

TESTIMONY

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Legislative Fiscal Office and Fiscal Note Reform

West Virginia is one of 10 states in the country that does not have an independent legislative fiscal office; in fact, among the 40 states that do maintain a legislative fiscal office, ten have more than one. All of West Virginia's surrounding states have a legislative fiscal office. Last year, Pennsylvania became the most recent state to create a legislative fiscal office. Maryland and Virginia each have two.

According to the National Conference of State Legislatures (NCSL), among the other states with multiple legislative fiscal offices, Colorado has two, Georgia has two, Louisiana has three, Michigan has two, Minnesota has three, Oklahoma has two, Oregon has two, and Washington has five.¹ Table 1 provides a list of states with legislative fiscal offices.

Non-partisan legislative fiscal offices provide valuable research and guidance to their legislatures in addition to traditional services such as bill drafting, committee staffing, and public information services. Most legislative fiscal offices:

1.) analyze operating and capital budgets; 2.) process budget bills, 3.) prepare fiscal notes, 4.) collect and report on local government financial information, 5.) prepare forecasts of revenues and expenditures, 8.) undertake program evaluations, 9.) research and report on fiscal policy issues, taxation, operation of governmental units and programs, and 10.) research the fiscal relationship of state and local governments.

Maryland's Department of Legislative Services has a designated Fiscal & Policy Analysis unit that performs these services for its General Assembly. In Ohio, the Legislative Service Commission provides this support.

Wyoming's Legislative Service Office has a Budget & Fiscal Section which, in addition to those duties outlined previously, also provides school finance analysis for K-12 schools.

Wisconsin has had an established Legislative Fiscal Bureau since 1963 providing independent fiscal information services and information to legislative standing and interim committees, individual legislators, other legislative agencies and staff, the press and the general public.

The West Virginia's Legislative Services centralized unit does perform traditional services such as drafting legislative bills, managing the public information service unit, conducting legislative post audits of agencies and their accounts, and performing program evaluation and research of agency's statutory compliance.

Fiscal and policy services to the state legislature, however, are decentralized, fragmented and, most importantly, conducted by entities not statutorily responsible to the state legislature. WVU economists and the Tax Department provides revenue estimates, the State Budget Office provides budget forecast information, executive branch agencies performs fiscal note analysis, and much of the policy impacts and information of pending legislation are performed by many people in this room, such as industry lobbyists and advocates (including myself and the WV Center on Budget & Policy).

This state legislature could likewise benefit from independent tax, fiscal and policy analysis commonly afforded to other states by their professional and dedicated staff who are responsible to their legislatures. This is true at the federal level as Congress relies on the Congressional Budget Office to help balance information and data generated by the President's Office of Management and Budget.

One of the most pressing duties of a legislative fiscal office would be to provide the legislature with an accurate cost-benefit analysis of proposed legislation. The remainder of this brief will describe why fiscal note reform is needed and identifies both short and long-term recommendations.

Fiscal Notes

Fiscal notes are the "price tags" attached to legislative bills introduced for passage each session of the state legislature. These "price tags" help to reduce the endless array of policy choices proposed each year into smaller financial decisions that shape and simplify the policy making process.

Because our state legislature is required, by state constitution, to pass a balanced budget and state policy makers are asked to review thousands of legislative bills with minimal time or funding to satisfy a growing list of demands, fiscal notes play a significant role in narrowing down the field of policy choices from which to allocate these limited resources.

Fiscal notes play a significant role in determining the outcome of proposed legislation because bills that are too costly are generally eliminated from consideration. Moreover, if the fiscal note identifies minimal costs, then that bill is likely to receive further consideration.

NCSL has identified five states that might be considered "models" in terms of their

processes for preparing fiscal notes. These states are: Indiana, North Carolina, Tennessee, Texas, and Utah. These states all have four common factors crucial to the accuracy of fiscal notes:

- 1.) Requiring that departments clearly set out their assumptions and calculations in support of their estimates. This provides a basis for an independent legislative agency to evaluate their estimates.
- 2.) Actively researching independent sources of information to complement information provided by departments, including similar bills or programs within the state, and information from other states, websites, and organizations.
- 3.) Building good working relationships with the departments, to include: acknowledging the inherent tension that may exist between the departments and the legislative agency; stressing the importance of the departments providing full and complete information; and reminding the departments of the consequences to their credibility if they are less than forthcoming.
- 4.) Emphasizing the professional objectivity and independence of the legislative staff responsible for fiscal notes. These legislative staffs in the model states note they have worked to build and nurture their reputations for objectivity and accuracy over the years.

Executive Agencies Perform Fiscal Note Analysis

Because fiscal notes shape the agenda and ultimately influence which policy proposals get enacted, the state legislature should have complete confidence in the fiscal note process. But who calculates the fiscal impact of the Legislature's proposals? In West Virginia, agencies in the executive branch, who may have the most at stake in the fate of the introduced legislation, as they're ultimately responsible for administering the new policy or program, performs the fiscal note analysis. West Virginia's legislature has no way of independently verifying the fiscal impacts provided by executive branch agencies. West Virginia is out of step with the majority of states and is out of step with all of our surrounding states. Fiscal notes are prepared by a wide array of executive agencies with various skill levels required to accurately calculate fiscal impacts.

Table 2 shows the range of executive agencies who calculated fiscal notes during the 2008 legislative session. While the Tax department conducted 46% of all fiscal notes (182), other more remote agencies such as the Board of Medicine, the Real Estate Commission, the Fire Commissioner, the Association of Counties, and the Adjutant General also generated fiscal analysis to the Legislature.

