Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

Memorandum

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TO: Interested Persons

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SUBJECT: How Legislative Strategies to Reduce Fiscal Impacts Are Shown in Fiscal Notes

Overview

Fiscal notes estimate the fiscal impact of legislation, including revenue impacts, state expenditures, and appropriations required. However, fiscal notes are decision-making tools for legislators, and the General Assembly is ultimately responsible for making appropriations and setting aside the state funding needed to implement legislation. This memorandum outlines several common strategies used to limit the fiscal impact of legislation, primarily expenditure impacts, and discusses how these strategies are treated in fiscal notes. Strategies discussed in this memorandum include:

- amending a bill to reduce its scope or required costs;
- making implementation of a bill discretionary;
- adding a "no appropriation" clause;
- making implementation of a bill subject to available appropriations;
- requiring that gifts, grants, or donations be used to implement a bill; and
- delaying implementation of a bill to a future year.

Expenditure Estimates in Fiscal Notes

In fiscal notes, Legislative Council Staff estimates the cost to state agencies to implement a bill. These costs may include additional staff (FTE), capital outlay and operating expenses for staff, computer system updates, and legal services, as well as program-specific costs such as grants, services, contractors, and so on. Costs identified in fiscal notes are directly related to the requirements of the bill and represent the least cost alternative for implementing the bill.

Fiscal notes will identify the fund sources that may be used to pay any costs, and outline any required appropriations. The House and Senate Appropriations Committees will typically amend a bill to include any required appropriations. The Joint Budget Committee Staff supports the Appropriations Committee in determining how much General Fund money is available to appropriate through new legislation, taking into account the current revenue forecast and passage of the state budget (Long Bill).

Legislative Strategies for Limiting Expenditure Impacts

As noted above, legislators may include provisions in a bill to limit its potential fiscal impact. However, these strategies can result in:

- the bill not being fully implemented;
- the bill not being implemented at all; or
- resources being diverted from other programs or statutory obligations within a state agency.

The sections below outline common legislative strategies to reduce the fiscal impact of bills, how fiscal notes treat these provisions, and the potential effect of these provisions on implementation of a bill.

Reducing the Scope or Requirements of a Bill

The most common way for a bill sponsor to reduce the fiscal impact of a bill is to amend the bill to reduce its scope or requirements. Depending on the nature of the bill, such amendments may seek to reduce administrative requirements for implementing the bill, limit the population served, lower the amount of grants or funding disbursed, require any services provided to fit within a set appropriation amount, permit the use of waitlists or other methods of cost containment, or similar strategies. **After a bill is amended to reduce its scope or requirements, Legislative Council Staff will publish a new, revised fiscal note reflecting these amendments for a later step in the legislative process.**

While such amendments will narrow the scope of a bill relative to the introduced bill, it is likely that the bill will still be implemented, assuming that any required appropriations are provided. However, some changes to bills, such as those discussed in later sections of this document, may limit the bill to such a degree that the policy is not ultimately implemented.

Discretionary Implementation

To reduce the fiscal impact of a bill, part of the bill may be made discretionary or permissive. For example, a bill may state that a state department *may* implement stricter regulations, or that a program *may* expand to cover additional types of clients. In evaluating the fiscal impact of such permissive measures, analysts will look at whether implementation is likely or possible, whether the General Assembly is dedicated funding for the measure, and other factors.

Fiscal notes typically assume that the General Assembly intends for something to occur when it enacts legislation, even if a bill is permissive. **Therefore, fiscal notes will provide an estimate of the costs, if possible, for any discretionary provisions.** However, the fiscal note will note that any appropriations for these provisions are at the discretion of the General Assembly, and not mandatory.

The fiscal note cost estimate can be used by the General Assembly, whether now or in the future, as an aid in determining whether to appropriate funding and, if so, how much funding to appropriate, for a discretionary provision added to state law. Even when funding is not appropriated during the current session, cost estimates for discretionary activities are useful and can make the General Assembly aware of potential future fiscal impacts, especially when implementation is at the discretion of state agencies and may appear as part of a future budget request.

