A discussion of the Montana fiscal note process
- A discussion of the Colorado switch from fiscal notes prepared in the Governor's budget office to being prepared by a unit created in the Legislative Branch
- A summary of the results of a 1999 NCSL survey of states regarding fiscal notes
- A review of the Montana statutes and rules related to fiscal notes (Attachments A and B)

Also during February, all 150 legislators were asked to complete a survey to determine legislator's views on the current fiscal note process, format, and content. Responses were received from 75 legislators. A summary of the fiscal note survey results is attached (Attachment C). The survey responses, besides indicating satisfaction levels, included numerous comments and suggestions that easily translated into a long list of options for the work group and ultimately the Legislative Council to consider.

On March 9, 2006, the work group met to discuss the information that had been compiled. The group reviewed the options provided and was presented with a few additional options during the course of the meeting. The work group discussions included the participation of several other people that were in attendance. Other participants in the discussion included David Ewer, Amy Sassano, and Christi Moyer of OBPP; House Chief Clerk Marilyn Miller; Assistant Secretary of the Senate Kathy Fabiano; Director Lois Menzies of the Legislative Services Division; Jon Moe and Roger Lloyd of the Legislative Fiscal Division; Larry Finch of the Department of Revenue; and Roxanne Minnehan of the Public Employee's Retirement Administration.

The options are discussed in detail below.

## FINDINGS

The following are the many options that are a product of the survey of legislators or that were suggested by participants in work group discussions. They are listed in four categories: 1) structural changes to the process requiring statute change or budget initiatives, 2) structural changes to the process requiring no statute change, 3) process or content enhancements, and 4) training and communications. The information with each option come from background information, discussions, or document reviews. If action is taken to accept some or all recommendations in this report, staff will take the necessary steps to develop legislation or rule change options, or to communicate the recommendations to the Office of Budget and Program Planning.

# STRUCTURAL CHANGES TO THE PROCESS (REQUIRING STATUTE CHANGE OR BUDGET INITIATIVE)

These options require some specific action by the legislature, either legislation or an appropriation.

## 1 - Move the fiscal note function out of the Governor’s budget office

This option suggests that the fiscal note process be moved from the Governor’s Office of Budget and Program Planning (OBPP) to another agency or independent unit, presumably in the Legislative Branch. There are three divisions in the branch: the Legislative Audit Division (LAD), the Legislative Services Division (LSD), and the Legislative Fiscal Division (LFD).

The LAD consists of financial auditors and performance auditors. The Director of LAD indicates that the fiscal note process should not be located in LAD 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. Even the performance auditors that might be diverted to the fiscal note function are subject to the same issue of maintaining independence and, as the director indicates, do not have an expertise that matches up to the skill set needed to prepare fiscal notes.

The LSD and the LFD both have extreme session workloads that correspond (in terms of the calendar) to the volume of work that the fiscal note preparation would require. Neither of these agencies could take on the fiscal note function without additional staff, a need estimated at 5.00 to 6.00 FTE fiscal analysts plus 1.00 FTE administrative support. The estimated cost would be in the area of \$300,000 to \$350,000 per year, or up to \$700,000 per biennium, assuming the staff was full-time and not hired just for the session. If the decision were to hire session staff, finding individuals with the necessary skill set would likely be a problem. Also, it is not expected that FTE approved for OBPP would be available for transfer to a new fiscal note unit because of the workload volumes that OBPP must maintain. Although a removal of the fiscal note function would reduce their workload during the session, they still prepare executive budget proposal before the session and monitor the budget through the session, among other budget oversight duties.

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 (18 months) If positions are temporary, potential recruitment problems Would need office space in or very close to the Capitol

Work Group Staff Comment: This is purely a policy and financial decision for the legislature. From a process and resource perspective, having the fiscal note function in OBPP is a pretty good fit. If the legislature wishes to address the perception of bias and inaccuracy through a more “independent” agency, then moving the function may be necessary. But would moving the fiscal note function solve the bias and accuracy perceptions? Is the legislature willing to provide the funds needed to establish a separate fiscal note unit in the Legislative Branch, and do advantages outweigh the costs? It is difficult to say at this time that five to six analysts would be enough so costs could be greater than estimated. The Colorado unit started with five but has expanded considerably. Another strategy under this option would be to contract with an independent group outside state government, although this staff has had difficulty visualizing how that might work effectively.

Work Group Recommendation: Cost is obviously a concern. Also, since the bulk of data used in compiling fiscal notes would still come from the agencies, would some legislators still be suspicious of the content of fiscal notes? Statutory change would be necessary to pursue this option. The Legislative Council or an individual

legislator could introduce legislation to put the option of moving the fiscal note function in front of the legislature for discussion.

## 2 - Establish an independent review of fiscal notes during the session

This option would suggest the hiring of session only legislative staff (probably December 1 through April 30) to review fiscal notes on behalf of the legislature. One or two FTE might be able to perform this function, depending upon the volume of fiscal note that need review. These FTE could focus on fiscal notes that are challenged by the sponsor or other legislators, which might limit the volume they need to review.

Pros	Gives legislators the resource they need to validate the information in the fiscal note May create a higher level of comfort for legislators with fiscal notes
Cons	Still has a cost...maybe \$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

Work Group Staff: Again, this is a policy and financial decision for the legislature, albeit, at a much lower cost. By adding one or two staff with the right skill set to the Legislative Fiscal Division, at least for the session, the review of at least controversial fiscal notes could be achieved. Whether establishing a quality control component would help legislators feel better about the fiscal note would be determined by trying it. In terms of finding the expertise to fill this role, we also need to see how it works, although with an aging workforce, maybe the increase in retirements will yield some people with state and local government fiscal experience. In order to avoid adversely affecting the timeliness of fiscal notes, the review would likely have to be performed after the fiscal note is distributed. Otherwise, the completion of a fiscal note might take a day or two longer. While a change to statute is not needed for this option, it would require spending authority for a temporary session position, which could be authorized through the budget for future spending and through the “feed bill” for the upcoming session.

Work Group Recommendation: No recommendation.

## 3 - Increase staff resources...to aid in timeliness and accuracy

This option suggest that additional staff be hired by OBPP for the fiscal note process in order to deal with the extreme volume of fiscal notes that occurs early in the session and to assist in the analysis and revisions driven by amendments to legislation. These staff would presumably be session only staff.

Pros	More staff might translate into more accurate and timely fiscal notes
Cons	Cost might be comparable to the above option for two staff Finding temporary staff with the necessary expertise might be a problem

Work Group Staff: The idea here is to add staff to take some pressure off the staff that currently prepares fiscal notes allowing more time to ensure accuracy and to speed a process that is slowed by the sheer volume of work. This is a financial decision for the legislature. 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. While a change to statute is not needed for this option, it would require spending authority for the temporary hiring, which could be authorized through the budget for the 2009 session and via a supplemental appropriation for the 2007 session, if needed.

Work Group Recommendation: No recommendation.

## 4 - Instead of a sponsor’s fiscal note, have a sponsor’s rebuttal form...indicating the sponsor’s disagreement

The thought here is to change the nature of the bill sponsor’s response to the fiscal note that he or she does not agree is correct. It would focus on the part of the fiscal note where there is disagreement and not require the

preparation of a complete sponsor’s fiscal note. The rebuttal would need to focus on facts or assumption stated in the fiscal note that result in the stated fiscal impact and not simply say that the fiscal note is incorrect. This could even be made part of the current fiscal note rather than be a separate form. Presumably this could be prepared in the period that sponsor’s are given to review and sign the fiscal note. The sponsor could provide the written response to OBPP for inclusion in the fiscal note or as an attachment, or it could be a separate form as is the case with the sponsor’s fiscal note currently.

