

Shopping Without Price Tags

Improving Illinois's budget via fiscal note reform

The Problem

Paris Hilton may be able to shop without looking at price tags, but the State of Illinois doesn't have that luxury. Even so, state legislators receive precious little information on how much the laws they're approving will save or cost taxpayers. The state's "fiscal note" process should be improved as part of broader budget reforms.

Fiscal notes are intended to estimate the costs, savings, revenue gain, or revenue loss resulting from the implementation of proposed legislation. They serve as tools to help legislators, the media, and the public better understand how a bill might impact the state budget, individual agencies, local units of government, and taxpayers. However, fiscal notes in Illinois often fall far short of these goals—if they exist at all.

A June 24, 2010 survey by the Illinois Policy Institute found that out of 545 bills pending review by the governor (having passed both the House and Senate), only 3 percent—or 16 bills—had fiscal notes attached. As not every bill results in spending or tax changes, the survey reviewed bill descriptions and found that out of 122 bills likely to be fiscally impactful, only 13 percent had fiscal notes, 5 percent had pension notes, 2 percent had balanced budget notes, and 3 percent had state debt impact notes. Out of the few fiscal notes available,

many provided woefully limited information and most were comprised of a few sentences. See Appendix A for the 16 bill numbers and the associated fiscal notes.

Current implementation of the state's fiscal note statute, Illinois Fiscal Note Act (25 ILCS 50), serves few well. Problems include:

- Many bills go through the legislative process without ever having their fiscal impact measured. The sponsor has to request the note, or another member (with majority support from the chamber) must request the note. The default position is no fiscal note.
- Fiscal notes are often prepared before a bill's second reading, which may not account for subsequent amendments that significantly alter a bill's impact.
- The resulting notes are often opaque and provide minimal information. Little insight into the estimation methods is offered, even though summaries or worksheet computations are supposed to be provided.
- Long-range effects of the measure are rarely included, even though they're called for by statute.
- Affected agencies prepare the notes, and they may have an interest in directing the results.

- The public does not have an easy method for discovering and contacting note authors.

Combined, these factors create a situation where legislators and the public are unable to conduct a proper analysis of the budgetary effects of proposed legislation.

Consider these examples, which demonstrate how bills large and small are considered and passed without comprehensive, impartial cost estimates:

- *Income Tax Increase (HB 174)*. This bill is the preferred legislative vehicle of those who support a massive increase in the Illinois income tax rate. According to proponents, this bill would “raise between \$5.0 billion and \$5.2 billion in new, recurring tax revenue.”¹ The Illinois Senate passed this bill in May 2009 after amending the original bill many times. The attached fiscal note from the Department of Revenue refers only to the bill’s pre-amendment language, which has nothing to do with a \$5 billion tax increase. Even though HB 174 remains an active bill and is vigorously pushed by supporters, an updated fiscal note has not been provided.
- *Pension Benefit Reform (SB 1946)*. Now law, this significant legislation was quickly passed in spring 2010 and modified the pension benefits for future government employees. Supporters have argued that it could save “as much as \$100 billion in future costs.”² However, the only fiscal note attached to the bill (provided by the State Universities Retirement Systems) lacks comprehensive information, stating only “SB 1946 (H-AM 4) does not impact the fiscal year 2011 certified employer contribution amount due to the State Universities Retirement System. The impact on costs in future years has yet to be determined.” A three-sentence Pension Note from the Commission on Government Forecasting & Accountability offered a top line savings estimate.

- *Local Farm and Food Products Act (HB 3990)*. This legislation from 2009, now law, permits state-owned food buyers to spend up to 10 percent more than the lowest bid to buy locally grown produce, even when it could buy more food for less from elsewhere. No fiscal note was attached to the bill.
- *Covering ALL KIDS Health Insurance Act (HB 806)*. In 2005, the Illinois General Assembly approved a large entitlement expansion of the All Kids program that sought to provide health insurance for all children in Illinois regardless of family income or immigration status. The legislation started out as a bill regarding inmate furloughs, and the Illinois State Police filed a fiscal note aimed at this original provision. No fiscal note regarding the All Kids expansion was filed. A May 2010 report from the Illinois Auditor General found that the expansion program’s net cost was \$70 million in fiscal year 2009.³
- *Tuition Vouchers (SB 2494)*. Considered in May 2010, this bill offered vouchers to the children in Chicago’s worst performing public schools. The fiscal note for House Floor Amendment No. 1 stated that the cost or savings of the program could not be estimated because it wasn’t clear how many children would enroll in the program, even though proponents believed that a sliding scale of enrollment among a set population of students could have been used to provide a range. More importantly, the agency responsible for authoring the fiscal note—the State Board of Education—had previously stated their fundamental opposition to vouchers as a public policy, thereby calling into question their neutrality as a fiscal note author.
- *Sales Tax Holiday (SB 3658)*. This sales tax holiday bill was approved by the House and Senate in May 2010 and lowered the state sales tax rate on clothing and school supplies from 6.25 percent to 1.25 percent from August 6-15, 2010. Even though the bill would clearly have an impact on state

Legislators and the public are unable to conduct a proper analysis of the budgetary effects of proposed legislation.

revenue collections, no fiscal note was filed.

