



Office of
LEGISLATIVE AUDITOR GENERAL
State of Utah

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A Limited Review of Fiscal Note Accountability

State agencies cannot readily account for fiscal note appropriations or revenues in many of the fiscal notes we sampled.

State agencies could be more accountable for fiscal note estimates and expenditure of fiscal note appropriations. Based on a sample of 45 fiscal notes, we found it is often difficult for state agencies to specifically account for fiscal note appropriations or revenues upon request. Even an in-depth review of five fiscal notes could not supply conclusive answers in all cases as to how appropriations had been spent or what revenues had been received. In our opinion, it is important for state agencies to be accountable for fiscal note appropriations and revenues. Toward this end, the Office of the Legislative Fiscal Analyst (LFA) has developed and is implementing fiscal note follow-up procedures to assess both the accuracy of the fiscal note itself and the expenditure of fiscal note appropriations. Without strong follow-up, agencies are not held accountable for fiscal note appropriations and revenue projections. Finally, it may be feasible, when appropriate, for the Legislature to consider establishing individual line items for fiscal note appropriations, thus ensuring greater accountability through the *Budgetary Procedures Act*.

Utah Code 36-12-13 requires the LFA to prepare cost estimates on all proposed bills that anticipate expenditures by state and other government entities, and that anticipate any direct expenditures by any

Utah resident. In addition, the LFA is also required to prepare an analysis of revenue estimates for existing and proposed revenue acts.

These required cost/revenue estimates are contained in legislative fiscal notes. The purpose of a fiscal note is to help lawmakers understand the impact of proposed legislation. By legislative rule, an analyst must complete a fiscal note within 72 hours of receiving the legislation unless the analyst requests an extension. In the 2005 General Session, the LFA prepared around 850 fiscal notes.

Agencies are in a position to significantly impact their funding through their fiscal note estimates.

While an analyst will obtain help from other analysts having expertise in areas addressed by the bill, an analyst will also request fiscal estimates from impacted agencies. The LFA is ultimately responsible for the fiscal note; however, given the fiscal note time constraints and volume of fiscal notes mentioned, the information and estimates provided by an agency often become the basis of a fiscal note. Further, it is often the case that, if the legislation passes, the amount appropriated to an agency matches the fiscal note estimate. Consequently, agencies are in a position to significantly impact their funding.

Some legislators became concerned with the possibility that agencies may use the fiscal note process to their advantage. As a result, we were asked to follow up with some agencies to assess fiscal note accountability.

In conducting this review, our objective was to follow up on past fiscal notes to ensure revenues are received and funds are expended consistent with the fiscal note.

Many Agencies Cannot Readily Account For Fiscal Notes

The ability to readily provide a detailed accounting for fiscal note appropriations and revenues varies among agencies. When agencies were asked to provide as detailed an accounting as possible for a sample of 2005 fiscal notes, the results ranged from providing no detail to providing significant detail. Further, an in-depth review of five fiscal notes did not provide conclusive answers in all cases as to

Agency fiscal note detail varied, but requested documentation was not adequate for the most part.

how appropriations had been spent or what revenues had been received.

Sample Demonstrates Varying Documentation Abilities

We selected and reviewed a sample of 45 fiscal notes from the 2005 General Session. Initially, we reviewed how the agency estimates were developed and supported. As noted earlier, these estimates are important because they often form the basis of the fiscal note. Also, the estimates often outline how the agency expects to spend the funds.

We asked each agency involved to provide all documentation supporting their estimated fiscal impact. Few agencies provided us with specific documentation on the assumptions and calculations used to justify their estimate or to justify why no fiscal impact would occur. Lack of specific documentation casts doubt on the strength of fiscal note input.

For those 2005 bills with a fiscal impact that passed (27 of 45), we contacted the agency to assess fiscal note accountability. All relevant documentation was requested in as much detail as possible supporting how the funding was spent or how much projected revenue was received for fiscal year 2006. Figure 1 shows the results of our review.

