



**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY**



FISCAL REVIEW COMMITTEE

Performance Audit Report

January 2017

Justin P. Wilson, Comptroller



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January 5, 2017

The Honorable Ron Ramsey
Speaker of the Senate
and
The Honorable Beth Harwell
Speaker of the House of Representatives
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243
and
Ms. Krista Lee, Executive Director
Fiscal Review Committee
320 6th Avenue North, 8th Floor
Nashville, Tennessee 37243

Ladies and Gentlemen:

We have conducted a performance audit of selected programs and activities of the Fiscal Review Committee for the period July 1, 2012, through June 30, 2016.¹

Our audit disclosed certain findings, which are detailed in the Audit Conclusions section of this report. Management of the Fiscal Review Committee has responded to the audit findings; we have included the responses following each finding. We will follow up the audit to examine the application of the procedures instituted because of the audit findings.

We have reported other less significant matters involving internal control and instances of noncompliance to the Fiscal Review Committee's management in a separate letter.

Sincerely,

A handwritten signature in black ink that reads "Deborah V. Loveless".

Deborah V. Loveless, CPA
Director

DVL/ss

16/242

¹ Our base audit period was July 1, 2012, through June 30, 2016. In certain instances, we expanded our scope beyond this period. See the Audit Conclusions section for more information.



Division of State Audit

Fiscal Review Committee Performance Audit January 2017

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AUDIT HIGHLIGHTS

We have audited the following areas of the Fiscal Review Committee for the period July 1, 2012, through June 30, 2016. Our audit scope included a review of internal controls and compliance with laws, regulations, policies, and procedures for the following areas:

- risk assessment,
- fiscal notes,
- contract review, and
- operating protocols.

Key Conclusions

Findings

- As noted in the prior audit, management of the Fiscal Review Committee has not fulfilled its responsibility to formally and annually assess the committee's operational and fiscal risks of noncompliance, errors, fraud, waste, and abuse (page 5).*
- Fiscal notes were not completed within the 10-day requirement (page 9).

*This finding is repeated from the prior audit.

Observations

The following topics did not warrant a finding but are included in this report because of their effect on the operations of the Fiscal Review Committee and the citizens of Tennessee: Committee staff do not discuss and obtain approval from committee members for the types of contracts they seek to review, and staff have not ensured that they receive a complete list of contracts that require review (page 15); and the committee's management has not updated the staff policy and procedure manual or provided staff with written performance evaluations (page 17).

Matter for Legislative Consideration

The General Assembly may wish to consider statutory changes to improve the efficiency and effectiveness of Fiscal Review Committee operations, specifically in relation to its fiscal note process (page 11).

Performance Audit Fiscal Review Committee

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Performance Audit Fiscal Review Committee

INTRODUCTION

AUDIT AUTHORITY

This is the report on the performance audit of the Fiscal Review Committee. Section 8-4-109, *Tennessee Code Annotated*, states the following:

The comptroller of the treasury is hereby authorized to audit any books and records of any governmental entity created under and by virtue of the statutes of the state which handles public funds when such audit is deemed necessary or appropriate by the comptroller of the treasury. The comptroller of the treasury shall have the full cooperation of officials of the governmental entity in the performance of such audit or audits.

The audit was conducted pursuant to Section 4-3-304, *Tennessee Code Annotated*, which requires the Department of Audit to audit all accounts and financial records of any state department, institution, office, or agency in accordance with both generally accepted auditing standards and procedures established by the Comptroller. An audit may include any or all of the following elements: financial, compliance, economy and efficiency, program results, and program evaluations.

BACKGROUND

The 85th General Assembly established the Fiscal Review Committee in 1967 as a special, continuing committee to keep the members of the legislature informed of the fiscal affairs of the State of Tennessee. The committee is composed of six senators and nine representatives, elected by members of the Senate and House of Representatives, respectively. Additionally, the chairs of the Finance, Ways and Means Committee of each house serve as ex-officio voting members, while the speakers of each house serve as ex-officio non-voting members.

The committee elects from its membership a chair, a vice chair, and such other officers as it considers necessary. Pursuant to Section 3-7-101(e), *Tennessee Code Annotated*, the chair and vice chair are from opposite houses of the General Assembly so that one is a member of the Senate and one is a member of the House of Representatives. The chair and vice chair positions rotate between the Senate and House of Representatives every two years.

The Fiscal Review Committee conducts a continuing review of the fiscal operations of state government. They perform such functions as

- preparing fiscal notes showing the estimated effect on expenditures and revenues of bills and resolutions introduced in the General Assembly;
- preparing estimates of state tax revenues and net lottery proceeds; and
- reviewing and holding hearings on noncompetitive contracts and repeat audit findings.

The contract services subcommittee of the Fiscal Review Committee is a statutory subcommittee of the full committee and is charged with reviewing a wide range of state and local contracts, excluding matters being reviewed by the Information Systems Council, pursuant to Section 3-7-112, *Tennessee Code Annotated*; contracts for highway and road improvement by the Department of Transportation; contracts reviewed by the State Building Commission; and debt issuance contracts reviewed by the Comptroller of the Treasury, pursuant to Section 4-56-107, *Tennessee Code Annotated*.

The committee staff is budgeted for 15 positions, which include the Executive Director, who is appointed² by committee members. As of December 1, 2016, two of those positions were vacant. The Fiscal Review Committee is accounted for in business unit code 30150. An organization chart of the committee is on page 4.

AUDIT SCOPE

We have audited the Fiscal Review Committee for the period July 1, 2012, through June 30, 2016. Our audit scope included a review of internal control and compliance with laws and regulations in the areas of risk assessment, fiscal notes, contract review, and operating protocols. Management of the committee is responsible for establishing and maintaining effective internal control and for complying with applicable laws and regulations.

For our sample design, we used nonstatistical audit sampling, which was the most appropriate and cost-effective method for concluding on our audit objectives. Based on our professional judgment, review of authoritative sampling guidance, and careful consideration of underlying statistical concepts, we believe that nonstatistical sampling provides sufficient appropriate audit evidence to support the conclusions in our report. Although our sample results provide a reasonable basis for drawing conclusions, the errors identified in these samples cannot be used to make statistically valid projections to the original populations. We present more detailed information about our methodologies in the individual report sections.

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our

² The current Executive Director was appointed in October 2015; she has worked for the committee as a fiscal analyst for the past 12 years.

audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The Comptroller of the Treasury is elected for a two-year term in a joint vote by both houses of the Tennessee General Assembly (Tennessee State Senate and Tennessee State House of Representatives), which are headed by the Speaker of the Senate and the Speaker of the House, respectively. We do not believe that the election of the Comptroller of the Treasury by the General Assembly affected our ability to conduct an independent audit of the Fiscal Review Committee.