Pros	Provides a means for sponsors to disagree and make their case for the disagreement Makes the disagreement by the sponsor part of the fiscal note May provide more clarity in fiscal note by executive preparer
Cons	Depends on a quick response from the sponsor or slows down the fiscal note Probably requires statutory change Might adversely affect timeliness

Work Group Staff: Again, this is a policy decision for the legislature as a statutory change probably would be necessary. The legislature need to ask itself how useful the existing sponsor’s fiscal note is in the legislative process and how serious are they taken. In the 2005 regular session, only seven “sponsor’s fiscal notes” were printed for distribution.

Work Group Recommendation: Sponsor’s fiscal notes are not used much and creating a different format may not serve the legislature’s purpose to any greater degree. The better route seems to be to make sure that members know that they can talk to OBPP about their disagreement with the fiscal note and seek redress of the note in that way.

**5 - Something in statute that better defines what a fiscal note is and what it should include...to establish a clearer expectation of the legislature**

Currently the only direction that the executive agencies have is that the fiscal note “shall, where possible, show in dollar amounts the estimated increase or decrease in revenues or expenditures, costs which may be absorbed without additional funds, and long-range financial implications. No comment or opinion relative to merits of the bill shall be included; however, technical or mechanical defects may be noted.” Would the legislature want to be more specific in what the fiscal note should include or how it is constructed?

Pros	All parties might benefit by having expectations more clearly defined
Cons	

OBPP Comment: A definition should not be so narrow as to be unworkable, given the wide variety of bill topics and subject matter, and the variations in the amount of information that a fiscal note needs to include to satisfy the fiscal note requirement.

Work Group Staff: The legislature should decide if it wants to add a more descriptive definition. A sample of what staff visualizes for this option would be something like this:

Under 5-4-205 Content of notes

*It is the legislature’s intent that a fiscal note be prepared as an objective analysis of the fiscal impact of legislation. It should represent only the estimate of the revenues and expenditures that would result from the implementation of the legislation, if enacted, and shall not in any way reflect the views or opinions of the preparing agencies, the sponsor, or other interested parties. Reported revenues shall be estimated for each reported year based upon accepted revenue estimating methodologies for the source described, and should reflect the change from the official revenue estimate . Expenditures shall be estimated as the minimum required over and above the present law level for implementing the legislation, if enacted, in each reported year regardless of whether or not the preparing agency determines that it can absorb the costs in its proposed budget.*

*The fiscal note shall clearly differentiate between statements of fact and assumption made by the preparer while maintaining a logical flow of both in presenting how the fiscal impact is determined. The source of stated facts and the basis of stated assumptions should be clear in the fiscal note presentation. The fiscal note shall clearly state any uncertainties in the final estimate.*

Under 5-4-204 Submission of fiscal note

*A minor amendment in subsection (1)(b), following “budget director”, add “or fiscal note preparer”*

**Work Group Recommendation:** Recommendation left to purview of the Legislative Council. One work group member has indicated that this is not necessary and two members have indicated that this would be okay to recommend.

## **STRUCTURAL CHANGES TO THE PROCESS (NO STATUTE CHANGE NEEDED)**

These options relate primarily to the timeliness of fiscal notes. Pros and cons for the timeliness options are not provided. The goal of these options is obviously to enhance the timeliness of fiscal notes. It is important to ensure that acceptance of an option does not have an adverse effect on the quality of the fiscal notes.

### **6 - Have fiscal note ready for hearing, rather than requirement that bill cannot be reported out of committee without a fiscal note**

The current requirement that the bill cannot be reported out of committee without a fiscal note causes some confusion as it suggests that the fiscal note is not required for the hearing. Committee members on the other hand expect the fiscal note for the hearing and many will not vote on a bill without it. Ensuring that fiscal notes are available for the hearing can be accomplished in a couple of ways: 1) by not scheduling the hearing unless it is known that a fiscal note will be ready, and 2) by getting a commitment from OBPP and participating agencies that the note will be ready by a certain day. The bottom line is not letting the hearing start without the fiscal note being available. This option depends on other initiatives to encourage timelier fiscal notes such as starting preparation earlier or communicating the need for a revised fiscal note in a better way. In the work group discussion, it was suggested that the rule itself needs to be discussed by the rules committee to make sure it says what everyone think it should say. Currently Joint Rule 40-100(8) says, “If a bill requires a fiscal note, the bill may not be reported from a committee for second reading unless the bill is accompanied by the fiscal note.”

**OBPP Comment:** OBPP does and will continue to make every effort to have fiscal notes ready for hearings, however, sometimes this cannot occur due to when the request for the fiscal note is received or the complexity of the bill.

**Work Group Staff:** The Legislative Council could discuss the need for a rule change directing that fiscal notes be available for hearings, but timeliness is still related to the complexity of the legislation and the preparer’s ability to turn the fiscal note request around in the allotted time. The Legislative Council should also discuss whether committee chairmen would be able to have a protocol for scheduling a hearing only if the fiscal note will be ready. With a 6-day fiscal note preparation process that can be extended by the presiding officer (of House or Senate) and a 3-day notice requirement for meetings, the ability to anticipate the availability of the fiscal note is problematic.

**Work Group Recommendation:** Since this option seems to match the expectations of most legislators, this should be the goal for availability of fiscal notes, even if the rules are not changed to require it. OBPP already attempts to meet this requirement, but on complicated bills, the scheduling of hearings should be coordinated with the ability of OBPP to produce the fiscal note in time.

## **7 - Ensure that fiscal note gets to sponsor before distribution**

While this option comes from the comments of some legislators in the survey responses, the existing process provides a step in which the sponsor is given the note in advance of distribution. The intent is that the sponsor signs the fiscal note (or at least sees the note) before it is released.

OBPP Comment: OBPP does not distribute fiscal notes but delivers them to the House and Senate for the sponsor and ultimately for distribution. Agencies are told not to distribute draft fiscal notes.

Work Group Recommendation: The House and Senate distribute the fiscal notes to sponsors when received but an effort to coordinate hearing schedules with the fiscal note process may be needed. It is recommended that the various committee staff, chief clerk of the House, and Secretary of the Senate discuss how this coordination can be accomplished.

## **8 - Add a note to the committee report that states that the committee amended the bill and a revised fiscal note is needed**

It is suggested that when a committee reports the bill out committee, if an amendment was passed, the committee report reflect that the amendment occurred and that a revised fiscal note is requested. The applicable chamber would be notified in this way and the presiding officer could make the request for the revised fiscal note.

OBPP Comment: This could only improve the process.

Work Group Recommendation: This option is highly recommended, as it would enhance communication of the need for a revised fiscal note.

## **9 - Make the revision of a fiscal note automatic when bill is amended...not by request through the presiding officer**

Another alternative to the above would be to take the presiding officer out of the loop, and have the fiscal note revision automatically generated by the occurrence of the amendment. This would require the OBPP to monitor all committee actions or that committee staff initiate the request when his or her committee amends a bill. OBPP would need a copy of the amendment in order to comply.

OBPP Comment: OBPP already reviews all amendments to all bills (even if they didn't have a fiscal note before). This could cause much more "make-work" and confusion than help.

Work Group Recommendation: Not recommended with option #8 above.