Only 30 percent of the agencies sampled provided adequate supporting documentation.

Figure 1. Follow-Up Produced Little Adequate Documentation. In a sample of 27 fiscal notes from 2005 bills, only 30 percent of the agencies provided us with adequate supporting documentation on fiscal note expenditures made or revenues received.¹

Results of Follow-Up	Number of Bills	Percent
Agency stated results without adequate supporting documentation.	12	44%
Agency stated results and provided adequate supporting documentation.	8	30
Agency cannot assess results until later date. ²	4	15
Agency did not respond or agency reported results were indeterminate.	<u>3</u>	<u>11</u>
Total	27	100%

1. No follow-up was conducted on 18 of the 45 bills because either the bill did not pass, the bill passed but the fiscal note stated no fiscal impact, or the bill passed but the fiscal note stated implementation was possible within existing resources.

2. Revenue bills generally need more than the passage of one year to obtain data for assessment of results.

Many agencies reported they are seldom asked to provide detailed expenditure documentation on specific fiscal notes.

The request for detailed fiscal year 2006 expenditure or revenue information caused some agencies to struggle. Although the LFA routinely visits with agencies in the interim and has meetings with specific program and division leaders through the budget review process, agencies reported they are seldom asked to provide detailed information outside of the budget review process on implementing specific legislation. In fact, fiscal note appropriations often go into an agency's general budget, making specific expenditure tracking difficult. Consequently, agency responses regarding the sampled fiscal notes ranged from the general, reporting only the organization that received funding, to the detailed, reporting expenditures transaction by transaction.

Because few agencies in the sample provided enough detailed information to demonstrate accountability, we selected five fiscal notes from our 2005 sample and completed a more in-depth follow-up of fiscal year 2006 expenditures and revenue.

In-Depth Follow-Up Did Not Supply Conclusive Answers

While not expected to be exact, the in-depth follow-up revealed some questions concerning input to fiscal notes.

The in-depth follow-ups did not supply conclusive answers as to how appropriations had been spent or what revenues had been received in all cases. In our opinion, conclusive answers should be attainable if agencies have anticipated a follow-up. Further, while fiscal note estimates are not expected to be exact, some questions surrounding the input to the fiscal note surfaced. The following summarizes our findings on the follow-up of five fiscal notes.

Bill One. This bill was passed to close a loophole in Utah law and to make the law conform with federal law. The fiscal note estimated \$10 million additional restricted fund revenue and the need for three additional full-time equivalent employees (FTEs) and attorney services. The fiscal note provided an appropriation of \$353,000 from a restricted federal trust fund to provide the requested FTEs and attorney services.

The agency reported that the funds were not spent for additional positions or attorney services as identified in their fiscal note estimate. Instead, they reassigned one full-time staff and used the remaining funds to pay for existing staff time as well as for time spent by an agency task force. In addition, although the agency was able to provide detailed information to estimate potential revenues in the fiscal note worksheet, they stated it was not possible to identify how much revenue was actually received. While they could produce no supportive evidence, they believe their estimate was realized.

- **Estimate Concerns:** It is troubling that the agency estimated potential revenue increases for the fiscal note, but now maintains that actual revenue increases cannot be determined.
- **Follow-Up Concerns:** While the agency was able to supply some documentation as to how the money was spent, the money was not spent as represented to the Legislature in the fiscal note. While this shift in funding may be appropriate, it raises questions as to the actual funding needed to implement the bill.

Money was not spent as represented to the Legislature.

Bill Two. To implement provisions of this bill, the agency needed to computer design a new license and then notify license holders about the required license replacement. The agency's \$246,000 first year cost estimate was based on mailing costs associated with 110,000 notifications, four additional staff, and computer programming costs. The fiscal note calculated by the fiscal analyst was for \$158,000 and was based on mailing costs associated with 80,800 notifications, two additional staff, and computer programming costs. The fiscal analyst's adjusted notification number was based on discussions with agency management. This estimate also estimated \$616,000 would be generated in restricted fund revenue.