Our Solution

Illinois must enact a stronger fiscal note statute and develop standardized guidelines that aim to increase note availability, accuracy, and transparency.

The statute and guidelines should address the following major points:

- *Independence:* The notes should be chiefly authored by a neutral and independent source, such as the Commission on Government Forecasting and Accountability, rather than the affected agency. Agencies should be encouraged to provide information on a bill, but the primary author should be outside of the agency.
- *Accountability:* The notes should include a “references and sources” section that identifies staff and other entities supplying information. The contact information for the person responsible for answering questions regarding the fiscal note should be provided.
- *Methodology:* Fiscal notes should contain an explanation of the method used to produce the cost estimates and the reason for using the particular method. They should also include a description of potential alternative methods that would result in different cost estimates (for example, scoring using static and dynamic methods). The note should also include a description of assumptions used to determine the cost estimates.
- *Accessibility:* Illinois should create and operate a searchable fiscal note tracking system that is publicly available, similar to Minnesota’s fiscal note website.⁴
- *Notes Required:* The current Illinois statute provides that no fiscal note is required whenever the bill sponsor is of the opinion that no fiscal note is necessary, unless any member of either house requests that a note be obtained and a

majority of those present and voting in the house of which he or she is a member deems it necessary. The result is that fiscal notes are rarely requested. This provision should be changed so that a note is always required whenever the proposed legislation involves spending or taxation, unless the sponsor is of the opinion that no fiscal note is necessary and the majority of those present and voting deem that no note is necessary. Even seemingly minor bills can have an impact on the state budget and should be scored.

- *Staff Levels:* The statute should require that fiscal notes provide an estimate of change in Full Time Equivalent (FTE) positions by agency.
- *Long-Term Fiscal Implications.* The notes should include a minimum five-year fiscal forecast; rather than simply “the long-range effect of the measure” as is currently required. The note should also include a section that indicates whether the estimated fiscal impact will continue beyond the initial forecast period.
- *Impact on Citizens and Businesses.* The notes should consider the impact of government action on Illinois residents and businesses. For example, how would a licensing fee increase affect businesses and their ability to employ workers? How would an insurance mandate affect premium affordability?
- *Uniformity:* Implementation of Illinois’s Fiscal Note statute should include a uniform procedure subdivision, which would require the Commission on Government Forecasting and Accountability or another body to govern the fiscal note process and ensure compliance with the statute. Some states, such as Minnesota,⁵ issue manuals and guidelines on how to prepare and process fiscal notes in order to ensure that the notes are standardized, accurate, and comprehensive.

Appendix B provides a sample fiscal notes from Minnesota and Texas that demonstrate how

If Illinois is going to balance its budget, state leaders will need better information on the cost of new programs or higher taxes.

many of these recommendations can be put into practice.

Why This Works

If Illinois is going to balance its budget, state leaders will need better information on the cost of new programs or higher taxes. Continuing with the status quo—which permits bills to be passed without realistic cost estimates—is untenable for a state that is billions of dollars in the red.

An improved fiscal note statute should require the creation of a fiscal note when a bill will impact state finances. Requiring a full accounting of the note’s methodology will improve confidence in the accuracy of the notes as well. Creating a public database will increase their accessibility. Placing primary responsibility over fiscal notes with an independent body would improve their neutrality. The inclusion of a list of individuals who created the estimates and their contact information would also improve accountability.

Some will argue that a more rigorous fiscal note process will be used to unnecessarily delay consideration of a bill. While this may be a concern, the state should err on the side of caution by not rushing into costly programs that it cannot afford to fund.

Even a kid at a candy store needs to look at the price tags to see if pocket money will cover the goodies. Similarly, Illinois legislators need “price tags” in the form of improved fiscal notes to better understand how new programs and taxes will impact the state’s budget. With a state facing a financial fiasco, shopping for programs while blindfolded to the price can only lead to further disaster.

Illinois legislators need “price tags” in the form of improved fiscal notes to better understand how new programs and taxes will impact the state’s budget.