## **10 - Have the 6 day preparation start date begin when bill is pre-introduced, not on Day-1 of the session...thereby, allowing some fiscal notes to be ready shortly after the session begins and committees are ready to schedule bills for hearing**

OBPP would be directed to begin the fiscal note preparation on bills that are pre-introduced before the session. Therefore, a bill pre-introduced before December 26, 2006, could theoretically have the completed note in the hands of the sponsor on opening day of the session (January 3) and ready for hearing by the third day of the session. Bills without fiscal notes could be heard earlier. Notice to the public of the hearings this early must be initiated in advance of the beginning of the session in order to ensure adequate notice per rule.

OBPP Comment: OBPP has committed to have fiscal notes ready for pre-introduced bills on the 1<sup>st</sup> day of the session rather than the 6<sup>th</sup> day (assuming OBPP gets the request at least 6 days before the start of the session).

Work Group Staff: This option would probably help the legislative process to begin with many fiscal notes ready for hearing while taking some pressure off the fiscal note staff in the early days of the session, reducing some of the bottleneck that occurs in the first few weeks.

Work Group Recommendation: This option is highly recommended as it would allow for a quicker start for committee work and would seemingly smooth out the workload during the first few weeks.

## PROCESS OR CONTENT ENHANCEMENTS

### 11 - Special format for pension plan related fiscal notes

OBPP has initiated a new format already.

Pros	Provides a long-term impact to the actuarial liability and other pension specific info Focus legislator attention on important impacts; allows them to learn more about bill Tells whether actuary participated in the assessment
Cons	Might be a need for two fiscal notes if bill affects pensions and other state programs, although this admittedly would only occur up to a couple of times per session

Work Group Recommendation: The work group supports this OBPP effort to create a pension-specific format, as it would allow the fiscal note to address the uniqueness of pension legislation fiscal impacts.

### 12 - Show impact in years beyond the budget years

OBPP has initiated design of a format that would provide the impact for the budget years and the two years following the budget years...i.e., the fiscal summary on the front of the fiscal note, in the 2007 session, would show impacts for FY 2008, 2009, 2010, and 2011...sometimes the current year (2007) impact would need to be shown.

Pros	Longer-term look at the impact on front page of the note Delayed implementations will show up in the out years
Cons	Busier look on front page

Work Group Recommendation: The work group supports this OBPP effort to show additional years of impact in the summary on the front page, as long as it does not adversely affect timeliness. It should not replace the section in the fiscal note that discusses significant long-term impacts, which could extend well beyond the four years reported on the front page of the fiscal note.

### 13 - Simplify the fiscal note format

There were many comments in the survey responses that suggested simplification of the fiscal note. At the same time, most respondents of the survey said that they were satisfied with the categories of information that are currently reported on the fiscal note. Many said that all parts are useful. Simplification might imply that some of the current data would need to go in order to achieve simplification. However, maybe the fiscal note could be simplified by focusing on key data, while holding back information that might be considered background information. Background information is typically available if requested by the sponsor or others. In considering this option, some examples of a format might be necessary to see if the product would meet the needs of legislature. A simplified format could be up to one-page of just numbers and a few key assumptions and bullet statements on long-term impacts, local impacts, and technical notes...to a one-page (front and back) that still includes the fiscal summary, key assumptions, long-term impacts, local impacts, and technical notes. Even with a standard simplified format, there could be an occasional attachment to provide a table of data or pertinent spreadsheet.

Pros	Less complex...easier for legislators to read in short time
Cons	Less information available to understand the reason for a reported impact

OBPP Comment: OBPP makes every effort to make the fiscal note as simple and straightforward as possible, while still stating clearly the fiscal impact of the bill, and will continue to do so.

Work Group Staff: There are others that use the fiscal note and have to be considered in any effort to simplify the fiscal note. LFD staff, for example, that prepares the General Fund Status for the legislature is highly dependent on the fiscal note information. Some changes to the format of the front page of a fiscal note might answer the suggestions of legislators that want the notes simplified by giving them what they need on the front while leaving more detail in the subsequent pages.

Work Group Recommendation: The work group suggests that clarity is a larger issue than simplification, and that fiscal note enhancements to make the note more understandable should take precedent over efforts to reduce or simplify the format.

## **14 - Add a brief narrative description of fiscal impact to the beginning of the fiscal note**

This option would provide a brief paragraph at the beginning of a fiscal note that explains what it is about the bill that causes the reported fiscal impact. It would not summarize the bill, but just what causes the impact. For example: *“Fiscal impact occurs because the bill creates a five-member council required to meet 6 times per year which results in per diem and travel expenses,”* or *“Fiscal impact is reported for this bill because it provides a tax credit that will reduce tax liability for as many as 10,000 taxpayers, resulting in a reduction in individual income tax revenues. At the same time the bill adds a monitoring requirement for the Department of Commerce that requires the addition of 1.00 FTE program specialist to carry out those duties.”*

Pros	Focuses the reader on what specifically causes the impact
Cons	

Work Group Staff: From this staff person’s perspective, this option provides an opportunity for clarity in the understanding of fiscal notes. For a small investment of time up front by the person who knows the fiscal note best, it can reduce misunderstandings.

Work Group Recommendation: The work group supports this option.

## **15 - Indicate “up front” in the fiscal note what changed in a revised fiscal note...i.e., an amendment to the bill, change in assumption, error in calculation, etc.**

This option should be considered in concert with the previous option. When a fiscal note is revised, it is usually not easy to detect why the change to the fiscal note occurred. It could be because of an amendment or a change in an assumption, or maybe a newly identified technical concern. This note would simply say, for example: *“This revision is the result of two amendments adopted in House Appropriations committee on 2/23/07 that in effect removed the requirement for inspection services (assumption #4) and eliminated the need for the technical note shown in the previous version of the fiscal note.”* It should be part of the narrative in the previously discussed option.

Pros	Reader would quickly know why the note changed without having to search for change
Cons	

OBPP Comment: This sounds like a possibility, but not sure it is always this simple. Many times the assumptions may completely change.

Work Group Staff: From this staff person’s perspective, this option provides an opportunity for clarity in the understanding of fiscal notes. For a small investment of time by the person who probably knows best what has changed, it can simplify the note and reduce misunderstandings.

Work Group Recommendation: The work group supports this option.

**16 - Add space in fiscal note for the sponsor to comment on the fiscal impact presented in the fiscal note**

This option suggests that instead of simply “not signing the fiscal note in disagreement”, the sponsor would have the ability to add, to the fiscal note, his reason for disagreement. As with the fiscal note, the sponsor could not discuss the merits of the bill, but rather would only be allowed to question assumptions and calculations. This would be a sponsor’s recourse when OBPP cannot be convinced to change the note based upon the sponsor’s argument. The sponsor comment might look something like this: *“The sponsor disagrees with the caseload assumption because it assumes every potential beneficiary would apply, and that it is more likely that about half would apply because many potential beneficiaries have access to other alternative services. This would cut the impact in each year from \$46,000 general fund to \$28,000 general fund, if all other assumptions are valid.”*

Pros	Gives the sponsor a voice in the process other than preparing the sponsor fiscal note Could potentially eliminate sponsor fiscal note Engaging the sponsor in this way may improve sponsor’s understanding of fiscal note Might help encourage communication between sponsor and OBPP
Cons	Risk of slowing down the distribution and availability of fiscal note

OBPP Comment: Not sure the comments would come like the example shows. This is the role of the sponsor’s fiscal note or the suggested rebuttal form.

Work Group Staff: Staff is not sure this is an appropriate item for the fiscal note, but feel it is worthy of discussion. It goes back to whether or not the sponsor’s fiscal note is really an effective tool in the process (see the earlier discussion).