For our expenditure follow-up, the agency estimated expenditures based on 115,900 notifications mailed—a higher number than the agency originally estimated and significantly higher than the analyst's number that was based on discussions with agency management. Further, the agency first reported \$80,000 in additional staff costs and later increased these costs to \$90,661. However, when we summed salary and benefit costs for the two new employees, we could only document costs totaling \$58,340. We were able to document the reported computer programming costs, which were less than originally estimated by the agency.

- **Estimate Concerns:** It is puzzling that the agency originally estimated four additional staff were needed to process 110,000 documents, but the agency was able to process 115,900 documents with only two additional staff. In our opinion, this discrepancy demonstrates the importance of appropriate workload incremental measures (i.e., workload measures that support additional staff) when submitting an estimate of fiscal impact. We believe these measures should be required whenever agencies request additional staff.
- **Follow-Up Concerns:** While this agency provided some expenditure documentation, questions concerning actual expenditures still remain. Mailing costs were estimated, and the amount estimated is dependent on the number of notifications assumed. It is unclear which of the three notification numbers best represents the number of additional notifications resulting from the passage of the bill. On a similar note, it is unclear which of the three salary and benefit costs

When estimating staff needs, fiscal note documentation should contain appropriate workload incremental measures.

A necessary follow-up component, number of notifications mailed, is unclear. Therefore, questions concerning actual expenditures remain.

stated previously represents the actual fiscal year 2006 expense for the two additional employees. One of the employees was already working at the agency and was reassigned in March 2006. The other was a March 2006 new hire.

Bill Three. This bill increased the enforcement activities of an agency with the costs funded by raising each permit fee by 75 cents. The agency estimated they would need three additional staff (two investigators and one technician), two vehicles, and attorney general defense support to implement this bill for a total cost of \$246,000 from dedicated credits. However, the \$246,000 fiscal note included four additional staff and three vehicles, different needs than those identified by the agency. No documented justification was found for the difference between the agency's need estimate and the fiscal analyst's need estimate. In addition, the fiscal note estimated \$246,000 in dedicated credit revenues.

The agency reported additional dedicated credit revenues of \$253,700, and we confirmed \$253,700 of additional agency expenditures in fiscal year 2006. The agency also supplied documentation showing three additional investigators were hired and three additional vehicles were purchased.

The differences in manpower and vehicle estimates raise questions as to actual need.

- **Estimate Concerns:** Two estimates of need exist: the agency's original estimate and the fiscal analyst's estimate. As noted earlier, no documented justification was found reconciling the differences between the two. Ultimately, the agency's final action did not match either estimate. While the agency's actions may be appropriate, the differences in manpower and vehicle estimates raise questions as to what was really required to achieve the increased enforcement goal.
- **Follow-Up Concerns:** Some reported expenses (i.e., equipment expense, communication expense) were estimates only. The agency budget officer could not readily document and tie these expenses to the three new hires.

Bill Four. This bill was passed to create a program to provide scholarships for students with special needs. The state agency impacted by the bill originally estimated the cost of the bill as \$2.3 million per year. This amount was based on the agency's assumption

that 600 scholarships would be provided each year. The fiscal note ultimately attached to the bill estimated an appropriation of \$1.6 million in fiscal year 2005 to provide scholarships and then appropriations of \$1.7 million in both fiscal years 2006 and 2007. This estimate was based on the assumption that 650 and 875 scholarships would be provided in fiscal years 2005 and 2006, respectively. These appropriation amounts are less than the agency's original estimate because of a Uniform School Fund offset on the fiscal note. It is unclear if the agency or the LFA provided these latter participation assumptions; however, the LFA stated in the fiscal note that participation rates could vary. While the fiscal note anticipates three years of appropriations, the Legislature instead provided a one-time appropriation of \$2.5 million to implement the bill as well as \$100,000 for ongoing administrative costs.