No Appropriation Clauses

Rather than appropriating funding for a bill, the General Assembly may choose to include a "no appropriation" clause in a bill. Such provisions state that no appropriation is provided and that it is the intention of the General Assembly that the bill or program be implemented using existing appropriations. **Even with the inclusion of a "no appropriation" clause, a fiscal note will estimate the fiscal impact to implement the bill, based on the substantive policy provisions of the bill.** This estimate is included for two reasons. First, the General Assembly may ultimately decide to appropriate funding for the bill and will rely upon this analysis to make an appropriation. Second, if the "no appropriation" clause remains, the estimate will inform the General Assembly of the impact to the implementing agency's budget in terms of the resources that may be shifted from other uses. It also informs the General Assembly of potential future budget requests by state agencies to support implementation of the bill or to backfill other programs from which resources are diverted. When a fiscal note anticipates a fiscal impact in a bill with a "no appropriation" clause, it will include language in the State Appropriation Section similar to the following:

"The fiscal note estimates that the bill requires a General Fund appropriation of $300,000 to the Department of Human Services; however, the General Assembly has specified that no appropriation will be included and the bill must be implemented within existing appropriations."

Subject to Available Appropriations

Legislation may specify that all or part of the bill will be implemented "subject to available appropriations." **Fiscal notes interpret such provisions to mean that state agencies are only required to implement the bill if sufficient appropriations are provided.** This means that the General Assembly may choose not to appropriate money in a bill, in which case parts of the bill that are contingent on an appropriation being made will not be implemented. It also means that the General Assembly may reduce or eliminate appropriations in the future, and the provisions of the bill subject to available appropriations will stop, whether temporarily or permanently.

When a provision of a bill is subject to available appropriations, the fiscal note will estimate the cost to implement the provision so that sufficient appropriations may be provided to implement the bill. Generally, fiscal notes assume that the General Assembly, by enacting a bill, intends for something to occur and will indicate that appropriations are required for the bill to be implemented. However, if the bill proceeds through the legislative process without the General Assembly making an appropriation, the final fiscal note published after session will indicate that no appropriation was provided and that it is assumed that the affected provisions will not be implemented unless the General Assembly makes an appropriation for the implementation of those provisions in the future.

There are some exceptions to the general rules outlined above. In some cases, despite the "subject to available appropriations" language, a provision of a bill must be implemented and the fiscal note will indicate that an appropriation should be provided, and there will still be an anticipated budget impact from the bill even if an appropriation is not made. For example, sometimes a provision is required to be implemented by federal law, interacts with another provision of the bill that is mandatory, or creates an impact to a program regardless of whether or not an appropriation is provided.

Gifts, Grants, and Donations

In some cases, a bill may specify that implementation of a bill is subject to the receipt of sufficient gifts, grants, or donations. **In such instances, the fiscal note will estimate the costs to implement the bill in order for the General Assembly and potential donors to know how much in gifts, grants, and donations must be received before the bill will be implemented.** Typically, expenditures will be shown from a relevant cash fund where any funding is deposited. If a source of gifts, grants, and donations, has not been identified, the fiscal note will not estimate any revenue to the state and will assume that the bill will not be implemented. If a verified source of funding is identified, the revenue will be noted in the fiscal note and the likely implementation timeline discussed.

Note that gifts, grants, and donations typically work best for one-time costs or short-term initiatives and are usually not a viable source for ongoing funding for a permanent program. Depending on the language of a bill, initial implementation may depend on the receipt of gifts, grants, and donations, but future year costs could shift to the state if it is a permanent program.[1]

Delayed Implementation

When funding is not available in the upcoming budget year, legislators sometimes will postpone implementation of their bill to a future year. **While fiscal notes typically show two years of impacts (the upcoming budget year and one out-year), fiscal note estimates will be extended as far into the future as needed to show the full implementation cost of the bill.** Delaying implementation of a bill will eliminate the need for an immediate appropriation, but future year impacts will be shown so the General Assembly can be aware of future budget impacts that will result from passage of a bill.

[1] Section 24-75-1305, C.R.S. prohibits appropriations of state funds to a program previously funded with grants that does not receive sufficient grant funding. The General Assembly may, through subsequent legislation, reauthorize a grant-funded program and make appropriations of state funds to support the program.