Appendix A
Bills with Fiscal Notes Pending Governor Action as of Thursday June 24, 2010

Bill Number	Fiscal Note
HB3631	Fiscal Note, House Floor Amendment No. 2 (Dept. of Commerce & Economic Opportunity): HB 3631 (H-AM 2) is estimated to cost the Department of Commerce and Economic Opportunity \$8,910,000 annually.
HB4821	Fiscal Note (State Board of Elections): HB 4821 would actually save the State of Illinois money. As background, more than 500 committees accept electronic notification right now. However, over 2,000 committees file electronically and would qualify under this legislation. HB 4821 could generate potential savings in postage and mail processing areas. In addition, under Public Act 96-832, the campaign finance package passed in 2009, the number of reports will double to four per year; thereby doubling the amount of mail that must be sent.
HB4837	Fiscal Note (Dept. of Commerce & Economic Opportunity): This legislation is not expected to have any fiscal impact on the Department of Commerce and Economic Opportunity.
HB5040	Fiscal Note, House Committee Amendment No. 1 (Office of the Attorney General): Fiscal Impact: Minimal.
HB5054	Fiscal Note, House Committee Amendment No. 1 (Dept. of Healthcare & Family Services): The fiscal impact for HB 5054 (H-AM 1) cannot be determined until the Department of Healthcare & Family Services ascertains the most cost-effective means of producing semi-permanent or permanent cards. The Department of Healthcare & Family Services is committed to implementing this law at no additional long-term cost to the State and will strive to reduce expenditures through this process.
HB5109	Fiscal Note (Office of the Secretary of State): HB 5109 has no fiscal impact on the Secretary of State's Office.
HB5124	Fiscal Note (Dept. of Human Services): This legislation creates no fiscal impact for the Department of Human Services.
HB5783	Fiscal Note, House Floor Amendment No. 2 (Financial & Professional Regulation): HB 5783 (H-AM 2) will have a fiscal impact of approximately \$513,742 to the Illinois Department of Financial and Professional Regulation.
HB5927	Fiscal Note (Dept. of Healthcare & Family Services): Fiscal impact is expected to be minimal for two reasons. First, the Department of Healthcare and Family Services has to cover high cost care anyway because a child with high medical costs is eligible under spenddown even during the penalty because of federal law. Second, any potential increase in medical liability would be offset by improved client health outcomes from continuous availability of care.

Bill Number	Fiscal Note
HB6099	<p>Fiscal Note, House Committee Amendment No. 1 (Dept. of Agriculture): The fiscal impact to the Department as a result of HB 6099 (H-AM 1) would be as follows: Revenues - The State should receive approximately \$105,000 of revenues as a result of the new registration requirement based on an estimated 1,000 sites each submitting the required \$100 "registration" fee and \$5 "duplicate" registration fee. The Department is aware of approximately 700 wash water containment areas currently permitted under section 5 of the Lawncare Products Application and Notice Act (LCPANA) which would each most likely qualify for the registration requirement. We expect that an additional number of sites beyond the currently permitted ones would also require registration that have estimated their number at 300. Expenditures - The administration of the registration program coupled with the enforcement of the fertilizer application restrictions are estimated to require at least 3.5 full-time-equivalents of staff resources. These would be split between clerical (registration processing and general clerical activities), program management/ enforcement case processing, and field inspection/ investigation. An initial estimate of staff requirements would be at least 1 FTE clerical position, .05 FTE section manager/enforcement officer, and 2 FTE field staff which would be equivalent to an approximate annual cost of \$325,000. After adding cost of the amended bill to the Department is estimated at not less than \$350,000 per year.</p>
HB6202	<p>Fiscal Note (Illinois Commerce Commission): This legislation would require the Commission to create new meter aggregation rule. While this rule likely could be done using existing staff resources, they would probably have to be pulled off their other duties. The amount of staff time to create the rule is estimated at 500 staff hours; which would be the equivalent of about \$30,000 in costs. Fiscal Note, House Committee Amendment No. 1 (Illinois Commerce Commission): It is hard to estimate the total time and work the task force would perform; and what their expectations would be of the Commission, but total cost in State employee time could range anywhere from \$50,000 to \$110,000 per year. The Commission's estimated portion of that cost would range from \$6,200 to \$66,200.</p>
SB0043	<p>Fiscal Note (Dept. of Labor): SB 43 creates additional responsibilities for the Conciliation and Mediation Division of the Department of Labor. The fiscal impact is as follows: (1) Personnel, 2-Labor Conciliators = \$120,000; (2) Fringes = \$23,000; (3) Contractual Services = \$2,500; (4) Travel = \$7,000; (5) Commodities = \$3,500; (5) Printing = \$500; (6) Equipment = \$1,500; (7) EDP Equipment = \$3,000; (8) Telecommunications = \$1,000; Total Fiscal Impact = \$162,000.</p>
SB2612	<p>Fiscal Note (Dept. of Revenue): SB 2612 will have no fiscal impact on State revenues.</p>
SB3047	<p>Fiscal Note, House Committee Amendment No. 1 (Dept. of Public Health): Previous experience implementing the Health Care Justice Act indicates that, should funds be made available to implement this legislation, such funds would need to be in the amount of approximately \$1,000,000, and including \$200,000 for staffing/administration and \$800,000 for contractual consulting.</p>
SB3267	<p>Fiscal Note (Dept. on Aging): The FY 2011 estimated cost of adding this program enhancement is approximately \$30,000, based on the following projections: (1) Development of one hour online training program = \$20,000; (2) Printing and distribution of brochures and posters = \$10,000.</p>
SB3721	<p>Fiscal Note, House Committee Amendment No. 1 (Illinois Environmental Protection Agency): SB 3721 (H-AM 1) would generate the necessary revenue for the Illinois EPA and counties to implement the requirements of this bill.</p>
<p>Total Bills Pending</p>	<p>545</p>
<p>Bills with Fiscal Notes</p>	<p>16</p>