PRIOR AUDIT FINDINGS

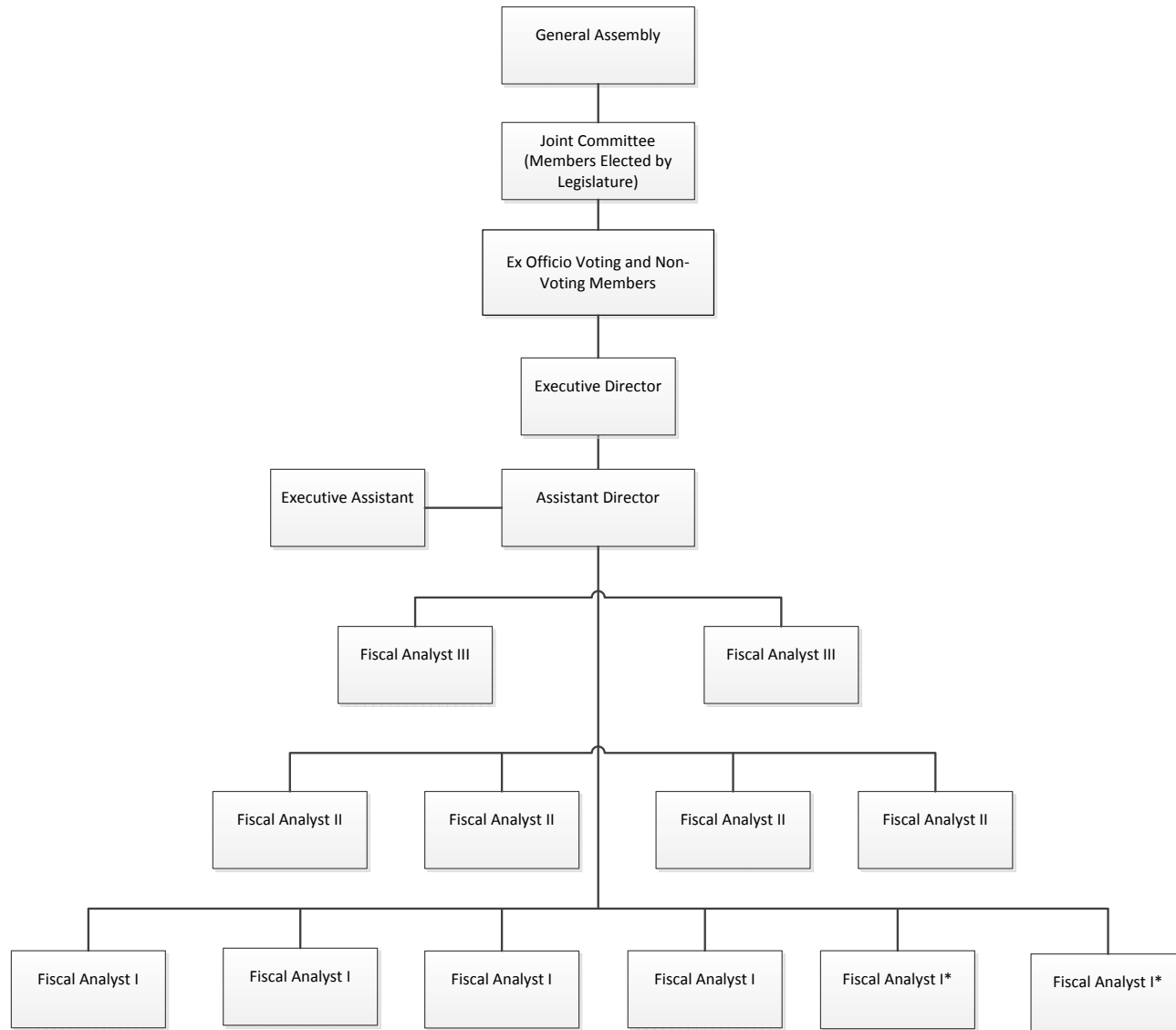
Section 8-4-109, *Tennessee Code Annotated*, requires that each state department, agency, or institution report to the Comptroller of the Treasury the action taken to implement the recommendations in the prior audit report. The prior audit report was dated March 2013. The Fiscal Review Committee filed its report with the Comptroller of the Treasury on August 30, 2013. A follow-up of all prior audit findings was conducted as part of the current audit.

The prior audit report contained a finding concerning the committee not following best practices regarding computer access. Since this function and other administrative functions transferred to the Office of Legislative Administration on January 2012, the follow-up of the finding will occur the next time the Office of Legislative Administration is audited.

REPEATED AUDIT FINDING

The prior audit report also contained a finding concerning the committee's lack of a formal documented risk assessment. This finding has not been resolved and is repeated in the applicable section of this report.

**Fiscal Review Committee
Organizational Chart
(December 2016)**



(*Position is vacant)

AUDIT CONCLUSIONS

RISK ASSESSMENT

The Fiscal Review Committee is responsible for conducting a continuing review of such items as revenue collections, budget requests, the recommended executive budget, appropriations, work programs, allotments, reserves, impoundments, the state debt, and the condition of the various state funds. To carry out the committee's responsibilities, the Executive Director and management team must establish an adequate internal control structure to provide reasonable assurance that the committee can achieve basic objectives related to its operations; financial reporting; and compliance with laws, regulations, and policies.

Audit Results

As noted in the prior audit, the Executive Director and management team did not perform formal risk assessment procedures since July 2010, in violation of the committee's own written procedures and best practices. Management concurred with the prior finding; however, based on our discussion with management, we determined that management still had not prepared a formal risk assessment (see **Finding 1**).

Finding 1 - As noted in the prior audit, management of the Fiscal Review Committee has not fulfilled its responsibility to formally and annually assess the committee's operational and fiscal risks of noncompliance, errors, fraud, waste, and abuse

Condition

For our current audit, we determined that management had not formally assessed risks since calendar year 2010. An ongoing risk assessment process is a basic component of internal control. The ultimate purpose of a periodic risk assessment is to allow management to take effective action to eliminate or mitigate each of the risks identified.