Work Group Recommendation: This option might open the fiscal note to remarks that affect the objectivity that the fiscal note is suppose to represent. The question might be whether or not the addition of this option would provide a balancing effect, addressing some legislators’ view that bias does occasionally occur in fiscal notes. Also, can it be implemented without adversely affecting timeliness?

**17 - State the facts and assumption in a way that clearly differentiates them**

This option comes from the survey and suggests that there be some standard for presenting the assumptions that the agency provides in developing the fiscal note. It could be as simple as telling agencies that facts are stated as facts and that assumptions always begin with “it is assumed.” Example of fact: *“In FY 2005 and 2006, 434 and 441 licenses were issued.”* Example of assumption: *“It is assumed that 450 licenses would be issued in each year of the 2009 biennium based upon the 2005 and 2006 experience.”* The work group discussed, as an alternative, possibly separating the facts or background data from the assumption statements. In that scenario, the logic flow leading to a conclusion might be broken and cause some confusion. Further discussion of the alternatives may be needed.

Pros	With training, the reader would know the difference This can be done without separating facts and assumption and interrupting the logic
Cons	

OBPP Comment: OBPP tries now to differentiate the two and will emphasize to agencies and OBPP staff to clearly differentiate the two.

Work Group Staff: This appears to be an issue for the training provided to its staff and the agency staff.

Work Group Recommendation: The work group recommends that this option be incorporated into OBPP directions to agencies and preparers.

### **18 - Be clear in the fiscal note about uncertainties in data**

This option, which was also suggested in survey responses, appears to suggest that when an agencies is not certain of the impact, either because of a lack of data, or because it is a new requirement with no experience, or impact is conditional on a variety of occurrences, that the fiscal note state that clearly. In other words, it should make clear the limitation of the data available and not simply make assumptions with no real basis, to come up with an estimate. It might also suggest that the fiscal summary simply say that an estimate cannot be determined because of a lack of data. What would be the legislature’s preference in this situation?

Pros	Clarity can enhance legislator perception of fiscal notes Clarity can mitigate perceptions of bias
Cons	

OBPP Comment: OBPP tries to clarify this situation and indicate data limitations. This situation will be added to agency guidelines and OBPP staff directions.

Work Group Staff: Also a training issue for OBPP staff and agencies.

Work Group Recommendation: The work group recommends that this option be incorporated into OBPP directions to agencies and preparers.

### **19 - Use ranges in fiscal impact when appropriate**

Under this option, agencies would use facts and assumptions that might only allow an estimate to be stated as a minimum and maximum. Therefore, based upon some less than solid estimates, fiscal impact could be stated as a range rather than a specific amount...for example, \$100,000 to \$150,000. The variation in the final impact should be reflected in the assumptions as well.

Pros	Provides some flexibility in fiscal note preparation Provides some clarity when there is not strong data on which to base estimate
Cons	Is problematic for LFD in preparing GF status sheet without specific estimate

OBPP Comments: Occasionally, OBPP have used ranges and will continue to have it as an option.

Work Group Recommendation: The work group suggests that OBPP continue to use ranges when necessary.

### **20 - 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...i.e., school funding data, etc.**

This option appears to assume that there is a great deal of data in fiscal notes that is repeated in multiple fiscal notes. With that in mind, it suggests that there be a base document that contains certain data, statistics, etc., that can be referenced by the fiscal note, but not included in the fiscal note, thereby, simplifying the fiscal note for ease of reading. For example, for school funding bills, historic enrollment figures and average costs might be used in multiple fiscal notes, so could be in base document.

Pros	Less to read means easier to read
Cons	Would be difficult to anticipate what data would be accumulated in base document Awkward to have to refer back and forth between document and fiscal note

Work Group Staff: This does not appear to be practical for all agencies and programs, but might be useful for some bigger programs, such as school funding, corrections, Medicaid. Conceptually, it is worthy of discussion. It would seem to take a great deal of work to create and would be difficult to apply in practice.

Work Group Recommendation: This may be too cumbersome to implement and is not recommended at this time.

## **21 - A printed “date prepared” so that a date appears when the fiscal note is printed from the Internet LAWS database**

This option, suggested by LSD and LFD staff, would provide that a printed date would be shown on the fiscal note. Currently, the only date that appears is the date handwritten by the budget director when he signs or the sponsor when he or she signs the fiscal note. This date shows up on notes printed for distribution, but does not show on fiscal notes that are printed from the LAWS database through the Internet. A printed date on the fiscal note would avoid the confusion that can occur when no date appears.

Work Group Recommendation: The work group supports this option and OBPP has indicated they will be implementing it.

## **TRAINING AND COMMUNICATION**

### **22 - Develop training strategies to help legislators better understand the fiscal note**

There were many comments in survey responses that suggested or implied the need for more training for legislators in understanding a fiscal note. From discussion in the work group, a suggestion was made that legislators need to have the fiscal note guidelines used by agencies and OBPP, in order to have an understanding of how fiscal notes come together and what a fiscal note should include. Legislators also need to understand that, even though there may be generic guidelines describing what should be in a fiscal note, all fiscal notes are not the same. Fiscal notes, often times, only include the items that are needed to explain the impact.

Pros	More understanding of the fiscal note process and content Higher comfort level with the fiscal note Investment of some time early in session could reap benefits during the session
Cons	It requires legislator time to participate in the training

Work Group Staff: In the first work group meeting, Lois Menzies suggested that more training on fiscal notes could be developed and OBPP offered to participate at whatever level was needed. Certainly this needs to be provided to the new members before the session, but based upon survey results veteran legislators may need some training also. There are a number of strategies that could be pursued such as: 1) training sessions at orientation, 2) training sessions at beginning of session for all legislators, 3) providing a training manual for legislators (although a brochure is currently provided, 4) attaching the brochure or other explanation of process and content to the fiscal note given to the sponsor, and 5) encouraging sponsors to discuss the note with the preparer (or visa versa) for a better understanding of its content.

Work Group Recommendation: The work group supports efforts to train legislators on fiscal notes because the notes are a critical component of the legislative process.

### **23 - Encourage sponsors to follow through on their disagreement with fiscal note...discuss with OBPP when they disagree**

This suggestion is under training because it suggests that legislators need to know that they can contact OBPP to discuss the fiscal note on their bill for an explanation of the content of the fiscal note and to seek a change if they disagree. It does not mean that the note will automatically be changed (although sometimes OBPP will

revise a fiscal note) but they might better understand the reasoning behind the fiscal note, which can tell them what they can do to reduce the fiscal note in the way of amendments. It was suggested that, at least for new legislators that when they receive their first fiscal note, a message be attached to tell them what to do if they do if they do not agree with the fiscal note.

Pros	Better communication, understanding and improved comfort level with fiscal note The sponsor might have info that the preparer does not have. Fiscal note preparer might better understand intent and identify unintended effects Sponsor can learn what might need to be changed in bill to eliminate impact
Cons	Increases the time preparer must spend on the fiscal note.

**Work Group Recommendation:** The work group supports training for legislators on this point, so that legislators understand that sponsors can discuss the fiscal note with OBPP and agency staff.

## 24 - Communication with sponsor by the preparer

This suggests that the preparer make an effort to contact the sponsor and understand the intent of the bill. The sponsor benefits by hearing in advance what the preparer is seeing in the bill so he or she is not caught off guard.

Pros	Better communication, understanding and improved comfort level with fiscal note Sponsor can learn what might need to change in bill The sponsor might have info that the preparer does not have. Fiscal note preparer might better understand intent and identify unintended effects
Cons	Increases the time preparer must spend on the fiscal note. Might adversely affect timeliness

**OBPP Comment:** This occurs on an ad hoc basis already...just not on every bill.

**Work Group Recommendation:** This would be beneficial for legislators to understand where fiscal impact is apparent in advance of bill hearings and debate. It also gives the sponsor a “heads up” on potential amendments. Recognizing that this it is happening in some instances, the work group encourages this practice whenever it can enhance communication in the process.

## 25 - Communication between drafter of legislation and preparer of fiscal note

This option suggest that the preparer be able to contact the drafter for a better understanding of what is intended by a bill.

Pros	Fiscal note preparer might better understand intent and identify unintended effects Might avoid misunderstanding of sponsor intent Can help drafter understand flaw in bill
Cons	Increases the time preparer must spend on the fiscal note. Takes time for bill drafter who has very high workload volume as well Might adversely affect timeliness

**Work Group Staff:** This actually occurs to some degree presently. I think preparers know that this resource is available if needed, but the preparers also need to know that drafters are extremely busy at the same time so responses may not come quick.

**Work Group Recommendation:** This practice is encouraged whenever it is practical.

## STATUTES CONCERNING FISCAL NOTES

### AUTHORITY FOR FISCAL NOTES

**5-4-201. Requirement of fiscal notes with committee reports.** All bills reported out of a committee of the legislature having an effect on the revenues, expenditures, or fiscal liability of the state or of a county or municipality, except appropriation measures carrying specific dollar amounts, shall include a fiscal note incorporating an estimate of such effect. Fiscal notes shall be requested by the presiding officer of either house, who shall determine the need for the note at the time of introduction.

**5-4-202. Requests for notes by committee, house, or sponsor.** A fiscal note also may be requested on a bill, as the joint rules of the senate and the house of representatives may allow, by:

- (1) a committee considering the bill;
- (2) a majority of the members of the house in which the bill is to be considered, at the time of second reading; or
- (3) the sponsor, through the presiding officer.

**5-4-203. Budget director to prepare note.** The budget director, in cooperation with the state or local agencies or officials or organizations representing local agencies or officials affected by the bill, is responsible for the preparation of the fiscal note and shall return same within 6 days. The director may request additional time to complete a note, which extension must be submitted to the presiding officer or committee requesting the note for approval.

**5-4-204. Submission of fiscal note -- sponsor's fiscal note -- distribution to legislators.** (1) A completed fiscal note shall be submitted by the budget director to the presiding officer who requested it. Upon receipt of the completed fiscal note, the presiding officer shall notify the sponsor of the bill for which the fiscal note was prepared that the fiscal note has been completed and is available for review. Within 24 hours following notification, the sponsor must:

- (a) notify the presiding officer that he concurs with the completed fiscal note;
- (b) request additional time, not to exceed 24 hours, to consult with the budget director on the fiscal note; or

(c) elect to prepare a sponsor's fiscal note as provided in subsection (4).

(2) (a) If the sponsor concurs with the completed fiscal note prepared by the budget director or elects to prepare a sponsor's fiscal note, the presiding officer shall refer the completed fiscal note prepared by the budget director to the committee considering the bill. If the bill is printed, the note shall be reproduced and placed on the members' desks.

(b) If the sponsor requests additional time to consult with the budget director, the presiding officer shall notify the sponsor and the budget director of the time, not to extend beyond the time limitation specified in subsection (1)(b), by which:

- (i) the budget director shall submit a revised completed fiscal note to the presiding officer;
- (ii) the sponsor shall notify the presiding officer that he concurs with the original completed fiscal note;

or

(iii) the sponsor shall elect to prepare a sponsor's fiscal note as provided in subsection (4).

(3) At the time specified as provided in subsection (2)(b), the presiding officer shall refer the original or, if revised, the revised fiscal note to the committee considering the bill. If the bill is printed, the note shall be reproduced and placed on the members' desks.

(4) (a) If a sponsor elects to prepare a sponsor's fiscal note, he shall prepare the fiscal note as provided in 5-4-205 and return the completed sponsor's fiscal note to the presiding officer within 4 days of his election to prepare a sponsor's fiscal note.

(b) The presiding officer may grant additional time to the sponsor to prepare the sponsor's fiscal note.

(c) Upon receipt of the completed sponsor's fiscal note, the presiding officer shall refer it to the committee hearing the bill. If the bill is printed, the note must be identified as a sponsor's fiscal note, reproduced, and placed on the members' desks.

**5-4-205. Contents of notes.** Fiscal notes shall, where possible, show in dollar amounts the estimated increase or decrease in revenues or expenditures, costs which may be absorbed without additional funds, and long-range financial implications. No comment or opinion relative to merits of the bill shall be included; however, technical or mechanical defects may be noted.

**5-4-206. Background information to legislators on request.** The budget director shall make available on request to any member of the legislature all background information used in developing a fiscal note.

**5-4-207. Repealed.** Sec. 2, Ch. 274, L. 1993.

**5-4-208 and 5-4-209 reserved.**

**5-4-210. Estimate of fiscal impact on local government required.** (1) A bill that, if enacted, may require a local government unit to perform an activity or provide a service or facility that requires a direct expenditure of additional funds without a specific means to finance the activity, service, or facility in violation of 1-2-112 or 1-2-113 must be accompanied, at the time that the bill is presented for introduction to the chief clerk of the house of representatives or the secretary of the senate, by an estimate of all direct and indirect fiscal impacts on a local government unit. The estimate of fiscal impacts must be prepared by the budget director in cooperation with a local government unit affected by the bill. The budget director has 10 days to prepare the estimate.

(2) The estimate must show in dollar amounts the increase in expenditures that may be required by the bill. Comment or opinion relative to the merits of the bill may not be included in the estimate. However, technical or mechanical defects may be noted. Upon completion of the estimate, the budget director shall submit the estimate to the requestor of the bill.

## REGARDING REVENUE ESTIMATES

**5-5-227. Revenue and transportation interim committee -- powers and duties -- revenue estimating and use of estimates.** (1) The revenue and transportation interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the department of revenue and the department of transportation and the entities attached to the departments for administrative purposes.

(2) The committee must have prepared by December 1 for introduction during each regular session of the legislature in which a revenue bill is under consideration an estimate of the amount of revenue projected to be available for legislative appropriation.

(3) The committee's estimate, as introduced in the legislature, constitutes the legislature's current revenue estimate until amended or until final adoption of the estimate by both houses. **It is intended that the legislature's estimates and the assumptions underlying the estimates will be used by all agencies with responsibilities for estimating revenue or costs, including the preparation of fiscal notes.**

(4) The legislative services division shall provide staff assistance to the committee. The committee may request the assistance of the staffs of the office of the legislative fiscal analyst, the legislative auditor, the department of revenue, and any other agency that has information regarding any of the tax or revenue bases of the state.

## REGARDING DEDICATED REVENUE PROVISIONS

**17-1-506. Review of legislation.** The office of budget and program planning shall, consistent with the review provisions in 17-1-505, review each piece of legislation that proposes to dedicate revenue. **The office shall submit its findings concerning the dedication of revenue on the fiscal notes accompanying that legislation.**

## REGARDING STATUTORY APPROPRIATIONS

**17-1-508. Review of statutory appropriations.** (1) Each biennium, the office of budget and program planning shall, in development of the executive budget, review and identify instances in which statutory appropriations in current law do not appear consistent with the guidelines set forth in subsection (2).

(2) The review of statutory appropriations must determine whether a statutory appropriation meets the requirements of 17-7-502. A statutory appropriation from a continuing and reliable source of revenue may not be used to fund administrative costs. In reviewing and establishing statutory appropriations, the legislature shall consider the following guidelines. A statutory appropriation may be considered appropriate if:

- (a) the fund or use requires an appropriation;
- (b) the money is not from a continuing, reliable, and estimable source;
- (c) the use of the appropriation or the expenditure occurrence is not predictable and reliable;
- (d) the authority does not exist elsewhere;
- (e) an alternative appropriation method is not available, practical, or effective;
- (f) other than for emergency purposes, it does not appropriate money from the state general fund;
- (g) the money is dedicated for a specific use;
- (h) the legislature wishes the activity to be funded on a continual basis; and
- (i) when feasible, an expenditure cap and sunset date are included.

(3) The office of budget and program planning shall prepare a fiscal note for each piece of legislation that proposes to create or amend a statutory appropriation. It shall, consistent with the guidelines in this section, review each of these pieces of legislation. **Its findings concerning the statutory appropriation must be contained in the fiscal note accompanying that legislation.**



# RULES OF THE MONTANA LEGISLATURE

## REGARDING FISCAL NOTES

### Joint Rules

**40-100. Fiscal notes.** (1) As provided in Title 5, chapter 4, part 2, MCA, all bills reported out of a committee of the Legislature having a potential effect on the revenues, expenditures, or fiscal liability of the state, local governments, or public schools, except appropriation measures carrying specific dollar amounts, must include a fiscal note incorporating an estimate of the fiscal effect. The Legislative Services Division staff shall indicate at the top of each bill prepared for introduction that a fiscal note may be necessary under this rule. Fiscal notes must be requested by the presiding officer of either house, who, at the time of introduction or after adoption of substantive amendments to an introduced bill, shall determine the need for the note, based on the Legislative Services Division staff recommendation.

(2) The Legislative Services Division shall make available an electronic copy of any bill for which it has been determined a fiscal note may be necessary to the Budget Director immediately after the bill has been prepared for introduction and delivered to the requesting member. The Budget Director may proceed with the preparation of a fiscal note in anticipation of a subsequent formal request. A bill with financial implications for a local government or school district must comply with subsection (4).

(3) The Budget Director, in cooperation with the governmental entity or entities affected by the bill, is responsible for the preparation of the fiscal note. Except as provided in subsection (4), the Budget Director shall return the fiscal note within 6 days unless further time is granted by the presiding officer or committee making the request, based upon a written statement from the Budget Director that additional time is necessary to properly prepare the note.

(4) (a) A bill that may require a local government or school district to perform an activity or provide a service or facility that requires the direct expenditure of additional funds without a specific means to finance the activity, service, or facility in violation of section 1-2-112 or 1-2-113, MCA, must be accompanied, at the time that the bill is presented for introduction, by an estimate of all direct and indirect fiscal impacts on the local government or school district. The estimate of the fiscal impacts must be prepared by the Budget Director in cooperation with a local government or school district affected by the bill.

(b) The Budget Director has 10 days to prepare the estimate. Upon completion of the estimate, the Budget Director shall submit it to the presiding officer and the chief sponsor of the bill.

(5) A completed fiscal note must be submitted by the Budget Director to the presiding officer who requested it. The presiding officer shall notify the bill's chief sponsor of the completed fiscal note and request the chief sponsor's signature. The chief sponsor has 1 legislative day after delivery to review the fiscal note and to discuss the findings with the Budget Director, if necessary. After the legislative day has elapsed, all fiscal notes must be reproduced and placed on the members' desks, either with or without the chief sponsor's signature.

(6) A fiscal note must, if possible, show in dollar amounts:

- (a) the estimated increase or decrease in revenues or expenditures;
- (b) costs that may be absorbed without additional funds; and
- (c) long-range financial implications.

(7) The fiscal note may not include any comment or opinion relative to merits of the bill. However, technical or mechanical defects in the bill may be noted.

(8) A fiscal note also may be requested, through the presiding officer, on a bill and on an amended bill by:

- (a) a committee considering the bill;
- (b) a majority of the members of the house in which the bill is to be considered, at the time of second reading; or
- (c) the chief sponsor.

(9) The Budget Director shall make available on request to any member of the Legislature all background information used in developing a fiscal note.

(10) If a bill requires a fiscal note, the bill may not be reported from a committee for second reading unless the bill is accompanied by the fiscal note.

**40-110. Sponsor's fiscal note.** (1) If a sponsor elects to request the preparation of a sponsor's fiscal note pursuant to section 5-4-204, MCA, the sponsor shall make the election as provided and return the completed sponsor's fiscal note to the presiding officer within 4 days of the election.

(2) The presiding officer may grant additional time to the sponsor for preparation of the sponsor's fiscal note.

(3) Upon receipt of the completed sponsor's fiscal note, the presiding officer shall refer it to the committee hearing the bill. If the bill is printed, the note must be identified as a sponsor's fiscal note, reproduced, and placed on the members' desks.

(4) The Legislative Services Division shall provide forms for preparation of sponsors' fiscal notes and shall print the completed sponsors' fiscal notes on a different color paper than the fiscal notes prepared by the Budget Director.

## Senate Rules

**S30-70. Procedures.** (5) In reporting a measure out of committee, a committee shall include in its report:

- (a) the measure in the form reported out;
- (b) the recommendation of the committee;
- (c) an identification of all substantive changes; and
- (d) a fiscal note, if required.

## House Rules

**H10-20. Speaker's Duties.** (8) Upon request of the House Leader of the opposite party, the Speaker will submit a request for a fiscal note on any bill.

**H30-50. Procedures.** (7) In reporting a measure out of committee, a committee shall include in its report:

- (a) the measure in the form reported out;
- (b) the recommendation of the committee;
- (c) an identification of all substantive changes; and
- (d) a fiscal note, if required.



## FISCAL NOTE SURVEY RESULTS

### ABOUT THE SURVEY

In anticipation of the first meeting of the Fiscal Note Work Group, a survey has been conducted to determine, first hand, legislator satisfaction with the fiscal note content and process. While legislators may not always know the “behind the scenes” activities that result in the fiscal note product, legislators do have knowledge and perceptions of the product itself and the timeliness.

The survey was sent to all 150 members of the Fifty-ninth Legislature. 131 were sent to legislators for which e-mail addresses were available and 19 were sent to legislators by regular mail. Seventy-five legislators completed the survey, a response rate of 50 percent. The rate of return for the e-mailed surveys, which included a link to an online template for completing the survey, was 48.1 percent. The rate of return for the “regular mail” survey, which included a stamped self-addressed return envelope, was 63.2 percent. It is not known why the rate of return was this different, although it is known that a few legislators that ultimately submitted a survey response did initially experience some difficulty with the logon procedure. Overall, the numbers of responses provide a good representation of the legislative members.

### SUMMARY OF RESPONSES

The following is a summary of the responses recorded for the each question on the survey instrument. The statistics are listed for each specific question. A sample listing of the related comments follows questions that allowed comments. Some comments expressed satisfaction and some expressed concerns. In the comment lists that follow, some of the comments are paraphrased if there were multiple similar comments.

#### **Question 1 - How often have you read the fiscal notes that accompanied bills debated during your years in the legislature?**

Always	57	76.0%
Sometimes	11	14.7%
Never	0	0.0%
Other	7	9.3%

All 75 respondents answered this question. Fiscal notes are apparently well read, with 76 percent of the respondents indicating that they always read fiscal notes, and 14.7 percent indicated that the sometimes read them. Of the respondents answering “other,” 5 described their frequency of reading as being between “always” and “sometimes.” There were no responses of “never” read fiscal notes.