Appendix B: Examples of Comprehensive Fiscal Notes
- Example from the State of Minnesota -

Consolidated Fiscal Note – 2009-10 Session

Bill #: S0093-1E **Complete Date:** 03/25/09

Chief Author: LATZ, RON

Title: LIAB CAP RMVL FOR STATE TORT CLAIMS

Fiscal Impact	Yes	No
State	X	
Local		X
Fee/Departmental Earnings	X	
Tax Revenue		X

Agencies: Minnesota Management & Budget (03/24/09) Attorney General (03/25/09)
Administration Dept (03/25/09)

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

Dollars (in thousands)	FY09	FY10	FY11	FY12	FY13
Net Expenditures					
General Fund		241	300	300	300
Attorney General		33	92	92	92
Minnesota Management & Budget		208	208	208	208
Trunk Highway Fund		781	781	781	781
Minnesota Management & Budget		781	781	781	781
Risk Management Fund		1,000	1,050	1,103	1,158
Administration Dept		1,000	1,050	1,103	1,158
Revenues					
Risk Management Fund		1,000	1,050	1,103	1,158
Administration Dept		1,000	1,050	1,103	1,158
Net Cost <Savings>					
General Fund		241	300	300	300
Attorney General		33	92	92	92
Minnesota Management & Budget		208	208	208	208
Trunk Highway Fund		781	781	781	781
Minnesota Management & Budget		781	781	781	781
Risk Management Fund		0	0	0	0
Administration Dept		0	0	0	0
Total Cost <Savings> to the State		1,022	1,081	1,081	1,081

	FY09	FY10	FY11	FY12	FY13
Full Time Equivalents					
General Fund		0.50	1.00	1.00	1.00
Attorney General		0.50	1.00	1.00	1.00
Total FTE		0.50	1.00	1.00	1.00

Consolidated EBO Comments

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: ABIGAIL READ

Date: 03/25/09 Phone: 201-8025

Fiscal Note – 2009-10 Session

Bill #: S0093-1E **Complete Date:** 03/24/09

Chief Author: LATZ, RON

Title: LIAB CAP RMVL FOR STATE TORT CLAIMS

Fiscal Impact	Yes	No
State	X	
Local		X
Fee/Departmental Earnings		X
Tax Revenue		X

Agency Name: Minnesota Management & Budget

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

Dollars (in thousands)	FY09	FY10	FY11	FY12	FY13
Expenditures					
General Fund		208	208	208	208
Trunk Highway Fund		781	781	781	781
Less Agency Can Absorb					
-- No Impact --					
Net Expenditures					
General Fund		208	208	208	208
Trunk Highway Fund		781	781	781	781
Revenues					
-- No Impact --					
Net Cost <Savings>					
General Fund		208	208	208	208
Trunk Highway Fund		781	781	781	781
Total Cost <Savings> to the State		989	989	989	989

	FY09	FY10	FY11	FY12	FY13
Full Time Equivalents					
-- No Impact --					
Total FTE					

Bill Description

Senate file 93 removes the single occurrence total liability cap related to state tort claims and specifies certain limitations on the payment amount.

Assumptions

The department assumes the Department of Administration's fiscal note reflects all costs by agencies that are insured through their risk management unit. This fiscal note will only reflect those costs associated with non-insured state agencies.

Under current law, any tort claim settlements would be first paid from agency operation funds, but if they are insufficient, the claim settlements would be paid out of tort claim appropriations made to the commissioner of finance. These appropriations total \$322,000 each biennium in the general fund, and \$1.2 million in the trunk highway fund each biennium.

Although it is inevitable that there will be accidents and incidents for which the damages will exceed the current cap, these events are uncommon. The attorney general's response to this fiscal note provides three recent examples of catastrophic incidents occurring in 1994, 2005, and 2007. Since the per person cap on state liability would remain in place (currently at \$400,000, increasing to \$500,000 on July 1, 2009), if this bill were to pass, an incident involving three or more claimants would have the potential for total settlements to exceed the current aggregate of \$1.2 million. In order to hold agency operation appropriations harmless for the increased potential in claims costs, the tort claims appropriations made to the commissioner of finance would need to be increased significantly. The optimal amount of these appropriations depends on the level of risk that agency operations are expected to assume.

