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MEMORANDUM

TO: Senator Wil Schroder, Co-Chair
Representative Kevin Bratcher, Co-Chair
Representative Jerry Miller, Co-Chair
Interim Joint Committee on State Government

FROM: Robert Jenkins

RE: Overview of Fiscal Note and Fiscal Statement Process

DATE: September 17, 2020

Introduction

During the 1960s, the Kentucky General Assembly considered several bills that would have established a fiscal note process. In 1969, the Legislative Research Commission researched other states' efforts for the purpose of examining "the desirability and application of a fiscal note system in Kentucky."¹ The 1976 General Assembly established the first fiscal note system. This memorandum reviews the current process that has evolved from those early roots.

How We Got Here

The 1976 General Assembly created the initial fiscal note framework in new House Rule 51 and Senate Rule 51. The rules:

- permitted a sponsor to request a fiscal note for legislation;
- "at any time prior to the filing of a request for posting" (House) or "at any time" (Senate);
- permitted a committee chair or majority of committee members to request a fiscal note before voting on a bill in committee;
- required "[a]ny member proposing to amend...a bill or resolution which carries a fiscal note or if the proposed amendment itself carries a fiscal implication" to request "a fiscal

¹ Kentucky. Legislative Research Commission. *Fiscal Notes*. Research Memorandum No. 335. Dec. 5, 1969.

analysis...to be made and a fiscal note attached to the proposed amendment at the time of introduction.” (House and Senate);

- permitted the chamber membership by majority vote to require a fiscal note for an amendment if not otherwise requested;
- required the LRC Director to advise by letter of the time the fiscal note would be completed if it could not be completed prior to the next legislative day; and
- (if the LRC Director certified that the fiscal note could not be completed by the promised time) prohibited the amendment from being considered unless the members, by majority vote, determined to act on the amendment, or to pass and bill without the fiscal note, or pass over them until the fiscal note was filed.

(Following adoption of an unrelated rule, House Rule 51 became House Rule 52 in 1984, and Senate Rule 51 became Senate Rule 52 in 1990.)

In 1980, the General Assembly required an *actuarial analysis* before reporting from committee any legislation increasing benefits or participation in, or changing the financial liability of, the state public retirement systems. (1980 Ky. Acts ch. 246, sec. 1, codified at KRS 6.350) The 2008 General Assembly directed that the analysis be prepared for a bill that decreases benefits or participation, expanded the cost projection from 10 years to 20 years, and required the actuary to note new assumptions. (2008 1st Extra. Sess. Ky. Acts ch. 1, sec. 1) The 2016 General Assembly required, among other things, the actuarial analysis to include an estimate unfunded liabilities and funding levels over a 20–year period. (2016 Ky. Acts ch. 133, sec. 1) The 2017 General Assembly required the actuary, if the analysis was that the cost was negligible or indeterminable, to include a statement certifying the number of people affected, the estimated change in benefit payments, the estimated change to employer costs, and the estimated change to administrative expenses. (2017 Ky. Acts ch. 12, sec. 11) There have been other amendments, but most of the major provisions are identified above.

The 1982 General Assembly established a statutory framework requiring fiscal notes for bills impacting “any aspect of local government or any service provided thereby.” (1982 Ky. Acts ch. 215, secs. 1-6, codified at KRS 6.950 to 6.975) The statutory framework for this *local mandate impact statement* is substantively unchanged.

In 1984, the chambers created House Rule 52A and Senate Rule 51A, thereby requiring the local mandate impact statement to be completed prior to placing a bill in the Orders of the Day.

The 1990 Senate adopted Rule 52B, which required LRC to analyze a bill relating to state or local corrections before final consideration. The House adopted this *corrections impact statement* in 1992 Rule 52B. The 2011 General Assembly specifically directed the Department of Corrections to prepare the analysis, which must estimate costs, savings, and necessary appropriations associated with pre- and post-trial incarcerations in jail or state correctional facilities, bail and pretrial release, probation, and mandated programs, and required (in the absence of further data) the projection to include an estimate based on the cost of 10 persons being charged and 100 persons being convicted, among other things. (2011 Ky. Acts ch. 2, sec. 74) There have been other amendments, but most of the major provisions are identified above.

In 1994, in new Rule 52, titled “Fiscal Statement,” both chambers rewrote the substance of the original fiscal note rule to permit a sponsor to request a fiscal note for a bill affecting the Commonwealth’s revenues or expenditures. The rule no longer referenced the LRC Director. The rule eliminated Rule 52A and Rule 52B and incorporated their provisions into the general fiscal statement rule requiring LRC staff to analyze and prepare a “fiscal note” for a bill fiscally affecting local government or corrections. A committee chair, majority of the committee to which a bill had been assigned, or majority of a chamber (for a bill in the Orders of the Day) could also request a “fiscal statement.”

The 1998 General Assembly required a bill sponsor to “cause” a financial impact statement to be prepared for a bill requiring a health benefit plan to provide a benefit, include coverage, or pay for a medical service. (1998 Ky. Acts ch. 496, sec. 42, codified at KRS 6.948) Both chambers incorporated this *health mandate analysis* into Rule 52 in 2000. In 2003, the General Assembly amended KRS 6.948 to direct that the analysis be conducted by the Department of Insurance. (2003 Ky. Acts ch. 193, sec. 1) There have been other amendments, but most of the major provisions are identified above.

The terms “fiscal note” (FN) and “fiscal statement” have been used both interchangeably and separately, causing confusion among legislators, staff, and the public. For purposes of this memorandum, “fiscal statement” refers to an actuarial analysis, corrections impact statement, health mandate analysis, and local mandate analysis:

1. An *actuarial analysis* (AA) is prepared by a state-administered retirement system’s actuary and describes the economic impact on the retirement benefits of various public employees.
2. A *corrections impact statement* (CI) is prepared by Department of Corrections’ staff and describes the legislation’s financial impact on correctional facilities and related supervision and treatment services.
3. A *health mandate analysis* (HM) is prepared by a Department of Insurance actuary and, generally speaking, describes the legislation’s financial impact on the premiums of private health benefit plans.
4. A *local mandate analysis* (LM) is prepared by LRC staff and describes the legislation’s financial impact on local government revenues and expenditures.

Fiscal note (FN) refers to the analysis prepared by LRC staff that describes the bill’s impact on the Commonwealth’s revenues or expenditures.

Today, House Rule 52 and Senate Rule 52 are substantially similar. The rules *permit* a sponsor, committee chair, or majority of committee or chamber membership to request a fiscal note on bills impacting state revenues or expenditures, and they *require* LRC staff to prepare actuarial analyses, local mandates, corrections impact statements, and health mandates. While LRC staff prepare the fiscal notes and local mandate analyses, they “cause” the preparation of the other mandates by identifying the bills needing them and asking the retirement systems, Department of Corrections, and Department of Insurance to prepare them. LRC staff review the prepared fiscal statements and

make them available to the public. House Rule 53 and Senate Rule 53 permit members to request “fiscal statements” for amendments.

Fiscal Notes

Requesting. Because LRC staff do not prepare fiscal notes as a matter of course, the requestor (sponsor, committee chair, majority of committee, majority of chamber) must initiate the request by contacting the Office of Budget Review. The requestor must identify the appropriate version of the measure (introduced, committee substitute) needing the fiscal note.

The Office of Budget Review logs the request, which is then assigned to a Budget Review analyst (for appropriations bills) or Appropriations and Revenue Committee analyst and/or economist (for revenue bills). The analysts work closely with the LRC Office of Economic Analysis.

Preparing. The analyst estimates the fiscal impact over each year of the biennium, summarizes the bill’s purpose, explains the fiscal implications, and lists information sources. The analyst’s name is included at the end of the fiscal note in case there are questions.

