Fiscal Note Study
of
2007 Legislation

Conducted by the
Legislative Auditor's Office
Performance Evaluation and Research Division

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The Legislative Auditor Found That Only Nine Fiscal Notes for Bills That Passed the 2007 Legislative Session Which Had a Fiscal Impact Correctly Estimated the Actual Fiscal Impact Within Ten Percent.

In order to determine how accurately state agencies estimated expenditures and/or revenue in fiscal notes, the Legislative Auditor reviewed all legislation that passed the 2007 legislative session which had fiscal notes assigned to them. The fiscal note estimates were then compared with the actual fiscal impact as stated by the agencies for Fiscal Years 2007 through 2011. In 2007, the Legislature passed 70 bills with fiscal notes attached to them. The Legislative Auditor contacted the state agency representatives that originally completed the fiscal note in 2007, and requested that they provide the actual costs or revenue to the State as a result of the bill's passage for each fiscal year separately from 2007 – 2011. Similar to data requested in a fiscal note, the agency's response was to include increases or decreases in:

- total costs,
- personal services,
- expenses,
- repairs and alterations,
- assets,
- other expenses, and
- revenue.

Additionally, agency representatives were asked to provide a detailed explanation as to why the actual costs/revenues were different from the fiscal notes submitted to the Legislature, and to provide an explanation of whether or not the fiscal note summary and the fiscal note memorandum were accurate following implementation of the legislation. The Legislative Auditor received all but two responses. The Supreme Court of Appeals did not respond regarding HB 3106 and the West Virginia Development Office did not provide a response for SB 177. Thus, 68 bills with fiscal notes were included in this study. **It must be noted that the Legislative Auditor did not independently verify the accuracy of the agencies responses.** Table 1 shows all of the agencies assigned fiscal notes for legislation that passed the 2007 session. Some fiscal note requests were sent to multiple agencies for the same bill.

Table 1 State Agencies Assigned Fiscal Notes	
Agency	**Number of Bills**
State Tax Department	26
Consolidated Public Retirement Board	8
Department of Motor Vehicles	4
Department of Education	4
Department of Health and Human Resources	4
Division of Corrections	3
Development Office	3
Division of Highways	2
PEIA	2
Department of Transportation	2
Regional Jail and Correctional Facility	2
Supreme Court of Appeals	2
Adjutant General	1
Department of Administration	1
Department of Agriculture	1
Attorney General	1
Division of Banking	1
Criminal Justice Services	1
Department of Environmental Protection	1
Division of Labor	1
Education & State Employees Grievance Board	1
Division of Personnel	1
Fire Commission	1
Higher Education Policy Commission	1
Insurance Commission	1
Public Service Commission	1
Secretary of State	1
WV State Auditor	1
State Police	1
Division of Natural Resources	1
Division of Veteran Affairs	1
Source: Bill Status	

Estimates for Nineteen Fiscal Notes Which Had a Fiscal Impact Were Inaccurate By More Than Ten Percent When Compared to the Actual Fiscal Impact Following Implementation

The Legislative Auditor examined each original fiscal note from 2007, and each agency response. The fiscal note estimate was then compared to the actual fiscal impact as provided by the agency for the first full year of implementation of the bill. Table 2 breaks down the number of fiscal notes that fell within each category of accuracy. Nineteen (19) of the 68 fiscal notes in 2007 were estimated by the state agency to have no fiscal impact following passage. The state agencies reported that the fiscal notes were correct, and that there was no fiscal impact as a result of passage of the bill. Thus, 49 of the bills with fiscal notes in 2007 had some form of fiscal impact either with a change in revenue and/or expenses. The Legislative Auditor categorized 21 fiscal notes and agency responses as being unable to calculate for various reasons, such as the final bill changing to a point where the fiscal note estimates were no longer valid or the nature of the bill included elements that the agency could not initially estimate in the fiscal note such as death and criminal activity. Additionally, several agencies were unable to give calculations on the actual fiscal impact of a bill due to the time constraints of the information request, data not being readily available or insufficient data. Twenty-nine (29) percent or 19 of the fiscal notes were categorized as being inaccurate by more than 10 percent. Nine of the fiscal note estimates were categorized as being 10 percent or less within the actual fiscal impact.

Table 2
Breakdown of 2007 Fiscal Note Estimates Compared to Actual Impact

Margin of Accuracy	Number of Fiscal Notes
Within 10% of Estimate	9
11-30% of Estimate	4
31-50% of Estimate	3
Over 50% of Estimate	12
No Fiscal Impact	19
Unable to Calculate	21
Total	**68**

Source: Bill Status and the respective state agencies

A total of 19 or 68 percent of the 28 fiscal notes that were estimated to have a fiscal impact were over 10 percent of the actual fiscal impact. **Twelve of those fiscal notes had estimates that were over 50% off of the actual fiscal impact.** State agencies identified various reasons for the estimates being incorrect, but the estimates were primarily inflated from the actual numbers. Of the 19 fiscal notes that were estimated at over 10% of actual impact, there were only 3 in which the fiscal note estimates were underinflated. Table 3 displays the bills with fiscal note estimates within ten percent of the actual impact, while Table 4 displays the bills

which were over ten percent of the actual fiscal impact. Reasons for the estimates being incorrect are included.

Table 3 2007 Fiscal Note Estimates Accurate Within Ten Percent						
Bill Number	**Bill Summary**	**Fiscal Estimate**	**Fiscal Actual**	**Percentage Difference**	**Agency Explanation**	**Agency**
HB 2992	Decreasing the health care provider tax imposed on gross receipts of providers of nursing facility services	$1,900,000 in lost revenue	$1,955,264	3%		State Tax Department
SB 178	Allowing counties to increase hotel occupancy tax	$5,692,277 in increased revenue	$6,187,703	9%	Based on county budget numbers.	WV State Auditor
SB 337	Establishing net greenhouse gas inventory program	$12,675 in cost	$12,703	0%	Total costs lower than expected due to DEP's leveraging of resources.	Department of Environmental Protection
SB 406	Including qualified continuing care retirement communities under Tax Limitations Amendment	$360,000 in lost revenue	$332,000	8%	Less retirement communities than estimated became Class II properties.	State Tax Department
SB 541	Relating to public school finance	$19,913,063 in cost	$20,114,971	1%	State Aid funding formula is difficult to estimate.	Department of Education, State Tax Department
SB 582	Creating Real Estate Division in Department of Administration	$400,000 in cost	$400,175	0%	.	Department of Administration
SB 603	Establishing 21st Century Tools for 21st Century Schools Technology Initiative	$2,274,114 in cost	$2,274,115	0%		Department of Education
SB 657	Requiring State Board of Education incorporate 21st Century Skills Initiative into certain standards	$3,900,000 in cost	$3,900,000	0%	Accurate	Department of Education

SB 690	Exempting consumers sales and service tax on highway construction and maintenance materials	$13,500,000 in transferred funds	$12,702,171	6%	Estimate was based on average expenditures on highway projects in 2007.	State Tax Department
Source: Bill Status and the respective state agencies						

Table 4 2007 Fiscal Notes with Estimates Over 10 Percent than Actual Fiscal Impact						
Bill Number	**Bill Summary**	**Fiscal Estimate**	**Fiscal Actual**	**Percentage Difference**	**Agency Explanation**	**Agency**
HB 2422	Cost-saving measures in connection with providing medical care in regional jails	$230,600 in savings	$799,207	246%	Reductions in inmate medical expenses were 47% as opposed to the estimated 20-30%.	Regional Jail and Correctional Facility
HB 2481	Allowing a registrant to transfer the registration of a Class C vehicle to another Class C type vehicle titled in the name of the registrant	$19,215 in lost revenue	$7,515	60%	Number of transfers lower than estimated.	Department of Motor Vehicles
HB 2583	Relating to the expansion of newborn testing	$1,234,333 in cost	$537,951	56%	A different means of purchasing equipment lead to cost-savings.	Department of Health and Human Resources
HB 2808	Increasing the fee for issuance of one-trip permits	$126,860 in revenue	$36,184	71%	Fee increase in final bill was less than at the time of fiscal note.	Department of Motor Vehicles
HB 2877	Funding entities ensuring public safety on state highways	$15,600,000 revenue of State Road Fund	$11,148,000	29%	Original estimate included approximately $4 million in Federal re-imbursement.	Division of Highways
HB 2931	Providing for payment of tuition for WV National Guard members enrolled in graduate study	$180,000 in cost	$63,007	65%	College enrollment was less than estimated.	Adjutant General, Division of Veterans Affairs
HB 2938	Including motor carrier inspectors and enforcement officers in the definition of law-enforcement officer	$4,000 in cost	$1,500	62%	Many new hires were already certified and didn't require additional training.	Public Service Commission
HB 2940	Increasing the age of dependents for health insurance coverage	$22,800,000 in total cost	$17,600,000	23%	Increase in the dependent population was lower than estimated.	Public Employee Insurance Agency