Expenditure and/or Revenue Formula

The table below provides three actual occurrences and two potential scenarios for consideration. If the state wanted to protect agency operation appropriations from the potential liability from an incident involving seven claimants then the appropriation to the commissioner of finance would need to be increased to a total of \$3.5 million per biennium. Even if appropriations increased to these amounts, agencies would still be liable for the balance. The table below uses the \$500,000 per person cap effective on July 1, 2009 per current law.

Number of Claimants	Settlement Amount if Receiving Maximum	Total Potential State Liability	Notes
3	\$500,000	\$1.5 million	2005 incident—Minnesota State University (Mankato) van accident
7	\$500,000	\$3.5 million	1994 incident—MnDOT snowplow accident
25	\$500,000	\$12.5 million	
50	\$500,000	\$25 million	
170	\$500,000	\$85 million	2007 incident—35W bridge collapse

Our combined appropriation from the general fund and the trunk highway fund totals \$1.522 per biennium. Increasing the appropriations to insure against the maximum potential settlement for an incident involving seven claimants would require an additional \$1.978 million per biennium. For purposes of the fiscal note, this amount is divided 21% to the general fund appropriation (\$416,000) and 79% to the trunk highway fund appropriation (\$1.562 million), in keeping with the current proportion. This is the amount reported on the table in the front of the note. The following table shows the required increases in the appropriations to insure against other potential liability levels.

Number of Claimants	Total Potential State Liability	General Fund Costs at 21%	Trunk Highway Costs at 79%
3	\$1.5 million	\$315,000	\$1,185,000
7	\$3.5 million	\$735,000	\$2,765,000

25	\$12.5 million	\$2,625,000	\$9,875,000
50	\$25 million	\$5,250,000	\$19,750,000
170	\$85 million	\$17,850,000	\$67,150,000

Long-Term Fiscal Considerations

Local Government Costs

References/Sources

FN Coord Signature: DENNIS MUNKWITZ
Date: 03/24/09 Phone: 201-8004

EBO Comments

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: ABIGAIL READ
Date: 03/24/09 Phone: 201-8025

Fiscal Note – 2009-10 Session

Bill #: S0093-1E **Complete Date:** 03/25/09

Chief Author: LATZ, RON

Title: LIAB CAP RMVL FOR STATE TORT CLAIMS

Fiscal Impact	Yes	No
State	X	
Local		X
Fee/Departmental Earnings		X
Tax Revenue		X

Agency Name: Attorney General

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

Dollars (in thousands)	FY09	FY10	FY11	FY12	FY13
Expenditures					
General Fund		33	92	92	92
Less Agency Can Absorb					
-- No Impact --					
Net Expenditures					
General Fund		33	92	92	92
Revenues					
-- No Impact --					
Net Cost <Savings>					
General Fund		33	92	92	92
Total Cost <Savings> to the State		33	92	92	92

	FY09	FY10	FY11	FY12	FY13
Full Time Equivalents					
General Fund		0.50	1.00	1.00	1.00
Total FTE		0.50	1.00	1.00	1.00

Bill Description

Presently, the State Tort Claims Act contains dollar limits (“caps”) on the amount of money that an individual can recover from the State in a personal injury lawsuit, as well as a cap on the total dollars that may be paid to multiple claimants injured in the same occurrence. The individual cap currently is \$400,000 and the occurrence cap is \$1.2 million; these caps are scheduled to increase to \$500,000 and \$1.5 million, respectively, on July 1, 2009.

S.F. 93-1E repeals the State’s occurrence cap effective July 1, 2009. Thus there would be no limit to the dollars the State might have to pay for personal injury actions arising out of the same occurrence effective with incidents occurring on or after July 1, 2009. (The occurrence cap for municipalities is left in place by this bill).

Personal injury accidents giving rise to multiple claimants alleging negligence by State employees are inevitable. Some past examples include the 1994 collision between a MnDOT snowplow and a van on I-94 near Alexandria resulting in 7 fatalities; the 2005 collision between a van carrying Mankato State engineering students and two semi-tractor trailers resulting in 3 fatalities; and the 2007 35W bridge collapse resulting in many injuries, including 13 fatalities.

It is expected that the repeal of the State’s occurrence cap will result in more cases being litigated because the absence of a cap will provide greater incentive for claimant attorneys to litigate certain large dollar cases where the State has potential liability.

Assumptions

Although it is inevitable that there will be accidents and incidents for which the damages will exceed the current occurrence cap, these events are uncommon. However, cases of this type, with multiple claimants and substantial damages, tend to be very resource intensive.