The agency gave us a detailed accounting of their scholarship awards. Our follow-up identified just under 110 scholarship participants with expenditures of about \$475,000 in fiscal year 2006.

Had the Legislature acted in accordance with the fiscal note, the scholarship fund would have received more funding than required to meet program demand.

- **Estimate Concerns:** As noted above, the fiscal note anticipated yearly appropriations around \$1.7 million for three years (around \$5 million in total). These appropriations were based on estimated yearly participation rates of 650 students in 2005 increasing to 875 students in 2006. Although estimates are not expected to be precise, this estimate significantly overstated participation. Given the actual participation (110 participants per year), the legislative decision to act outside the fiscal note was fortuitous. Had the Legislature acted in accordance with the agency's original calculation, or even with the lesser amount reflected in the fiscal note, the scholarship fund would have received more funding than required to meet the demand for the program.
- **Follow-Up Concerns:** None.

Bill Five. This bill originally provided \$1.5 million in funding for additional information technology equipment and \$75,000 as an on-going expenditure. The bill was passed after an amendment eliminated the \$75,000 on-going and reduced the amount appropriated with the bill to \$375,000. A subsequent bill appropriated an additional \$125,000. The amount appropriated was

determined by the Legislature and did not reflect the total cost to implement the bill. The fiscal note was not changed when the bill was amended.

The agency provided us with detailed expenditure information including copies of purchase orders for most of the funds and are requesting additional funds be included in their new base budget. The agency reported they continue to have general discussions with the fiscal analyst but have not provided expenditure information specific to the appropriation. However, the LFA reports they track the bill's implementation without asking the agency for specific expenditure information because the agency set up financial accounting categories that tracks their expenditures.

- **Estimate Concerns:** None.
- **Follow-Up Concerns:** The follow-up shows the funds were spent appropriately; however, the fiscal note was never amended to reflect a change to the amount ultimately appropriated in the bill. Legislative JR-4.23 requires an amended fiscal note if an amendment “appears to substantively change the fiscal impact of the bill.” In this case, the Legislature changed the amount of funding appropriated by the bill, deciding to provide funding for only fiscal year 2005 rather than providing full project funding as anticipated by the fiscal note. It is not clear if this bill change requires an amended note; but, an amended note might have provided additional information to the Legislature; for example, possible additional costs associated with delays in implementing the project.

The follow-up on these five bills raises questions relating not only to accountability for implementation of fiscal note appropriations, but also to estimates underlying fiscal notes, and therefore to the fiscal notes themselves. Since the LFA is ultimately responsible for the fiscal note, it is important for the analyst to quickly and properly evaluate the agency estimate. To enable a quick and proper LFA evaluation, the agency estimate should be well documented and succinct. During the interim, the LFA should then follow-up on some of the previous session's fiscal notes to determine if the implementation was appropriate and if the fiscal note was reasonably accurate.

It is important for the analyst to properly evaluate an agency's fiscal note estimate which should be well documented and succinct.

As will be discussed in the next section, the LFA recognizes an opportunity for improvement in these areas. The LFA has significantly improved and standardized its fiscal note input form (see Appendix) and has implemented follow-up procedures to hold agencies accountable for expenditure of fiscal note appropriations and collection of revenue reflected in fiscal notes.

The LFA’s New Follow-Up Procedures Will Strengthen Accountability

The LFA is changing its follow-up procedures from more general procedures occurring during the budgeting process to more specific procedures focused on selected fiscal notes. In our opinion, the LFA is going in the right direction. Follow-up on selected fiscal notes is going to assess not only implementation but also accuracy of the fiscal note. We believe fiscal-note-specific follow-up is a good idea that will increase both agency accountability and legislative knowledge. While the LFA’s new follow-up procedures are still being refined, the LFA management did outline the planned follow-up process as it now exists. We also have a few suggestions that could be incorporated into their process.