HB 2990	Making technical corrections to assure the proper collection of offset fees	$7,500 in increased revenue	$29,925	299%	A more efficient tax refund process allowed for higher revenue.	State Tax Department
HB 2991	Authorizing the Tax Commissioner to conduct criminal record checks of prospective employees of the Tax Division	$3,000 in cost	$1,000	66%	Much of the background check is done in-house.	State Tax Department
HB 3074	Relating to the carrying of concealed weapons; reciprocity agreements	$185,907 in cost	$151,513	19%	Mailings were used instead of travel, database done in house.	Attorney General
SB 66	Relating to WV Community Corrections Fund	$547,500 in revenue	$378,123	31%	Increased fee for home confinement. More offenders received indigent waivers than estimated.	Criminal Justice Services
SB 105	Imposing surcharge on certain fees due Deputy Sheriff Retirement Fund	$1,000 in revenue	$2,200	120%	More late fees collected than estimated. Not a State Fund	Consolidated Public Retirement Board
SB 180	Offering tax-free distributions from certain retirement plans to pay certain premiums for public safety officers	$25,000 in cost	$4,700	81%	Response was lower than estimated.	Consolidated Public Retirement Board
SB 181	Relating to per diem compensation of Board of Banking and Financial Institutions' members	$2,400 in cost	$1,200	50%	Estimates were made for perfect attendance of meetings.	Division of Banking
SB 335	Providing funding for WV Affordable Housing Trust Fund	$1,100,000 in revenue	$940,541	15%	Attributed to the housing slump.	State Tax Department
SB 411	Creating Correctional Center Nursery Act	$1,400,000 in savings	$570,827	59%	Estimates were simply incorrect. No state money used in program.	Division of Corrections

SB 518	Conforming WV Works Program with federal law requirements	$8,000,000 in cost	$4,581,606	43%	Allowed for college to be considered work for block grant beneficiaries. College enrollment less than expected.	Department of Health and Human Resources
SB 667	Providing student financial aid for certain military service	$78,116 in cost	$1,419	98%	Only one participant.	Higher Education Policy Commission
Cells shaded in green signify that the agency estimate was higher than the actual impact, while cells shaded in red signify that the agency estimate was below the actual impact.						
Source: Bill Status and the respective state agencies						

Table 5 compares the total dollar amount with the actual fiscal impact of the 28 measurable fiscal notes included in Tables 3 and 4. It should be noted that these estimates would include loss, cost, savings and revenue as whole numbers.

Table 5
Accuracy of 28 Fiscal Note Estimates with Measurable Fiscal Impact

Fiscal Note	Total Fiscal Note Estimate	Total Actual Fiscal Impact	Monetary Difference	Percentage Difference
Accurate Within 10%	$47,952,129	$47,879,102	$73,027	0%
Inaccurate Over 10%	$51,545,431	$36,856,418	$14,689,013	29%
Total	$99,497,560	$84,735,520	$14,762,040	15%

Source: Bill Status and the respective agencies

Conclusion

Based on fiscal notes for legislation that passed the 2007 legislative session, state agencies are estimating fiscal impact at a higher amount than the actual fiscal impact following passage and implementation of the bill. Nineteen of the bills passed in 2007 had fiscal notes which estimated the fiscal impact to be a difference of more than 10% from the actual fiscal impact. All but three of those were estimates that were less than the actual impact. Thus, agencies are providing information to the Legislature, in many cases, estimating that the State will have higher revenue or higher expenses than what the actual impact is. This study did identify that nine fiscal note estimates were within ten percent of the actual fiscal impact, and that 19 fiscal note estimates correctly identified that there would be no financial impact.