West Virginia's legislature has no fiscal office with the capacity to perform an independent fiscal analysis or to effectively challenge executive branch agencies'

fiscal analyses. Therefore, it is impossible to know whether executive branch agencies are “gaming” the fiscal note process to surreptitiously undermine the proposed legislation by unfairly inflating its costs or, to lend a helping hand to the bill by undermining its expected costs.

During each legislative session, approximately 1 in 5 bills introduced in West Virginia has a fiscal note attached.ⁱⁱ How many good pieces of legislation never make it out of committee due to inaccurate fiscal notes? Or, how many times does legislation get enacted with a moderate fiscal note but the actual fiscal impact to the state is much higher than originally calculated? Also, fiscal notes rarely get updated after the proposed legislation gets amended during the legislative process. Further, are there additional impacts besides fiscal that the legislature should consider when evaluating proposed legislation? What about job impacts, environmental impacts, regulatory impacts or fiscal impacts on local or municipal governments?

In West Virginia, are we sure that the fiscal note process is credible; that is, are we confident that legislators are being provided with fiscal notes that are unbiased and performed by professional, objective fiscal analysts?

Fiscal Impact of Enacted Legislation

The fiscal impact of enacted legislation from the recent 2009 and 2010 Legislative Sessions amounts to \$40 million and \$32 million respectively. Reduced fiscal impact of recent legislative sessions largely reflects the fiscal pressure on the state budget created by the recession.

During the 2008 Legislative Session, however, the total cost of enacted legislation was estimated to top \$313 million, or 15% of the available discretionary general revenues funds. These “price tags” represent significant policy choices given a limited amount of funding available.

Short-Term Recommendations: Trust but Verify

- 1.) The WV Legislative Service Office and its research entity, the Performance and Evaluation Research Division, currently do not conduct any post-audits of fiscal notes. An audit should be performed to determine the accuracy of the fiscal note process and to identify possible “gaming” of fiscal notes by executive branch agencies.
- 2.) The current West Virginia Fiscal Note Manual needs to be updated. The West Virginia Legislative Manager’s Office should revise the manual as soon as possible.

- 3.) West Virginia's fiscal note process is established as a basic legislative rule and not mandated by statute, like many other states do. In theory, executive branches could refuse to comply or delay their analyses beyond the three-day rule.

Accountable fiscal note analysis improves the strength of the legislative branch and reduces the ability of the executive branch to unfairly influence the legislative agenda.

Long-Term Recommendations: Create a Legislative Fiscal Office

What is true for West Virginia's fiscal note process specifically is also true for the state legislative resources in general; there are simply not enough staff, with sufficient resources, to meet the demand for analytical evaluations of a modern and professional state government. "The lack of adequate analytic information, whether in the budget document or legislative and Budget Office staff resources, reduces the scope of the policy alternatives considered by state officials and their capability to evaluate their options."¹ This testimony is further elaborated on as these academic scholars proclaim that, "The one area where the [West Virginia] legislature lags far behind others is legislative resources. With little money to spend, the state ranks low on staff and overall expenditures used to maintain a capable membership with access to a variety of sources of policy information and technical expertise."²

Conclusion

During each 60-day legislative session the legislature effectively gets an opportunity to shop for state policies and programs in the legislative policy market whose products and services take shape as introduced legislation. Each shelf of the policy market has something for every buyer. For example, in the policy aisle you'll find proposals to increase health care coverage for Medicaid recipients to 300% of the federal poverty level, or completely eliminate business property inventory taxes, or increase investments in schools, roads, and emergency services.

As legislative shoppers, House and Senate buyers essentially stroll up and down the policy market aisle looking for legislation to buy in order to meet their needs based on their budget. Some policies and programs have the face value of the "price tags" or fiscal notes attached to these products, others do not.

But, what if the "price tag" on the policy product isn't the same by the time you get to the check-out counter? How would you feel if they rang you up for more? What if you found out that the face value of the product you really wanted was incorrectly priced and well within your allotted \$4.4 billion dollar general revenue budget? Or, how would you feel if you bought a policy product based on the face value of the

¹ *West Virginia Politics and Government*, Brisbin, Dilger, Hammock, and Mooney, 1996, page 122.

² *Ibid*, page, 95.

fiscal note but, by the time you took it home the price escalated due to hidden costs that were not disclosed on the box or at the check-out counter?

The state should create an independent legislative fiscal office with sufficient professional staff that could serve the legislature as a fiscal check on executive branch agencies and their cost-benefit analysis of legislative proposals. West Virginia would also move toward a more professionalized legislature, as 40 other states have done already, and fulfill its constitutional obligation as an equal branch of state government.

ⁱ <http://www.ncsl.org/Default.aspx?TabID=788&tabs=857,37,404#404>

ⁱⁱ There were 2,079 bills introduced during the 2010 legislative session; among those introduced fiscal notes were required for 16% or 330. During the 2008 legislative session, there were 2,134 bills introduced and 19% had a fiscal note attached. [During the 2010 legislative session, the House introduced 1,378 bills (179 fiscal notes, 13%) and the Senate introduced 701 bills (151 fiscal notes, 21.5%). During the 2008 legislative session, the House introduced 1,012 bills (198 fiscal notes, 19.6%) and the Senate introduced 788 bills (200 fiscal notes, 25.4%).]