Criteria

Since the inception of the Financial Integrity Act of 1983, Section 9-18-102, *Tennessee Code Annotated*, requires the following:

- (a) Each agency of state government and institution of higher education along with each county, municipal, and metropolitan government shall establish and maintain internal controls, which shall provide reasonable assurance that:
 - (1) Obligations and costs are in compliance with applicable law;

- (2) Funds, property and other assets are safeguarded against waste, loss, unauthorized use or misappropriation; and
 - (3) Revenues and expenditures are properly recorded and accounted for to permit the preparation of accurate and reliable financial and statistical reports and to maintain accountability over the assets.
- (b) To document compliance with the requirements set forth in subsection (a), each agency of state government and institution of higher education shall annually perform a management assessment of risk. The internal controls discussed in subsection (a) should be incorporated into this assessment. The objectives of the annual risk assessment are to provide reasonable assurance of the following:
- (1) Accountability for meeting program objectives;
 - (2) Promoting operational efficiency and effectiveness;
 - (3) Improving reliability of financial statements;
 - (4) Strengthening compliance with laws, regulations, rules, and contracts and grant agreements; and
 - (5) Reducing the risk of financial or other asset losses due to fraud, waste and abuse.

Furthermore, the Fiscal Review Committee's *Staff Operations and Procedures Manual*, effective October 1, 2008, states, "the risk assessment will be updated annually."

Cause

Although former management agreed to perform an annual risk assessment in the prior audit released March 2013, the current Executive Director was unable to locate documentation indicating a risk assessment had been performed. Since the release of the prior audit report, the committee hired two Executive Directors, both of whom later resigned. The current Executive Director was appointed in October 2015, and she was unaware if either of the prior Executive Directors conducted a risk assessment of committee operations.

Effect

Risks of noncompliance, errors, fraud, waste, and abuse are mitigated by effective internal controls. In addition to performing and documenting a risk assessment, it is management's responsibility to design, implement, and monitor effective controls in the entity as an ongoing process to mitigate any identified risks.

Recommendation

The Executive Director should ensure that annual risk assessments are conducted. Each assessment should be well documented, complete, and clear. The risk assessment process should involve the active participation of staff; however, management is ultimately responsible for the results of the assessment. The Executive Director should assign specific responsibility to certain

staff to ensure that the assessments are properly conducted and should hold staff accountable for performing this critical function.

The risk assessment should include consideration of the risks of noncompliance, errors, fraud, waste, and abuse related to the committee and should address financial reporting, operational, and compliance risks. Management should consider the relative materiality of the risks with regard to qualitative as well as quantitative materiality. Management should use the results of the risk assessment to design appropriate internal controls to mitigate identified risks and should clearly link the risks with the related internal controls. Management should prioritize the risks so that its initial attention is on the greatest risks.

Management's Comment

We concur. Management is currently in the process of updating the Fiscal Review Committee's *Staff Operations and Procedures Manual* and completing the risk assessment and will address this finding by working to evaluate risk and the effectiveness of internal controls in conjunction with the Office of Legislative Administration. Furthermore, staff will be assigned specific responsibility to ensure the assessments are conducted annually.

FISCAL NOTES

What is a fiscal note? A document that estimates the fiscal impact of a particular piece of legislation if enacted—that is, how much it costs or how much revenue it will generate.

Committee staff are responsible for preparing and distributing fiscal notes for all general bills³ and certain resolutions, introduced by legislative members, that may have a fiscal effect on state or local government. Pursuant to Section 3-2-107, *Tennessee Code Annotated*, staff have no more than 10 days following the introduction of a bill to provide a fiscal note to the General Assembly, and only 24 hours to provide a fiscal memorandum on proposed amendments to a member. Staff also issue various other fiscal documents, such as fiscal memorandums (issued for amendments to bills) and corrected fiscal notes or memorandums (issued if the original document contains erroneous information).

Fiscal Note Process – Background

The committee staff refers bills to various state agencies, commissions, and offices for input as to the fiscal impact on or related to the functions or programs of these entities. Committee staff request that the various agencies use a fiscal note support form to provide this information. They also gather additional information from affected interest groups or associations if needed.

³ General information about how a bill becomes a law is described at <http://www.capitol.tn.gov/about/billtolaw.html>.

Fiscal analysts send fiscal note support form requests (by email) to agencies within 24 hours of the legislation’s introduction. These are agencies most likely affected by the proposed legislation. Agencies have three business days to return support forms. Some agencies return support information using the TN Bill Tracking System,⁴ which uploads the forms into FileNet⁵ through an automated process; however, other agencies use email to return the forms, which requires a fiscal analyst to manually upload the forms into FileNet.

After the information is received and subsequently analyzed, the fiscal analyst prepares a fiscal note and uploads it into FileNet. FileNet has an established workflow process that the committee staff uses to review fiscal notes. The Executive Director approves all fiscal notes, which subsequently authorizes the information systems to create/update the records necessary to make fiscal notes visible to systems used by legislative staff and the public.

The approximate number of fiscal notes and memos completed for each legislative session are shown in Table 1.

Table 1
Number of Fiscal Notes/Memos Issued

Calendar Year	Fiscal Notes	Fiscal Memos
2016	1,212	1,330
2015	1,397	895
2014	1,223	1,203
2013	1,433	1,065

Source: Office of Legislative Information Systems (unaudited).

Audit Results

- 1. Audit Objective:** Did committee staff follow established procedures for preparing fiscal notes for filed bills?

Conclusion: Based on the testwork performed, committee staff followed established procedures, with minor exceptions.
- 2. Audit Objective:** Did committee staff complete fiscal notes for filed bills within 10 days as required?

Conclusion: Committee staff did not complete fiscal notes within 10 days (see **Finding 2**).

⁴ The TN Bill Tracking System is used for submission of fiscal note support forms for proposed legislation. It is managed by the Department of Finance and Administration.

⁵ FileNet is a storage, fiscal note review, and workflow system. It is managed by Strategic Technology Solutions within the Department of Finance and Administration.

Methodology to Achieve Objectives

For our fiscal note testwork, we interviewed the committee chair, key management, and staff; and we reviewed policies and procedures, along with the applicable *Tennessee Code Annotated* provisions. We obtained the list of 1,212 fiscal notes completed from January 4, 2016, to April 19, 2016. We then selected a random sample of 40 fiscal notes from this list, and only tested House and Senate bills introduced, which resulted in 1,143⁶ fiscal notes. We obtained access to the necessary information systems to review the corresponding records.

Finding 2 – Fiscal notes were not completed within the 10-day requirement

Condition

Based on our review of fiscal notes, we determined that for 33 of 40 fiscal notes (83%) tested, staff did not complete fiscal notes within 10 days as required by statute. Our analysis revealed it took staff an average of 22 days beyond the initial 10 days to complete fiscal notes. Furthermore, we determined that for 28 of 40 fiscal notes (70%) tested, some agencies did not return fiscal note support forms to committee staff within 3 business days. Agencies averaged 11 days beyond the initial 3 business days to provide the forms, which might have contributed to the delays.

Criteria

According to Section 3-2-107(a)(1), *Tennessee Code Annotated*,

Fiscal notes shall be provided for all general bills or resolutions increasing or decreasing state or local revenues, making sum-sufficient appropriations, or increasing or decreasing existing appropriations or the fiscal liability of the state or of the local governments of the state. Not more than ten (10) days following the introduction of any such bill or resolution, the fiscal review committee shall furnish to the chief clerk of the house or houses of introduction a statement of analysis of the fiscal effect of such bill or resolution and shall prepare and distribute copies of the statement to members of the general assembly. Within ten (10) days following receipt of a request from a member of the general assembly for a fiscal note on any proposed bill or resolution requiring a fiscal note, the fiscal review committee shall prepare a fiscal note statement to accompany such proposal at the time of introduction.

Cause

According to committee management and staff, due to the large volume of proposed legislation submitted each session, staff are unable to comply with statute. Instead, staff

⁶ The population contained 69 fiscal notes for proposed resolutions.

complete fiscal notes as soon as possible, but reprioritize their work if proposed legislation is scheduled for an upcoming committee⁷ hearing.

Effect

Staff have not complied with statute. Furthermore, legislative members may not have enough time to review a fiscal note and obtain additional information from staff and agencies for their proposed legislation, if needed.

Recommendation

The committee should comply with statute as required; however, if committee members and management determine that they are unable to comply with statute in its current form, they should seek a change in statute. The General Assembly may wish to consider alternative actions for fiscal notes, as outlined in the Matter for Legislative Consideration on page 11.

Management's Comment

We concur. Management defers to the will of the General Assembly regarding any statutory or procedure changes. Staff works diligently to provide a detailed and accurate fiscal analysis of all proposed legislation within the timeframe required by statute. Management strives to ensure each fiscal note is completed as soon as possible following the filing of a bill but prioritization of fiscal note completion is driven by the scheduling of bills in committee. The goal of the Fiscal Review Committee staff is to complete each fiscal note in a timely manner so that members of the General Assembly have adequate time to review and understand the fiscal impact of his or her proposed legislation prior to the bill being heard in committee.

Management is grateful for the continued support of the General Assembly, especially the Fiscal Review Committee members, in implementing changes which have assisted in meeting the 10-day requirement. These include:

- Public Chapter 349 of 2011's extension of the requirement period from seven days to ten days;
- the recent approval to fill all vacant positions so that we have a full staff;
- the recent approval of salary adjustments for staff to ensure the longevity of experienced staff within the office; and
- the approval of technology enhancements to support office efficiency.

Management will continue to create efficiencies within the office and build staff's expertise and knowledge base through annual training which will increase our ability to meet the 10-day requirement.

⁷ This refers to various standing committees where the merit of the proposed legislation is discussed.

Matter for Legislative Consideration

This performance audit identified areas in which the General Assembly may wish to consider statutory changes to improve efficiency and effectiveness of Fiscal Review Committee operations, specifically in relation to its fiscal note process.

The General Assembly may wish to consider the following four options for amending the deadline for completing fiscal notes in Section 3-2-107(a)(1), *Tennessee Code Annotated*:

- Option 1 – Remove the 10-day requirement which begins when a bill is introduced, unless a formal request is made by a member, and add that a fiscal note should be completed as soon as possible but prior to its first scheduled committee hearing.
- Option 2 – Increase the number of days to complete a fiscal note after a bill is introduced, unless a formal request is made by a member.
- Option 3 – Define a fiscal note completion schedule based on the bill filing deadline. For example, if a bill is filed 5 or more days before the bill filing deadline, the committee could be required to complete the fiscal note within 10 days. If the bill is filed less than 5 days before the bill filing deadline, staff could be required to complete the fiscal note prior to the bill’s first scheduled committee hearing date, unless a formal request is made by a member.
- Option 4 – Establish that a bill cannot be scheduled for its first committee hearing until a fiscal note is completed.

Results of Other Audit Work

Review of the Fiscal Note Process

Amid concerns over the fiscal note process, during fall 2014, the Speaker of the House and the Speaker of the Senate requested that the National Conference of State Legislatures (NCSL)⁸ conduct a review of Tennessee’s fiscal note process. The final report (see [Appendix 1](#) for the full report) issued in July 2015 discusses key findings from the review, such as

- the number of fiscal notes prepared by staff averaging 150 to 200 per person, per session, and the number of fiscal memoranda for amendments doubling that amount for a total of 300 to 400 fiscal notes and fiscal memoranda per person, per session;
- inexperienced staff preparing fiscal notes;
- high turnover in fiscal analyst positions;
- outdated information technology systems;

⁸ According to NCSL’s website, its mission is to improve the quality and effectiveness of state legislatures; promote policy innovation; encourage communication among state legislatures; and ensure state legislatures a strong, cohesive voice in the federal system.

- lack of communication between parties involved in preparing and utilizing fiscal notes;
- difficulty budgeting to the dollar when accurate estimates cannot be made; and
- pressure by legislative members.

We identified that the committee has made the following improvements since the NCSL review in areas concerning staff, time, and communication:

- filled open positions for three fiscal analysts;
- held committee staff appreciation events;
- held meetings with committee chairs and staff to understand areas of concern;
- received committee approval for staff pay raises and reorganizational structure;
- changed some administrative functions within information systems;
- streamlined the amendment notification process;
- held an informational meeting to educate legislative staff, departmental staff, lobbyists, and other stakeholders on the fiscal note process; and
- developed and distributed to all legislative members a pamphlet identifying committee staff and responsibilities.

Proposed improvements from either the review or the committee that have not yet been implemented include

- increasing the turnaround time for fiscal analysts to review amendments and prepare fiscal memorandums from the current 24 hours to 72 hours; and
- limiting the number of amendments that require a fiscal memorandum.

Current Audit

We performed additional analysis on the information obtained from our fiscal note testwork and present the methodology and results here:

Centralized Information System

The Department of Finance and Administration manages the TN Bill Tracking System⁹ that state agencies use to provide fiscal note support forms to committee staff to prepare fiscal notes. However, not all agencies are using the system, including those in the legislative and judicial branches.

⁹ Additional functions of the system include searching for and tracking legislative bills; signing up for email notifications; and creating calendars.

We prepared a survey and sent it to the agency liaisons, based on information provided by committee staff, to understand why these agencies were not using the system. These agencies represented approximately 444 bills for which the committee requested fiscal note support forms. We received responses from all seven agencies we contacted, with representation from all three branches of government. The reasons for not using the system varied—from unfamiliarity with the system to concerns over submitting sensitive information in the system. While the committee does not require agencies to use the system, committee staff must manually upload the support information into FileNet, when agencies do not. This results in staff spending more time on administrative tasks, such as the manual uploads, and less time analyzing fiscal notes.

For further improvement in timeliness, management should consider including how to use the TN Bill Tracking System in its orientation for state agencies. The orientation should include discussion of any obstacles or concerns agencies may have in using the system to submit fiscal note support forms, as well as how to resolve them. For entities that are unable to use the TN Bill Tracking System, the committee should specify the format that they should use to report their information so that it can be uploaded to FileNet quickly and without any changes.

Volume of Proposed Bills

Based on the population used in our fiscal note testwork, we compared the list of fiscal notes and bills to enacted public chapters¹⁰ from the 109th General Assembly to understand what percentage of proposed legislation actually became law. From the 1,143 fiscal notes, we determined that approximately 502 bills (44%) resulted in changes to statute.

For further improvements in efficiency and effectiveness, the committee may wish to pursue a change in legislation or rule that defines when a fiscal note is required—for example, only when it is scheduled on a committee calendar for hearings. This would eliminate the need to complete fiscal notes for bills that members decide not to pursue further (see **Matter for Legislative Consideration** on page 11).

CONTRACT REVIEW

The Fiscal Review Committee appoints a contract services subcommittee to review the state's fee-for-service contracts, direct purchase authority contracts, interdepartmental contracts, and governmental contracts other than state contracts. The subcommittee has discretionary authority to review the state's contracts involving grants, grants to governments, departmental grant authority, no-cost contracts, revenue contracts, and memoranda of agreement. Members of the subcommittee are appointed by the chair¹¹ of the Fiscal Review Committee.

¹⁰ Source: Office of Legislative Information Systems (unaudited).

¹¹The most recent committee chairs chose not to appoint a separate subcommittee; instead, the full committee reviewed all contracts presented.

When the legislature is not in session, the full committee holds contract review meetings, which are one- or two-day meetings each month, depending on the agendas. Typically, the agendas include a consent calendar¹² of agency and statewide contracts, noncompetitive contracts, presentations, and other business. The committee does not have authority to veto or cancel a contract, but it does make a non-binding recommendation, either positive or negative, on the contract. Subsequent to the committee's recommendation, the Central Procurement Office and Comptroller's Office would ideally approve the contract in Edison, the state's accounting system.

Consent Calendar of Agency and Statewide Contracts

The Central Procurement Office submits monthly consent calendars of statewide¹³ and agency term¹⁴ contract lists to the committee for their review and approval. For the 109th General Assembly's Fiscal Review Committee, consent calendars contained agency term or statewide contracts that amended the original contracts to add funding or extend terms, which were proposed during the initial formalization of the contracts. While the committee has the authority to review a variety of contracts, the decision to review consent calendar-related contract types was made by former committee staff prior to the start of the current Executive Director's tenure.

Individual Review of Noncompetitive Contracts

The Fiscal Review Committee is required to individually review and comment on proposed noncompetitive contracts for goods or services. Pursuant to Section 4-56-107 *Tennessee Code Annotated*,

All requests of the procuring agency to procure goods or services by negotiation with a single service provider, referred to in this section as a noncompetitive contract, shall be contemporaneously filed with the fiscal review committee of the general assembly, comptroller of the treasury and the chief procurement officer.

To allow for the required 40 business day review period before the state can enter into a noncompetitive contract,¹⁵ a department or agency must present the contract to the committee 60 days before the effective date of the next contract. The department/agency is considered late if it submits a contract less than 60 days before the contract begins. If late, the Commissioner must be present at the committee meeting and provide an explanation.

¹² A consent calendar as defined by *Roberts Rules of Order* allows the board to approve items that do not need any discussion or debate either because they are routine or are already unanimously agreed upon.

¹³ A *statewide contract*, established by the Chief Procurement Office, is a contract for goods or services that all state agencies must use and that may be used by local governments, higher education, and nonprofit entities.

¹⁴ An *agency term contract* is a state agency contract in which a source or sources of supply are established for a specified period of time at an agreed-upon unit price or prices.

¹⁵ The requirement applies to those contracts and amendments identified in Section 4-56-107 (b)(1), *Tennessee Code Annotated*.

Audit Results

Audit Objective: Does the committee have appropriate procedures for the contract review process?

Conclusion: The committee’s contract review process needs improvement in two specific areas (see **Observation 1**).

Methodology to Achieve Objective

We reviewed the committee’s *Staff Operations and Procedures Manual*, its website, and applicable *Tennessee Code Annotated* provisions. We interviewed the committee’s Executive Director to understand the responsibilities of the committee and staff. We also documented the processes and procedures performed. We reviewed the video recordings of committee meetings and attended meetings held during calendar years 2015 and 2016.

Observation 1 – Committee staff do not discuss and obtain approval from committee members for the types of contracts they seek to review, and staff have not ensured that they receive a complete list of contracts that require review

Background

The committee’s positive or negative contract recommendation does not result in committee staff approving a contract in Edison; in fact, staff do not add any information into Edison regarding contracts. Instead, subsequent to the committee’s contract review meetings, committee staff forward memos to communicate contract review results—either positive or negative recommendations on the contracts—to the Central Procurement Office, the Comptroller’s Office, and the head of each applicable agency.¹⁶ A negative recommendation by the committee could result in a delay of approval on the contract.

No Review with Committee Members

Committee staff did not discuss with committee members which types of contracts should appear on the monthly consent calendar lists. Pursuant to its jurisdiction under Section 3-7-103(a), the Fiscal Review Committee is authorized to review any other state contract or contract amendment, regardless of whether the contract or contract amendment meets the requirements of Section 4-56-107(b)(1), *Tennessee Code Annotated*. According to the U.S. Government Accountability Office’s *Standards for Internal Control in the Federal Government* (Green Book),¹⁷ “management periodically reviews policies, procedures, and related control activities

¹⁶ This procedure was in effect until July 1, 2016.

¹⁷ The *Standards for Internal Control in the Federal Government*, published by the United States Government Accountability Office, identify the standards for internal control in the federal government, as required by Title 31, *United States Code*, Sections 3512 (c) and (d). As noted in the foreword, these standards “may also be adopted by state, local, and quasigovernmental entities, as well as not-for-profit organizations, as a framework for an internal control system.”

for continued relevance and effectiveness in achieving the entity’s objectives or addressing related risks.”

Without discussing and obtaining written approval from committee members to guide staff, the Central Procurement Office, and state agencies, the committee increases the risk that it may not receive a complete population of contracts that by statute it has authority to review. Since contracts do not require committee approval in Edison, it is possible that a contract could be approved without any inquiry by the committee.

When we discussed this issue with the Executive Director, she stated that she planned to meet with the Central Procurement Office staff to decide which contracts are placed on the consent calendar, and she will then present those parameters to all new committees for their approval, beginning with the committee appointed in January 2017.

No Reconciliation of Contracts

The committee’s staff do not reconcile the monthly consent calendar lists provided by the Central Procurement Office or the noncompetitive contracts received from state agencies. Without performing a reconciliation to Edison, the committee does not have assurance that it is receiving a complete population of contracts it seeks to review under its authority. According to the Green Book, “management may design a variety of transaction control activities for operational processes, which may include verifications, reconciliations, authorizations and approvals, physical control activities, and supervisory control activities.”

For the consent calendars, staff relied on the Central Procurement Office to provide accurate and complete lists. Committee staff receive notifications of noncompetitive contracts from state agencies, as required by state statute, and, as a secondary check, rely on Comptroller’s Office staff to notify them if agencies do not submit contracts to the committee for review. Relying on the Central Procurement Office or the Comptroller’s Office to ensure the lists are complete and accurate is not a sufficient or effective control.

According to the Executive Director, she began evaluating the contract review process after her appointment in October 2015. When we discussed this issue with the Executive Director, she agreed to begin reconciling the lists to Edison.

OPERATING PROTOCOLS

All organizations must have basic administrative tools to ensure personnel are able to fulfill the mission of the organization. As a matter of best practice, management should have up-to-date policies and procedures, an effective staff evaluation system, and conflict-of-interest disclosures.

Audit Results

Audit Objective: Did the committee have up-to-date policies and procedures, an effective staff evaluation system, and conflict-of-interest disclosures?

Conclusion: The committee did not update its policies and procedures or establish a staff evaluation system (see **Observation 2**).

Based on our testwork, we found that 3 of 14 employees (21%) did not have a completed disclosure form on file. Although the Executive Director stated she reviews the forms for completion and disclosed impairments, she did not document her review. After we notified the Executive Director of the missing forms, she had two of the employees complete conflict-of-interest disclosure forms on October 20, 2016; for the remaining disclosure, the employee was no longer with the committee.

Methodology to Achieve Objective

We reviewed the committee's *Staff Operations and Procedures Manual*. We interviewed committee management and staff to determine if they receive written performance evaluations and complete annual conflict-of-interest disclosures. We obtained a list of employees who were budgeted to the Fiscal Review Committee and thus required to complete disclosures during calendar year 2016. We tested all 14 employees in place during the 2016 legislative session to determine if they completed the annual conflict-of-interest disclosure forms.

Observation 2 – The committee's management has not updated the staff policy and procedure manual or provided staff with written performance evaluations

Staff Operations and Procedures Manual

The committee's *Staff Operations and Procedures Manual* is outdated, even though several changes in operations and procedures have occurred since the manual's inception in October 2008. According to the manual, "the manual will be updated periodically to provide a current and readily accessible resource of information for the staff." According to the Green Book, "management periodically reviews policies, procedures, and related control activities for continued relevance and effectiveness in achieving the entity's objectives or addressing related risks."

By not providing a current and adequate resource for staff to reference, the committee increases the risk that staff may not realize the full expectations of their job requirements. None of the three former Executive Directors revised the manual during their tenure. The current Executive Director, appointed in October 2015, informed us that the manual is outdated and needs revisions. The Executive Director should review and update the manual to reflect the committee's current procedures and, if necessary, seek final approval on all changes from the committee.

Staff Performance Evaluations

According to the committee's *Staff Operations and Procedures Manual*, "individual performance evaluations are given on a semi-annual basis. Performance is based on session performance and is separately evaluated based on performance during non-session time." From our interviews with staff, we determined that staff do not receive written performance evaluations. Furthermore, the Green Book states that,

Personnel need to possess and maintain a level of competence that allows them to accomplish their assigned responsibilities, as well as understand the importance of effective internal control. Holding individuals accountable to established policies by evaluating personnel's competence is integral to attracting, developing, and retaining individuals. Management evaluates competence of personnel across the entity in relation to established policies. Management acts as necessary to address any deviations from the established policies. The oversight body evaluates the competence of management as well as the competence overall of entity personnel.

From our discussions with staff, it does not appear that a performance evaluation process was ever developed for staff. According to the Executive Director, she never received a written performance evaluation from any of the former Executive Directors during her time as a fiscal analyst. She noted that a performance evaluation matrix is currently in development.

Without a reasonable method to evaluate employee performance, the committee cannot provide a record of employees who are underperforming and cannot protect the organization against any wrongful termination claims. Additionally, the committee cannot provide justification for employees who receive promotions and are awarded salary raises. The Executive Director should develop and update policies and procedures to ensure that employee performance evaluations contain measurable data and are documented and completed at least annually.

APPENDICES

APPENDIX 1
Tennessee Fiscal Review Committee—Analysis of the Fiscal Note Process
(Unaudited)



**Tennessee Fiscal Review
Committee**
Analysis of the Fiscal Note Process

FINAL REPORT

July 2015

Conducted by
National Conference of State Legislatures

Arturo Pérez
Erica MacKellar

Executive Summary

In the spring of 2015, NCSL conducted a review of the fiscal note process in Tennessee. Overall, NCSL's review found that the fiscal note process is broadly similar to the processes used in other legislatures, and other states share many of the same concerns about fiscal notes as Tennessee legislators and staff. Fiscal notes are an important element in determining a bill's likelihood of passage, and therefore are inherently controversial in most states. However, there are some areas for improvement in Tennessee's fiscal note process that may reduce controversy while improving confidence in the fiscal note process.

The primary issue that should be adjusted to improve the fiscal note process in Tennessee is the heavy workload of Fiscal Review Committee staff relative to the time and resources available.

The issue of staff workload is related to several other concerns that were raised during our review process. Issues relating to staff workload include:

- **The number of fiscal notes and amendments.** Fiscal note staff each prepare an average of 150-200 fiscal notes per session and nearly as many fiscal memoranda. This is more than fiscal note analysts prepare in peer states.
- **The role of agencies and independent research.** There is concern that state agencies provide biased estimates for fiscal notes and that fiscal notes rely too heavily on agency information. This is a problem in other states that is best mitigated by experienced staff preparing fiscal notes.
- **The experience of Fiscal Review Committee staff.** High turnover in Fiscal Review Committee staff means fiscal note staff do not have the experience to "gut check" agency estimates.
- **Information technology (IT) systems.** Tennessee's IT system for fiscal notes is out of date, causing fiscal note analysts spend too much time on administrative tasks.

In addition to concerns related to staff workload, other issues that came to light during our review include:

- **Communication.** There is a lack of communication between several parties involved in preparing and using fiscal notes, leading to misunderstandings.
- **The budgeting system.** Tennessee's system of "budgeting to the dollar" makes it difficult when analysts cannot accurately estimate the cost of proposed legislation.
- **Member pressure.** There is concern that some legislators pressure fiscal note staff to achieve a particular outcome. It is important to maintain an independent and ethical fiscal note process.

In our view, improving the issue of staff workload and communication would likely solve many of the other issues discussed in this report. While we identify areas of improvement in the fiscal note process, we also found a broad confidence in the fiscal note process in Tennessee along with general respect and admiration for the Fiscal Review Committee staff.

Introduction and Background

In the fall of 2014, the Speaker of the House and the Speaker of the Senate of the Tennessee General Assembly asked the National Conference of State Legislatures (NCSL) to conduct a review of the Fiscal Review Committee’s fiscal note process in Tennessee. To complete this review, NCSL conducted phone interviews with numerous members of the House and Senate, as well as legislative fiscal staff. NCSL interviewed majority and minority party members, members of the Fiscal Review Committee as well as non-committee members. On the staff side, NCSL interviewed legislative Fiscal Review Committee staff of all experience levels, as well as staff outside of the Fiscal Review Committee that receive and use fiscal notes.

In addition to interviews within Tennessee, NCSL also formally and informally interviewed legislative fiscal office directors in other legislatures in order to compare the office with its peers. In 2012, NCSL completed a survey of legislative fiscal offices, which included questions on fiscal note preparation. We have relied on the results of that survey to support our analysis. The following report is a summary of NCSL’s findings and recommendations.

Other States Interviewed	
Colorado	North Carolina
Nebraska	Utah

Key Findings

Overall, the general process for fiscal notes in Tennessee is similar to the processes in other states. There are some similar problems faced by most fiscal offices we interviewed, and some problems specific to the Tennessee process. The issues we identified and recommendations and options for improvement are divided between staff workload issues and other problems identified during our review.

Staff Workload Issues:

The primary issue we identify with the fiscal note process in the Tennessee General Assembly is the workload of the Fiscal Review Committee staff given the relatively short length of Tennessee’s legislative session. In our opinion, a number of other concerns raised during our review are caused by the workload issue. Some of the issues relating to staff workload include:

Number of Fiscal Notes and Amendments. Given the limited number of Fiscal Review Committee analysts, the number of fiscal notes and amendments prepared by each analyst in a short period of time is impressive. The nine Fiscal Review Committee analysts each prepare 150-200 fiscal notes per legislative session, or about 1,300 to 1,800 total per session. Of the offices that responded to NCSL’s Legislative Fiscal Office Operations Survey, only five offices reported completing more fiscal notes total per session. When fiscal memorandums to bill amendments are included in the count for Tennessee, the number of fiscal analyses nearly doubles to between 2,700 and 3,600 fiscal notes total per

session. With so many fiscal analyses to prepare in such a short amount of time, it can be difficult for staff to spend a significant amount of time analyzing and preparing each fiscal note. Time for analysis can be especially short on fiscal memorandums, which are often completed on only one or two days' notice. If a bill amendment substantially changes the initial bill, analysts have little time to complete outside research on the issues at stake. Several interviewees raised concerns about Fiscal Review Committee staff's reliance on agency estimates (addressed in the next section) and a lack of additional outside resources. The limited time and staff resources to prepare fiscal notes makes outside research challenging.

Figure 1. Fiscal Notes Prepared in Other States		
Office	Average Number of Fiscal Notes Prepared Each Session	Estimated Number of Fiscal Note Staff
Alabama Legislative Fiscal Office	900	10
Michigan House Fiscal Agency	1,800	15
Kentucky Legislative Research Commission – Office of Budget Review	80	16
Nebraska Legislative Fiscal Analyst	800 – Long Session 600 – Short Session	9
Utah Office of the Legislative Fiscal Analyst	1,100	16
Source: NCSL Survey of Legislative Fiscal Office Operations, 2012. NCSL interviews, 2015.		

Recommendations: While we have identified the short timeframe to prepare fiscal notes as a problem, we are aware that more time to prepare fiscal notes might not be a realistic goal because of the nature of a part-time legislature and relatively short sessions. However, lessening the load on individual analysts could allow staff more time to analyze bills and determine their fiscal impact, making staff less reliant on agency-provided information. Some of the ways to achieve this might include:

- Adding more fiscal note staff.
- Limiting the number of amendments that require a fiscal memorandum.
- Involving Fiscal Review Committee analysts in the bill drafting phase to give them more time to conduct independent research and evaluate agency estimates.

The Role of State Agencies and Independent Research

In many of our conversations, the role of state agency staff in the fiscal note process was raised as a

concern. There is a perception within the Tennessee Legislature that agency staff deliberately provide biased information to raise or lower the cost of legislation, thus influencing the outcome of proposed legislation. Our review of the fiscal note process in other states found agency estimates to also be a concern elsewhere. What is unusual in Tennessee, and in our opinion untrue, is a perception that Fiscal Review Committee staff are willingly signing off on agency estimates without proper vetting. We believe this perception stems from the timing, workload and inexperience of Fiscal Review Committee staff, not from a lack of staff effort. Retaining fiscal note staff for long periods of time gives analysts the tools to better evaluate agency estimates.

There is also a desire from legislators in Tennessee for fiscal note estimates to rely on more data sources than agency estimates. In most states, agency estimates are the primary source of information for fiscal note staff. In some states with longer sessions, or where every bill does not require a fiscal note, staff have more time to conduct independent research. Legislative fiscal offices largely depend on the experience of their staff to verify agency estimates.

Recommendations:

- Tennessee could consider a rules change to make agency estimates less influential. For example, in North Carolina, the state prohibits agency staff from discussing estimates provided to the fiscal office with legislative members until a fiscal note is issued. That restriction has reduced rumors and member pressure on staff.

[Experience of Fiscal Review Committee Staff.](#)

In recent years, there has been high turnover in Fiscal Review Committee staff relative to fiscal offices in other states we have spoken with. High staff turnover can adversely impact the quality of fiscal notes. Even if new analysts are exceptionally qualified, there are nuances in the fiscal note process that can take years to master. For example, when an agency provides information to an analyst, more experienced analysts are better equipped to determine if the agency is attempting to manipulate the outcome of legislation. In several other states, we found that there is very low turnover among fiscal note analysts, and the directors we spoke with often cited extensive experience as a reason members trust the fiscal note estimates and why the process maintains its independence.

Recommendations:

- Create a culture where Fiscal Review Committee staff feel appreciated and respected.
- Consider staff pay raises, hiring additional staff, or other ways to improve the work environment for Fiscal Review Committee staff.

[Information Technology.](#) While very few states we spoke with had “state of the art” technology systems in place for their fiscal note process, the system in Tennessee seems particularly onerous for staff, resulting in a great deal of time on administrative tasks rather than analysis. Other states have created systems that reduce the administrative burden for fiscal note staff. In Utah, for example, when a bill is filed, any agencies potentially affected automatically receive an email with a request for information. Agencies then go to an online tool and enter their estimates and other information. If the agency does not respond within two days, a reminder is automatically sent. The process saves fiscal note analysts a significant amount of time.

Fiscal Review Committee staff on the other hand, are personally responsible for communicating with agency staff, and following up with staff if information is not immediately provided. Additionally, if a bill changes existing law or code, Tennessee Fiscal Review Committee staff must compare existing law with the bill to determine changes, which is unusual compared to other states. The time necessary to perform these administrative tasks adds up and can significantly reduce the amount of time staff have for fiscal analysis.

Recommendations:

- Work with information technology staff to develop a system in Tennessee that will make the process faster and easier for all parties involved.
- Potentially purchase a model from another state, or create a system modeled after a process in another state.

Other Issues Identified:

A handful of other issues were raised during our review of the fiscal note process. Of these issues, we believe increasing communication in the fiscal note process is the most important to alleviate the other concerns and improve the fiscal note process.

Communication. There appears to be a lack of communication during the fiscal note process. Members do not take advantage of the opportunity to meet and discuss fiscal notes with staff, and Fiscal Review Committee staff could do more to make members aware of their availability.

Additionally, changes have been made by Fiscal Review Committee staff this year that have not been discussed with other committee staff, leading to some difficulties as committees consider bills with a fiscal impact. Finally, there is a lack of communication between Fiscal Review Committee staff and bill drafting staff. In the other states we reviewed, these staff work closely to ensure an analyst preparing a fiscal note understands the intent of a bill and any specific changes to current law.

The lack of communication between various parties creates misunderstandings and can negatively affect confidence in fiscal note estimates.

Recommendations:

- The Fiscal Review Committee should ensure all members are aware of the role of Fiscal Review Committee staff and the resources they offer.
- Members should speak with Fiscal Review Committee staff as early as possible in the bill drafting process.
- Fiscal Review Committee staff and bill drafting staff should work together to ensure fiscal notes are informed and accurate.

The Budgeting System. During our interviews, there were numerous mentions of Tennessee's need to "budget to the dollar." Tennessee is a state that values a balanced budget, and it is important that legislators and their staff have an accurate idea of the cost of proposed legislation. Other states have a similar budgeting mentality to Tennessee. This gives fiscal notes in Tennessee and

elsewhere a great deal of weight and importance. However, other states we spoke with had a system in place to allow for times when fiscal staff cannot estimate the cost of legislation. There are times when staff may not have precedents or data to accurately estimate costs, and a system that does not allow for that possibility can put staff in a difficult position. We understand Tennessee is currently developing a strategy for dealing with this type of legislation, but for it to be successful all parties and offices that use fiscal notes need to be involved in the strategy. Involving all stakeholders will help increase understanding, decrease delays in fiscal note filings for committees and decrease frustrations at all levels.

Recommendations:

- Involve all parties that use fiscal notes to develop a process when the cost of legislation is difficult to estimate.

Member Pressure. Legislators in all states feel strongly about the legislation they introduce and want it to succeed. In Tennessee, some legislators have expressed concern that Fiscal Review Committee staff are subject to pressure from members to alter fiscal note estimates, and that members may be using the fiscal note process to ensure a bill's passage or failure. This feeling has created tension between members and between the House and the Senate. It is important that legislators express concerns over fiscal note estimates in a constructive and ethical way and fiscal staff must maintain their independence and non-partisanship. In Tennessee and in other states, fiscal staff seem willing to meet with legislators to discuss concerns, and also to discuss ways a bill might be changed to lower a fiscal price tag. Other states that use this strategy say these discussions might not lead to a change in a fiscal note estimate, but they provide transparency, outlets for disagreement and can help dispel rumors of "backdoor" negotiations. It has also been helpful in other states to have an experienced and strong fiscal office director who can withstand pressure from members.

Recommendations:

- Provide ethics training for legislators and legislative staff.
- Increase communication and ensure members are aware of opportunities to meet with fiscal analysts about fiscal note estimates.

Conclusion

The fiscal note process in Tennessee is similar to the process in other states. However, we identify a few issues facing the fiscal note process. The primary issue is the workload for Fiscal Review Committee staff relative to time and resources available. We believe solving this problems will alleviate many of the other concerns raised during our interviews with members and staff of the Tennessee General Assembly outlined in this report. Increasing communication in the fiscal note process will also greatly improve the fiscal note process in Tennessee and alleviate other issues raised during our review.

While NCSL has outlined some areas of concern in this report, our analysis also found a strong commitment to the process and to Fiscal Review Committee staff in Tennessee. In the end, the success of a fiscal note process largely relies on trust and the fostering of an environment that creates confidence in fiscal notes, while also allowing for a discourse over estimates.

APPENDIX 2
Staff Demographic Information
(as of December 1, 2016)

See below for a breakdown of the Fiscal Review Committee staff positions by gender and ethnicity. We did not audit, sample, or test the information; the procedures used to determine the information; or the controls over the validity of the information.

Title	Gender			Ethnicity						
	Male	Female	Total	American Indian	Asian	Black	Hispanic	White	Other	Total
Counsel	1	0	1	0	0	0	0	1	0	1
Executive Director	0	1	1	0	0	0	0	1	0	1
Fiscal Review Assistant Director	1	0	1	0	0	0	0	1	0	1
Legislative Administrative Assistant Joint	0	1	1	0	0	0	0	1	0	1
Legislative Fiscal Analyst 1	2	3	5	0	0	1	0	4	0	5
Legislative Fiscal Analyst 2	2	0	2	0	0	0	0	2	0	2
Legislative Fiscal Analyst 3	2	0	2	0	0	0	0	1	1	2
Grand Total	8	5	13	0	0	1	0	11	1	13

Source: State Audit Information Systems.