Expenditure and/or Revenue Formula

It is estimated that .5 FTE legal assistant position in FY 2010 and .5 legal assistant and .5 attorney positions in FY 2011 will be needed if S.F. 93-1E is enacted.

Long-Term Fiscal Considerations

In FY 2012 and FY 2013, .5 legal assistant position and .5 attorney position would be needed.

Local Government Costs

The disparity in the State occurrence cap (no limit) compared to the local government occurrence cap (limited) may result in additional litigation in local government tort cases regarding the propriety of the local government cap.

The bill seems to recognize this possibility because it provides that the uncapped occurrence limit for the State would be repealed if the local government unit occurrence cap is determined to be unconstitutional based upon amendments in the bill.

References/Sources

Discussions with AGO Civil Litigation staff.

Agency Contact Name: Rebecca Spartz (651-297-5969)
FN Coord Signature: TERRY POHLKAMP
Date: 03/17/09 Phone: 297-1143

EBO Comments

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: ANGELA VOGT

Date: 03/25/09 Phone: 201-8036

Fiscal Note – 2009-10 Session

Bill #: S0093-1E **Complete Date:** 03/25/09

Chief Author: LATZ, RON

Title: LIAB CAP RMVL FOR STATE TORT CLAIMS

Fiscal Impact	Yes	No
State	X	
Local		X
Fee/Departmental Earnings	X	
Tax Revenue		X

Agency Name: Administration Dept

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

Dollars (in thousands)	FY09	FY10	FY11	FY12	FY13
Expenditures					
Risk Management Fund		1,000	1,050	1,103	1,158
Less Agency Can Absorb					
-- No Impact --					
Net Expenditures					
Risk Management Fund		1,000	1,050	1,103	1,158
Revenues					
Risk Management Fund		1,000	1,050	1,103	1,158
Net Cost <Savings>					
Risk Management Fund		0	0	0	0
Total Cost <Savings> to the State					

	FY09	FY10	FY11	FY12	FY13
Full Time Equivalents					
-- No Impact --					
Total FTE					

Bill Description

The bill would remove the aggregate liability cap that is now in place when a tort liability claim is made against the state. The current aggregate tort liability limit is \$1.2 million and is scheduled to increase to \$1.5 million on July 1, 2009. There remains a "per person" liability cap, currently at \$400,000 per person and scheduled to increase to \$500,000 as of July 1, 2009.

Assumptions

The fiscal note assumes that passage of SF 0093-1E, in its current form, would change the state's liability exposure and would require changes in the state's programs of insurance by July 1, 2010. It also assumes a modified approach to the state's programs of insurance. Without more time, it is impossible to know whether the approach is the most suitable or economical option for the state. If given additional time, the Risk Management Division could complete an analysis of the self-insurance options, discuss the impact of the options with insured agencies, secure more reliable market estimates, and adjust the programs of insurance accordingly. This could be accomplished prior to the 2010 Legislative Session.

Although the fiscal note shows no increased cost to the Risk Management Fund (RMF), insurance costs to agencies would increase. Insurance costs are paid by agencies that purchase insurance from the RMF. The extent of the cost increase depends on many factors.

The following assumptions were applied in developing the fiscal note:

1. The Risk Management Fund (M.S. 16B.85, Subd. 2) would continue to provide multiple lines of insurance for state agencies. The RMF is supported by premiums paid by agencies out of their budgets. The RMF provides programs of insurance and pays claims up to the state's tort limits. The amount of premium charged is based on actuarial analysis of claim frequency and severity, as well as operating expenses including the cost of reinsurance.
2. The fiscal note assumes that the state would purchase additional excess coverage, from \$1.5 million (aggregate tort limit on July 1, 2009) to \$15 million to cover large in-state losses (see graph). The state's liability reinsurer was unable to provide a market estimate in time for completion of this fiscal note (see note 3). The state's broker, however, provided an indication of \$1 million additional premium expense for additional purchased excess coverage. The broker based the indication on a review of their public entity business and the experience of other states.
3. Actual premium quotes for additional excess coverage are typically unavailable until an insurance company can get within thirty days of a policy inception date. The actual insurance expense would differ from this estimate, depending on:
 - a. Level of self-insured retention.
 - b. Limit of excess liability coverage.
 - c. An actuarial analysis of the reserves required for the RMF to meet its future obligations given the removal of the per-occurrence cap.
 - d. Market availability and affordability of coverage, which fluctuates based on market conditions.
4. The fiscal note assumes an increase in the state's self-insured retention (SIR) level from \$1.5 million (aggregate tort limit on July 1, 2009) to \$2.5 million (see graph). Because insufficient time was available to complete the actuarial analysis to determine additional reserves needed to cover the additional \$1 million in SIR, the fiscal note assumes no change. However, once an actuarial analysis is completed, it is very likely that premiums would be increased to cover the added exposure.
5. Both the assumed self-insured retention level and the purchased insurance limits could be significantly higher. For example, the State of Wisconsin maintains a \$4 million SIR and \$50 million in limits. Changes in either the SIR or the purchased insurance limits could result in greater insurance costs, which would result in higher premiums charged to agencies.
6. The RMF would continue to provide *mandatory* automobile liability coverage for all of state government.
7. The RMF would continue to provide *optional* general liability coverage for all of state government. It is also assumed that there would be no change in the level of agency participation in the general liability program. For example, some agencies do not purchase general liability insurance but pay claims directly from their budgets. If any of these agencies chose to purchase general liability insurance, the RMF would have increased exposure and the agency would have a significantly higher insurance expense.

8. This fiscal note does not contemplate losses to uninsured agencies. A number of large agencies (such as MnDOT, DNR, DHS, Corrections, and Public Safety) do not purchase general liability insurance but pay claims directly from their budgets. Those costs are not included in this fiscal note. A large loss for an uninsured agency would likely result in a request for a legislative appropriation.

Expenditure and/or Revenue Formula

The subsequent years are based on an annual 5% inflation factor. This will be a new ongoing expense for the state for an indefinite period of time.

Long-Term Fiscal Considerations

Depending on the availability and affordability of purchased insurance, the state may consider alternative risk financing strategies, such as using lines of credit or captive mechanisms. These choices should be based on a rational assessment of the state's exposure, appetite for risk, and a thorough analysis of the financing alternatives.

Local Government Costs

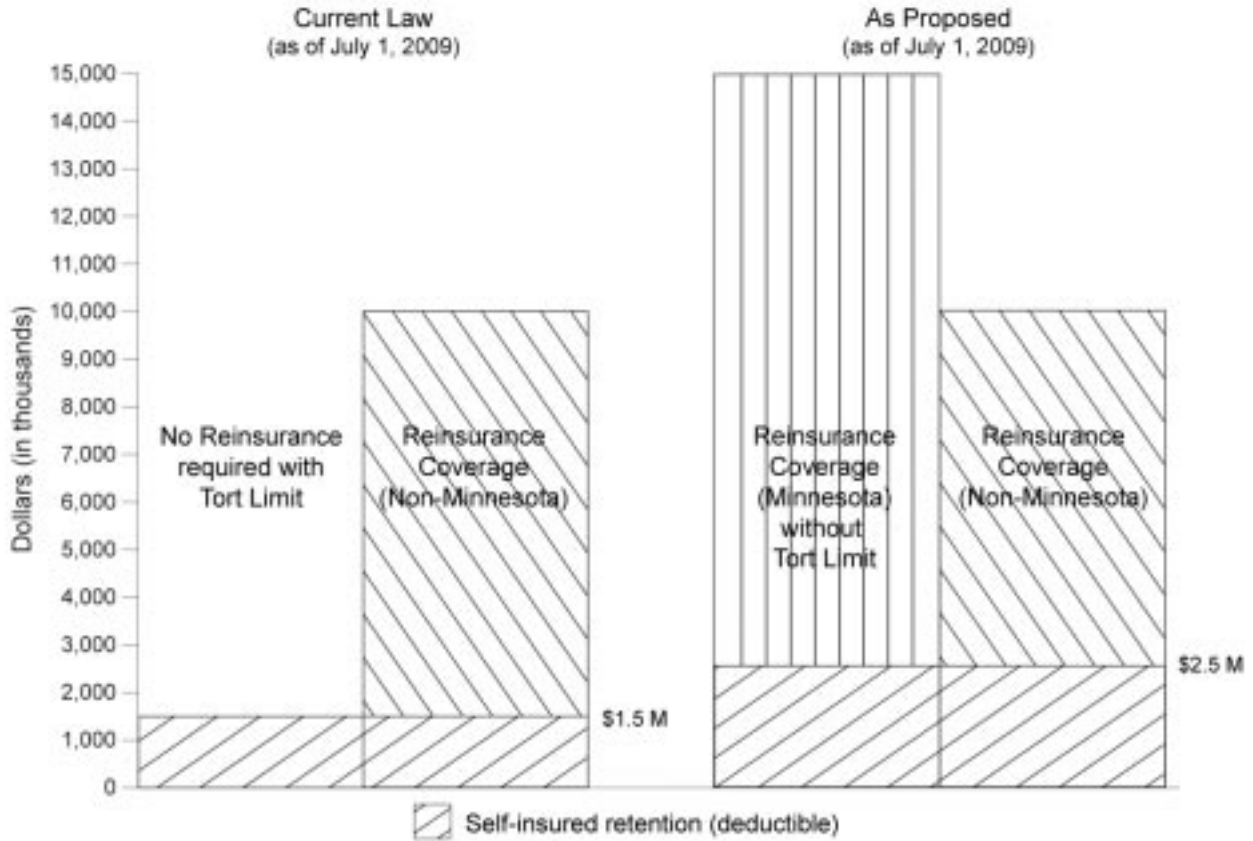
None

References/Sources

Risk Management Division, Department of Administration
Marsh USA Inc. (The state of MN's current insurance broker)
State of Wisconsin Risk Management Division
State of Connecticut Risk Management Division