Upon completion by the analyst, the Deputy Director for Budget Review reviews the fiscal note. The fiscal note is then shared with the requestor.

Miscellaneous. The fiscal note is prepared for the version identified by the requestor and is not updated for a subsequent version unless requested. For instance, a sponsor may request a fiscal note for an introduced version of the bill. If the committee reports the bill with a committee substitute, the sponsor (or other requestor) must ask for a new fiscal note. The Office of Budget Review receives all requests for new fiscal notes.

Actuarial Analyses

Requesting. The LRC bill drafter identifies whether a bill needs an actuarial analysis after drafting the bill. The drafter identifies a bill for an actuarial analysis if the bill affects a public retirement system, and the drafter lists:

- the retirement system affected;
- the bill’s provisions that might increase or decrease benefits or participation in benefits or change the financial liability of a retirement system;
- any section or page of the bill that contain the impact;
- any resources or contacts that would be helpful with completing the analysis; and
- any similar bill from the current or prior session.

The Bill Tracking Office notifies the Fiscal Statement Office that the bill requires the analysis, which is referred to the appropriate retirement system for completion. A requestor (drafter, sponsor, committee chair, majority of committee, majority of chamber) may request an actuarial analysis on a bill that the drafter did not identify immediately after drafting the bill.

Preparing. The retirement system forwards the bill to an actuary. The retirement system forwards the completed analysis to LRC staff.

Miscellaneous. The actuarial analysis is prepared for the version identified by the drafter. It is updated if the bill is reported from committee with a committee substitute or if it passes a chamber.

Corrections Impact Statements

Requesting. The LRC bill drafter identifies whether a bill needs a corrections impact statement after drafting the bill. The drafter identifies a bill for a corrections impact statement if the bill relates to felonies or misdemeanors, or if the bill affects expenditures or revenues of the Department of Corrections, and the drafter lists:

- any section or page of the bill that contain the impact;
- any resources or contacts that would be helpful with completing the analysis; and
- any similar bill from the current or prior session.

The Bill Tracking Office notifies the Fiscal Statement Office that the bill requires the analysis, which is referred to the Department of Corrections for completion. A requestor (drafter, sponsor, committee chair, majority of committee, majority of chamber) may request a corrections impact statement on a bill that the drafter did not identify immediately after drafting the bill.

Preparing. The Department of Corrections completes the analysis as required by statute. The Department of Corrections forwards the completed analysis to LRC staff.

Miscellaneous. The corrections impact statement is prepared for the version identified by the drafter. It is updated if the bill is reported from committee with a committee substitute or if it passes a chamber.

Health Mandate Analysis

Requesting. The LRC bill drafter identifies whether a bill needs a health mandate analysis after drafting the bill. The drafter identifies a bill for a health mandate analysis if the bill affects private health insurance, insurer's administrative expenses, or insurance premiums, or if the bill mandates additional health benefit coverage, and the drafter lists:

- any section or page of the bill that contain the impact;
- any resources or contacts that would be helpful with completing the analysis; and
- any similar bill from the current or prior session.

The Bill Tracking Office notifies the Fiscal Statement Office that the bill requires the analysis. The Fiscal Statement Office emails the bill's sponsor, advising that the bill has been identified as needing the analysis, and requests permission to forward the bill to the Department of Insurance for completion. After that permission is given, the Fiscal Statement Office refers the bill to the Department of Insurance. A requestor (drafter, sponsor, committee chair, majority of committee, majority of chamber) may request a health mandate analysis on a bill that the drafter did not identify immediately after drafting the bill.

Preparing. The Department of Insurance refers the bill to an actuary to complete the analysis. The Department of Insurance forwards the completed analysis to LRC staff.

Miscellaneous. The health mandate analysis is prepared for the version identified by the drafter. It is updated if the bill is reported from committee with a committee substitute or if it passes a chamber.