#### **Question 2a - In general, how satisfied were you with the content of the fiscal notes?**

Highly Satisfied	16	21.6%
Somewhat Satisfied	49	66.2%
Not Satisfied	8	10.8%
Other	1	1.4%

All but one respondent (74) answered this question, with 40 respondents adding comments. Generally, respondents are satisfied with the content of fiscal notes. This is addressed again in answers to question 2e below. In the comments attached to this question, some respondents used the opportunity to offer concerns related to accuracy of

data and bias in the conclusion presented. Even when respondents expressed some satisfaction, some would indicate that fiscal notes sometimes were inaccurate and/or biased. There seems to be some acceptance that this is an inherent possibility in fiscal notes, probably because the executive branch agencies with a stake in the legislation provide the data, but also because of limitation of time and staff for preparation of fiscal notes. One legislator suggests that legislators need to carefully read the fiscal note and to question the data.

On content issues, there are numerous comments paraphrased as follows:

- Several comments that content of fiscal notes is satisfactory
- Support of a specific format for pension plan legislation
- Shorter fiscal notes are sufficient (simplify)
- Seeking changes to fiscal note is almost impossible
- Put notation of changes to amended fiscal notes up front
- There should be more communication between the sponsor and the preparer of the fiscal note
- A need for more info on long-term impacts
- A need for more info on local government impacts
- Add a narrative description of the fiscal impact if necessary for clarity
- Add footnotes if necessary for clarity
- Technical notes sometimes conflict with the spirit of the bill.

Implied in some answers is a need for more time for sponsors and other legislators to review the fiscal note, and a need for more legislator training regarding fiscal notes.

**Question 2b - In general, how satisfied were you with the accuracy of the fiscal notes?**

Highly Satisfied	8	10.8%
Somewhat Satisfied	51	68.9%
Not Satisfied	12	16.2%
Other	3	4.1%

All but one respondent (74) answered this question, with 52 offering comments. Regardless of the relative level of satisfaction, accuracy of fiscal notes appears to be a concern of many legislators. Over 40 percent commented that fiscal notes are, at least sometimes, not accurate. Based upon comments, this opinion can be tied to various factors. Comments are paraphrased as follows:

- Several comments indicate that generally fiscal note accuracy is satisfactory
- Often not accurate the first time
- Fiscal note should clearly state uncertainties of impact
- Seem to be subject to change on pressure from the sponsor
- Bias occasionally mentioned as a reason for inaccuracy
- Not enough time – or staff - to prepare fiscal notes
- Some of the fiscal notes become very complicated...need to figure out way to simplify for ease of understanding
- Not sure of how [preparers] come up with their figures
- Notes don't always reflect the intent of the legislation
- Accuracy is dependent upon knowledge of the drafter...sponsor might suggest individuals with knowledge to assist in preparation
- If assumptions are faulty, then accuracy will suffer
- Based on mystery information...no idea where data came from
- Many times numbers inflated...unclear of reasons for costs or revenues
- Some fiscal notes need to be amended after legislation is amended
- I don't tend to rely on fiscal note because I know there is limited time for preparing them
- Based on future assumptions, incomplete information, and ambiguous reasons for impact
- Info can be subjective, leading to disagreements
- It would be helpful to see projection beyond current [budget] year

- Suggestion that 1-2 years after the session, review sample of fiscal notes to measure accuracy
- Seems like accuracy varies from year to year on same bill
- If a mistake is found, take it up with the budget office...they are willing to fix it
- Smaller fiscal note generally satisfactory...more complicated ones do not accurately reflect long-term impacts
- Too much dependence by some legislators on fiscal note in policy decision

After the online survey instrument was turned off, one legislator that had not completed the survey called with a comment to share with the work group: “I am sometimes frustrated when it appears that department personnel “pad” the resources needed to implement a bill they don’t like. It provides fuel to the opposition and it becomes difficult to debate a fiscal note. It often ends the debate on the underlying policy, because it’s immediately judged impractical.”

### **Question 2c - In general, how satisfied were you with the objectivity of the fiscal notes?**

Highly Satisfied	21	29.2%
Somewhat Satisfied	36	50.0%
Not Satisfied	14	19.4%
Other	1	1.4%

All but three respondents (72) answered this question, with 37 providing a comment. There is a higher percent of “highly satisfied” for this question than the previous two questions, and a good level of satisfaction overall (79.2 percent). However, this question also has the highest “not satisfied” percentage. Respondents, whether somewhat satisfied or not satisfied, offered numerous concerns under the theme of a perception of bias in at least some fiscal notes. As said by some, even a few instances affect the integrity of all fiscal notes. At the same time, many respondents said they were highly satisfied or somewhat satisfied and made no additional comment. The following sample of comments received under this question provides the gist of some respondents’ concerns:

- Slanted depending on the attitude of the Governor’s office toward the bill
- Contacting departments for input allows opportunity to “sabotage” legislation
- More effort to work with sponsor would improve objectivity
- Part of the problem is not being able to quickly digest the content. Simplify!
- You have to be able to see the political agenda in them
- Favored programs seem to receive positive fiscal notes
- Constraints in preparation time affect objectivity
- Sometimes confusing, sometimes biased, but generally I am very satisfied
- Most times an agency does a good job, but again, if the legislature disagrees, how do we change it?
- Sometimes departments are not as objective as they might be...their overall opinion of the bill may affect the technical notes
- In years past, fiscal notes were not considered objective for controversial bills...this continues
- For the most part, I believe the fiscal notes are developed with objectivity
- The budget office can greatly affect the outcome of bills by the way it does fiscal notes

### **Question 2d - In general, how satisfied were you with the timeliness of fiscal notes?**

Highly Satisfied	27	38.0%
Somewhat Satisfied	31	43.7%
Not Satisfied	12	16.9%
Other	1	1.4%

All but four respondents (71) answered this question, with 37 adding an accompanying comment. While there is a relatively high level (81.7 percent) of satisfaction with the timeliness of fiscal notes, there were again many comments to the contrary, even by respondents that said they were somewhat satisfied. The difference with the comments for this question is that, generally, the respondents seem to acknowledge the issue of time (short

deadlines) and workload that affect the timeliness of fiscal notes. At the same time, many respondents indicate the concern that some fiscal notes are not available for hearings or second reading vote, or that even the sponsor has not had enough time to read a fiscal note before a hearing. Here are some examples of comments:

- Generally good...I understand the pressure of volume
- Sometimes slow in coming but I realize the number of bills is probably overwhelming
- It's a tough job, I understand that they are not ready yesterday
- Generally notes were available, only exception is in the last days when staff gets overloaded by the volume
- The notes usually get to us on time
- Notes on my bills seem to be a low priority
- We actually held bills up in committee due to a lack of a fiscal note
- Some of the hold up is the department not getting the info to the budget office
- By the third week of the session, the fiscal note backlog gets bad
- Sometimes the delay in receiving the notes, or revised notes, delays the bill process
- Manipulating the timing of fiscal notes is another way to play political games with policy
- Some are done timely, some are withheld or delayed without cause, some are well done, some are complicated and difficult to prepare
- Bills should have timely fiscal notes in committee
- Sometimes fiscal notes were not received soon enough before a vote to understand
- Fiscal notes are many times late in the process...I don't know how to speed them up without requiring bills to be introduced earlier or providing more staff

**Question 2e - What parts of a fiscal note did you find most useful?**

Fiscal Summary	51	23.2%
Assumptions	38	17.3%
Effect on Local Govmt	38	17.3%
Long-Range Impacts	38	17.3%
Technical Notes	51	23.2%
Other	4	1.8%

This section did not get as much attention as the previous group, but a reasonable sample did respond. Combined with the next question's results, it can be stated that generally the respondents are satisfied with the categories of data that are contained in fiscal notes, although there are sometimes concerns with the data contained in these items. The following sample of comments reflect the varying importance of these items to the respondents:

- All parts were useful
- They are the essence of the matter, but need to be quickly and easily understood...more legislator training may be in order
- These two items [assumptions and technical notes] provide reason to the numbers and help understand the fiscal note...sometimes, I felt the true impact to counties were not complete and accurate.
- It was especially helpful to have the info on local government impacts
- If they were accurate, they provided wider knowledge for decision makers
- Long range is the only place discussing impacts which everyone knows exists, yet aren't seen on the price tag
- It can be very useful to understand how the bill will generate or cost money and what effect it will have on local government
- Assumptions were a clue as to what bogus info was used...technical notes interesting, if not valid
- Accurate, well articulated, and thorough
- Technical notes are always helpful
- Oftentimes a fiscal note gives a synopsis of the bill and an explanation of how a program works, and is quite helpful in that regard...I find all aspects helpful, and my carp about confusion and bias does not apply very often, and not recently
- They do help me gain knowledge about a particular bill

- The fiscal summary is critical to determine the effect on the budget...the technical notes and assumptions help test the validity of the conclusions...the effect on local revenues is critical for my constituency
- All useful, however, I find the assumptions very informative
- Technical notes did show weakness of some legislation

### Question 2f - What parts of a fiscal note were not useful to you?

Fiscal Summary	5	18.5%
Assumptions	3	11.1%
Effect on Local Govmt	3	11.1%
Long-Range Impacts	4	14.8%
Technical Notes	3	11.1%
Other	9	33.3%

This section did not receive much attention at all, probably because respondent general seemed satisfied with the items currently included in the fiscal note. The few comments provided are:

- Many stated that “these are all useful”
- These are useful, but many cases were not clear and muddled up with subjective statements...must be clear and concise
- Assumptions should be clear and annotated
- A good fiscal note can be as supportive as the bill text
- Technical notes are often confusing
- Assumptions are guesswork
- During several sessions, executive branch agencies, which were opposed to my bills, were asked to prepare the background for the fiscal notes...the assumptions used to determine the fiscal impact were specious at best and were used by the opponents to defeat my legislation
- Perhaps because they are done in haste, many must challenge the accuracy

### Question 3 - What improvements can be made to the fiscal notes process or format to better meet your needs?

Out of the 75 respondents, 55 answered this question with a suggestion or comment. This item in the survey gave the respondent the opportunity to make suggestion for changes. Suggestions, or at least implied suggestions, showed up in the comments under other questions as well. I am including all suggestions that could be gleaned from the all the comments, so as not to exclude suggestions that were provided in those other questions. The suggestions were categorized and are discussed in the context of the categories.

#### *Content/Format Issues*

Generally, it seems like all existing parts of the current fiscal note are important, in differing ways for different legislators. Comments oftentimes seemed to indicate that there is room for improvement in how information is presented.

- A couple of respondents suggested that pension plan related fiscal notes have a special format that showed a more relevant impact
- There was some emphasis on the need for more “out-year” (beyond the budget year) impacts to get a better picture of the impact of the bill
- There were comments that the fiscal note provides better understanding of the bill, with some suggesting a narrative brief summary of what the bill does or narrative summary of the fiscal impact (what in the bill causes it)
- Footnotes to explain more complicated bills
- Simplification of fiscal notes was suggested or implied by several respondents
- Adding a space in the fiscal note for the legislator to comment on the assumption and overall result
- Enhancement of commentary in local impacts, technical notes and long-range impacts
- State the facts and the assumptions in a way that separates the two
- Add advantages and disadvantages of action or inaction by the legislature

- Indicate “up front” what changed in an amended fiscal note and why
- One suggested showing alternative assumptions and ranges of fiscal impact
- One suggested showing a “rural vs. urban impact” and generally, make them easier to read...bigger print and more space

### ***Accuracy/Clarity Issues***

Some of the responses to the question on accuracy were geared more toward clarity. Therefore, for this presentation, the category is expanded.

- Some suggest that inaccuracy is a product of the volume and rush to complete fiscal notes
- One suggests “coordination with the Legislative Fiscal Division for accuracy”
- Some suggest that fiscal notes be prepared with more accurate numbers or cost projections
- One suggests more staff or money to enhance accuracy and timeliness
- Assumption should be clearly annotated
- Legislators need to question data and assumptions if they don’t think the fiscal note is correct
- Assumption should be based upon reality and what is in the legislation, not on what is perceived might happen
- Review a sample of fiscal notes a year or two later to assess accuracy
- Be clear in the fiscal note about uncertainties that exist in the preparation of the note

### ***Objectivity Issues***

Under this category, there were many comments regarding objectivity but really only one suggestion, also shown below under Process Issues.. The only suggestion relating to this category is that fiscal note should be prepared by an independent source.

### ***Timeliness Issues***

There were many comments on timeliness of fiscal notes. In a few instances, respondents indicated that fiscal notes were delayed for a reason, such as to delay action. Generally there seemed to be some understanding that delays were for the most part inherent in the process because of volume and “time crunch.” Suggestions included:

- Implied by many is that timeliness of fiscal notes be addressed in some way
- Encourage or require earlier introduction of bills to allow more time for fiscal note preparation
- Increase staff to address volume in short time period
- Have fiscal note ready for hearing
- Get fiscal note to sponsor before distribution
- Need timely fiscal note revisions for amended bills
- Have fiscal note preparer available for hearings
- Communicate with sponsor during preparation of data

### ***Process Issues***

The suggestions related to process come with various themes:

- Some respondents (7) suggested that the preparation of fiscal notes be moved out of the Governor’s budget office to either an independent third party or to the Legislative Branch.
- A few respondents felt that legislators need more training on understanding the fiscal notes, including training on preparation of the “sponsor fiscal note”
- More than a few suggested or implied that the sponsor should be more involved in the preparation stage and have input to the data and even suggest sources for data...increased communication with sponsors seemed to be a common theme
- Several mentioned the need for a better way for sponsors to disagree with a fiscal note, and to document the disagreement
- A couple of respondents suggested a dual process with fiscal notes prepared by the budget office and a legislative agency
- One suggested annual sessions would help

- Bill limits was suggested as way to improve process (also noted under timeliness issues)
- Increased staff was suggested in context of timeliness and improving overall quality of fiscal notes
- One suggestion that there be a base document of data that fiscal notes refer to so that information is not having to be regenerated for each note...i.e., school data for reference by school funding bills

### ***Other***

One respondent offered this suggestion: “Drop these wasteful surveys. I am serious. Do some productive or quit spending our money.”

### **Conclusions**

Although this survey and the results presented may go beyond the scope of what the working group was established to do, the results do provide a barometer of legislators’ views, feelings, and perceptions regarding fiscal notes and the process involved in the development of fiscal notes. Generally, there is satisfaction with the content and format with room for improvement. There is a measure of satisfaction, with expressions of concern in the areas of accuracy/clarity and objectivity (bias) of fiscal notes. And there were numerous comments and suggestions that legislators viewed as ways to improve the fiscal note product, ranging from enhancing the content or format to moving the fiscal note function out of the Governor’s budget office.