Once the Legislature has enacted legislation to address policy issues, agencies interpret, implement, and carry out the policy. It is important to conduct a follow-up to determine how well their interpretation, implementation, and policy follow-through are done. The follow-up process also communicates to agencies that they are expected to be accountable for implementing legislation based on the fiscal note estimates; this, therefore, will lead to more accurate estimates. Utah law requires the LFA “to report instances in which the administration may be failing to carry out the expressed intent of the Legislature.” (*Utah Code* 36-12-13 (2)(f)).

The LFA Is Implementing New Follow-Up Procedures

According to a recent fiscal note checklist developed by the LFA, a post-session follow-up regarding implementation and accuracy of the fiscal note will be done. The LFA management indicated that not all fiscal notes would receive a post-session follow-up. Instead, when

The LFA will follow-up on the implementation and accuracy of selected fiscal notes.

Analysts will flag fiscal notes they believe should receive a follow-up and the director and fiscal note manager will select a sample for follow-up.

writing or reviewing a fiscal note, analysts and supervisors will flag fiscal notes in the LFA's computer system that they believe should receive a follow-up. At the conclusion of the session, the fiscal note manager and the director will select a sample of notes for follow-up. The criteria for selection are still being developed, but the primary focus will be on General Fund and Uniform School Fund fiscal notes.

Once a note is selected, the responsible analyst will develop a tracking time frame, since some fiscal notes may need more time for implementation than others. The LFA management are also planning on developing a checklist for the agency to complete that will focus on the requirements of the bill and fiscal note. Follow-up findings will be reported to the relevant appropriations subcommittee during interim.

Follow-Up Suggestions for the LFA to Consider

Based on our follow-up results, we believe all agencies should be required to provide documentation detail on fiscal note representations. For example, if new positions were funded by the fiscal note, then the agency should document that new employees were hired. On the other hand, if actual fiscal note expenditures differed from those represented on the fiscal note, then these differences should be explained. Similar scrutiny should also occur with revenue projections. Then, using the agency information provided, a sample of fiscal notes could be selected for detailed follow-up. Towards this end, we believe the LFA should consider incorporating the following:

- Notify all agencies early that detailed revenue/expenditure follow-ups will occur. This will enable agency personnel to track relevant expenditures and revenues.
- Use the fiscal note management sheet as a follow-up pro-forma. All agencies initially use a fiscal note management sheet to identify fiscal impact and request funding. For the follow-up, agencies could be required to use the fiscal note management sheet to report actual expenditures made and revenues received.
- Use agency-supplied expenditure/revenue information from the pro-forma to help select fiscal notes for detailed follow-up by the fiscal analyst. For those fiscal notes not receiving a detailed follow-

We suggest the LFA notify all agencies of potential follow-up and require all agencies to report actual expenditures or revenue on a pro-forma.

The Legislature could compel greater agency accountability on any fiscal note appropriation by making that appropriation in a separate line item.

Strong follow-up procedures will ensure that agencies are held accountable for fiscal note revenues and expenditures.

up, the agency information would serve as follow-up documentation.

Appropriating to Separate Line Items Could Further Strengthen Agency Accountability. Finally, beyond better agency documentation and routine follow-up mentioned above, the LFA has suggested another tool that the Legislature may consider in improving accountability for fiscal note appropriations. Under the *Budgetary Procedures Act*, agencies must track line-item-level appropriations separately from one another and cannot transfer funding between line items. In cases where the Legislature wishes to require greater accountability for implementation of fiscal note bills, it should consider appropriating funds to a separate and distinct line item related to the bill.

In conclusion, it is important for state agencies to be accountable to the Legislature for fiscal note appropriations and revenues. Strong follow-up procedures will ensure that agencies are held accountable for fiscal note appropriations and revenue projections.