SEE GRAPH NEXT PAGE

Comparison of Insurance Before and After Removing Aggregate Tort Limit



LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 22, 2009

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB666 by Gutierrez (Relating to certain costs used to fund drug court programs.),
Committee Report 2nd House, Substituted

Estimated Two-year Net Impact to General Revenue Related Funds for HB666, Committee Report 2nd House, Substituted: a positive impact of \$457,000 through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	\$133,000
2011	\$324,000
2012	\$329,000
2013	\$335,000
2014	\$340,000

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain from General Revenue Fund 1
2010	\$133,000
2011	\$324,000
2012	\$329,000
2013	\$335,000
2014	\$340,000

Fiscal Analysis

This bill would amend the Code of Criminal Procedure, Article 102.0178(a). The bill would increase an existing \$50 drug court cost, which is currently assessed on the conviction of certain intoxication and drug offenses, to \$60 for drug and alcohol related offenses as listed in the Penal Code, Chapter 49 and the Health and Safety Code, Chapter 481. The bill would also repeal the Government Code, Section 102.0215.

The bill includes conforming language from legislation passed by the Eightieth Legislature, Regular Session, 2007 and has no fiscal impact.

The changes made by the bill would be applicable only to offenses committed on or after the effective date of the bill. The bill would be effective September 1, 2009.

Methodology

According to the Comptroller of Public Accounts (CPA), the fiscal impact estimated for this bill is based on historical data from the Annual Statistical Report for the Texas Judiciary for various years, adjusted for growth, indigency, implementation, and the percentage of fees retained by local governments (counties can typically retain 10 percent of most court costs if remitted to the CPA in a timely fashion; in addition, the counties with mandated drug court programs may retain an additional 50 percent of the current drug court cost). The court costs for criminal cases were multiplied by the total number of convictions, reduced to reflect historical non-collection rates, and adjusted for an implementation lag. Currently the cost is \$50 on drug and intoxication offenses; the bill would increase it by \$10.

House Bill 530, 80th Legislature, Regular Session, took effect June 15, 2007, and created the court cost and a general revenue account for the revenues. The account was not included in House Bill 3107, 80th Legislature, Regular Session, and was not created when that bill took effect June 15, 2007. Therefore, court cost revenues to the state from this bill would be deposited into the General Revenue Fund.

Local Government Impact

Local governments would see an increase in revenue due to the \$10 increase to the court cost for drug and alcohol related offenses listed under Chapter 49 of the Penal Code, and Chapter 481 of the Health and Safety Code. All counties are eligible to retain 10 percent of the total collected if they remit timely payments to the Comptroller each quarter. In addition, counties with a population over 200,000 would be eligible to retain 50 percent of the amounts collected to implement and maintain drug court programs. Together, these revenues are estimated by the Comptroller of Public Accounts to result in \$199,000 in local revenue gains for fiscal year 2010; \$486,000 in fiscal year 2011; \$494,000 in fiscal year 2012; \$502,000 in fiscal year 2013, and increase each year to an estimated \$510,000 for fiscal year 2014.

According to the Office of Court Administration, the amount of revenue gains for the 10 percent retained would be an estimated \$77,000 per year, and the statewide annual total for the 50 percent retained would be an estimated \$268,000 per year.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 304 Comptroller of Public Accounts

LBB Staff: JOB, JJO, TP, ESi, JI, DB

Endnotes

1 Center for Tax and Budget Accountability, "Q & A on House Bill 174," May 7, 2010, http://www.ctbaonline.org/New_Folder/Education/Q%20&%20A%20on%20House%20Bill%20174%20FINAL%205.7.2010.pdf.

2 Michael Madigan, "We Must Put Aside Partisan Games," June 27, 2010, <http://www.southtownstar.com/news/kadner/2435108,062710Kadner.article>.

3 Illinois Auditor General, "Program Audit of the Covering All Kids Health Insurance Program," May 2010, <http://www.auditor.illinois.gov/Audit-Reports/Performance-Special-Multi/Performance-Audits/10-All-Kids-Hlth-Ins-Pgm-Full.pdf>.

4 Minnesota search for fiscal notes: http://www.mmb.state.mn.us/cgi-bin/fnts_session.pl.

5 Minnesota Management and Budget, Fiscal Note Policy Manual: <http://www.doer.state.mn.us/fnts-policy>.