Local Mandate Analysis

Requesting. The LRC bill drafter identifies whether a bill needs a local mandate analysis after drafting the bill. The drafter identifies a bill for a local mandate analysis if the bill affects a local government, and the drafter lists:

- the type of local government affected;
- the local government departments or employees' duties affected;
- whether the bill affects local government expenditures or revenues;
- any section or page of the bill that contain the impact;
- any resources or contacts that would be helpful with completing the analysis; and
- any similar bill from the current or prior session.

The Bill Tracking Office notifies the Fiscal Statement Office that the bill requires the analysis. The Fiscal Statement Office requests Local Government Committee staff to provide a second opinion on the need for the analysis and then forwards the request to an LRC staffer to complete the analysis. A requestor (drafter, sponsor, committee chair, majority of committee, majority of chamber) may request a local mandate analysis on a bill that the drafter did not identify immediately after drafting the bill.

Preparing. The LRC staffer reviews the bill, identifies the local government officials and departments affected, reviews available budget information, collaborates with the LRC Office of Economic Analysis, and contacts outside resources, if necessary, for additional information. Other state government offices may provide information, as may local government officials and statewide association. The staffer completes the analysis and forwards it to the Fiscal Statement Coordinator for review. The staffer's name is included at the end of the fiscal note in case there are questions.

Miscellaneous. The local mandate analysis is prepared for the version identified by the drafter. It is updated if the bill is reported from committee with a committee substitute or if it passes a chamber.

Fiscal Impact Statement Summary Sheet

LRC's Fiscal Statement Review – Katie Carney, ext. 876
LRC Office of Budget Review – Amie Elam, ext. 550 (fiscal notes)

A fiscal impact statement is an analysis and summary of proposed legislation's impact on revenues and expenditures within certain areas. The following are types of fiscal impact statements.

Fiscal Note (FN) – Governed by House/Senate Rules 52 and 53. A FN identifies the monetary impact on **state** revenues and/or expenditures. Requested by sponsor, committee chair, or the majority of a committee or the chamber (in possession of the bill). A separate request must be made for each version of the bill. Requests are sent to Amie Elam and prepared by LRC's Office of Budget Review, Appropriations and Revenue, or Staff Economists.

Actuarial Analysis (AA) – Governed by KRS 6.350 and House/Senate Rules 52 and 53. Identifies changes to benefits, participation in benefits, or the actuarial accrued liability of any **state** administered retirement system. Initiated by bill's drafter, reviewed by LRC's Fiscal Statement Review in consultation with Public Pensions committee staff, and prepared by actuary associated with one of the 3 state administered retirement plans. (KERS, CERS, SPRS, KTRS, JRP, LRP).

Corrections Impact Statement (CI) – Governed by KRS 6.949 and House/Senate Rules 52 and 53. Identifies the impact of the bill's changes to incarceration at **local** and **state** correctional facilities, supervision, or treatment services provided by the Department of Corrections. Initiated by bill's drafter, reviewed by LRC's Fiscal Statement Review, and prepared by Department of Corrections.

Mandated Health Benefit (HM) – Governed by KRS 6.948 and House/Senate Rules 52 and 53. Identifies the fiscal impact on health benefit plans. Initiated by bill's drafter, reviewed by LRC's Banking and Insurance Staff, sponsor authorizes HM designation, prepared by Department of Insurance's actuary, and process is managed by LRC's Fiscal Statement Review.

Local Government Mandate or Local Mandate (LM) – Governed by KRS 6.950, KRS 6.955, and House/Senate Rules 52 and 53. Identifies the estimated impact of the bill's changes to **local governments'** revenues or expenditures. Initiated by bill's drafter, reviewed by LRC's Local Government Committee, and prepared by LRC staff under supervision of the LRC's Fiscal Statement Review.

AA, CI, HM, and LM statements – If a designation is not automatically made, then a statement may be requested by the sponsor, chair of assigned committee, majority vote of assigned committee, or majority vote of members of either chamber prior to final vote.