Recommendations

1. We recommend that the Office of the Legislative Fiscal Analyst continue to develop and implement follow-up procedures to assess the accuracy and implementation of fiscal notes based on an agency's actual expenditures and revenues.
2. We recommend that all agencies maintain supporting documentation and a clear audit trail for fiscal note expenditures and revenues to facilitate follow-up by the Office of the Legislative Fiscal Analyst.
3. We recommend the Legislature consider appropriating funds to a separate and distinct line item related to the bill, in those cases where greater accountability for implementation of fiscal notes is desired.

Appendix

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FISCAL NOTE WORKSHEET X (Revised Dec. 2006)

Agency: _____

Bill Number _____

TITLE OF BILL: _____

Requested by: _____

Fax/Electronic Mail Transmittal To:

Office of the Legislative Fiscal Analyst
 W310 State Capitol Complex
 Salt Lake City, UT 84114-5310
 538-1034 / Fax 538-1692

Name: _____
Date: _____
Fax Number: _____

Please return to Fiscal Analyst by: _____

This Bill Takes Effect: On passage On July 1 60 Days after session Other _____

Bill Carries Own Appropriation:

FISCAL IMPACT OF PROPOSED LEGISLATION

	FY 2007 Supp.	FY 2008	FY 2009
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A. REVENUE IMPACT BY SOURCE OF FUNDS

	FY 2007 Supp.	FY 2008	FY 2009
1. General Fund			
2. Uniform School Fund - Education Fund			
3. Transportation Fund			
4. Collections			
5. Other Funds (List Below)			
6 Local Funds			
7. TOTAL	\$0	\$0	\$0

B. EXPENDITURE IMPACT:

By Source of Funds

	FY 2007 Supp.	FY 2008	FY 2009
1. General Fund			
2. General Fund, One Time			
3. Uniform School Fund - Education Fund			
3. Transportation Fund			
4. Collections			
5. Other Funds (List Below)			
6. Local Funds			
7. TOTAL	\$0	\$0	\$0

By Expenditure Category

	FY 2007 Supp.	FY 2008	FY 2009
1. Salaries, Wages and Benefits			
2. Travel			
3. Current Expenses			
4. D.P. Current Expenses			
5. Capital Outlay			
6. D.P. Capital Outlay			
7. Other (Specify)			
8. TOTAL	\$0	\$0	\$0

C. IMPACT IN FUTURE YEARS?

If no fiscal impact in the first two years, indicate any impact in future years, and explain. Also, indicate any significant changes in fiscal impact beyond the first two years. (Use back side, or attachment, if necessary.)

Prepared By _____

Title _____

Agency _____

Phone # _____

Date _____

Bill Number: _____

Bill Title: _____

D. Identify Sections of the Bill That Will Generate the Additional Workload or Cost Increase

E. Expenditure Impact Details (Ties to totals in Section C)

List and document methodology and/or assumptions used in determining need for workload and cost increase.
List number, type, and step ranges of personnel required, including benefits.
List details of other impacted expenditure categories as shown in Section C.
List additional space requirements and cost associated with requirements of this bill.
(USE ATTACHMENTS IF NECESSARY.)

F. No Fiscal Impact or Will Not Require Additional Appropriations?

Specify why this bill will have no fiscal impact on your agency or institution.
Specify how you will reallocate workloads, resources, or funding sources to eliminate need for additional appropriations. (USE ATTACHMENTS IF NECESSARY.)

G. If Bill Carries Its Own Appropriation:

Indicate if the amount appropriated is adequate to meet the purposes of the bill.
Are there future additional costs anticipated beyond the appropriation in the bill?

H. Impact on Local Governments, Businesses, Associations, and Individuals

Specify requirements in the bill that drive the impact on local governments.
Indicate costs or savings that are **DIRECT and MEASURABLE**. If direct and measurable data are not available, are there areas that potentially could have a fiscal impact? (USE ATTACHMENT IF NECESSARY.)

Local Governments:

Businesses and Associations:

Individuals: