



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #1185

Economic Impact Statements (Legislature)

[LFB Summary of the Governor's Budget Reform Bill: Page 62, #3; Page 63, #4]

CURRENT LAW

No provision.

GOVERNOR

Establish statutory requirements for preparation of economic impact statements on bills and on administrative rules as follows:

(1) Bills. Require that any bill having an economic impact on a private person or a political subdivision of this state must have an estimate of the anticipated economic impact of the bill prepared before: (a) any vote is taken on the bill by either house of the Legislature if the bill is not referred to a standing committee; or (b) before any public hearing is held on the bill by any standing committee; or (c) if no public hearing is held on the bill, before any vote is taken on the bill by a standing committee. Provide that the economic impact estimate be prepared by the agency that would be responsible for administering the law creating the economic impact. Specify that economic impact estimates shall be printed and distributed in the same way that fiscal estimates to bills are distributed. Stipulate that biennial budget bills are exempt from the economic impact estimate requirement.

(2) Administrative Rules. Require that the Department of Administration (DOA) prepare, for any proposed administrative rule that may have an economic impact on a private person or a political subdivision of the state, an economic impact assessment. Specify that the assessment must be completed before the proposed rule is submitted to the Legislative Council's Administrative Rules Clearinghouse. Stipulate that the assessment evaluate the costs and benefits of complying with the proposed rule and the potential impact of the rule on the policy

decisions of private persons and political subdivisions of the state. Provide that the assessment shall also include alternatives to the rule that would reduce any negative impact of the rule on private persons and political subdivisions. Direct that DOA submit the required economic impact assessment to the agency that proposed the rule and to the Legislative Council at the same time that the promulgating agency submits the proposed rule to the Legislative Council's Administrative Rules Clearinghouse. Require that the report to the Legislature that must accompany any proposed administrative rule submitted to the Legislature for its review include any economic impact assessment that has been prepared for the rule.

DISCUSSION POINTS

1. The state budget office indicates that the reason for these two proposed changes is that the administration believes that there should be a cost/benefit type analysis prepared for both bills and proposed administrative rules in addition to the standard fiscal estimates. In the case of bills, the economic impact statement would be called an economic impact estimate comparable to the current fiscal estimate requirement for bills. In the case of bills, the economic impact statement would be termed an economic impact assessment, but again would be akin to the current fiscal estimate requirement for administrative rules, except that in this case DOA would be preparing the assessment rather than the agency proposing the rule.

2. Under the language of the bill, there is no definition or other criteria given for what measures are to be used to estimate the economic impact of a bill on a private person or political subdivision of the state. While fiscal estimates have no requirement for any direct assessment of a bill's impact on individual citizens of the state, there are requirements for the assessment of a bill's impact on increasing or decreasing general local government fiscal liability. The comparable requirement proposed to be placed on administrative rules, although termed an assessment rather than an estimate, is somewhat more definitive as to what is intended in that it refers to the determination of: (a) "the costs and benefits of complying with the proposed rule"; and (b) "the potential impact of the rule on the policy decisions of private persons and political subdivisions".

3. In general terms, cost/benefit analysis can be said to be aimed at attempting to quantify in economic terms both the costs and the benefits of a proposal or policy. Depending on the definition one uses, the costs and benefits to be measured could be solely fiscal (relating to government finances) or broader in terms of economic impact (effects on the economy). Although not widely used, there are occasions when reference is made to cost/benefit analysis with regard to the estimated societal costs and benefits of a policy. A Legislative Reference Bureau publication once endeavored to explain the concept of economic impact statements by suggesting the following distinction between traditional fiscal estimates and economic impact statements: "Fiscal estimates are narrowly focused and do not include the impact of governmental actions on the private sector and the state economy as a whole. Economic impact statements are intended to be much broader and more sophisticated than traditional fiscal estimates. They not only take into account the financial implications for government, but are

also concerned with such basic economic factors as employment, income levels and distribution, price stability, productivity, marketing efficiency, competition, availability of goods and services and so on."

4. What will be determined to be the necessary elements of an economic impact statement, under the two proposals in the bill, will depend upon the different implementing authorities. In the case of economic impact assessments on administrative rules, under the bill DOA would have complete charge of determining which rules would have economic impact assessments prepared, and what the procedures would be for the assessment analysis and preparation of the actual written assessment. Currently, fiscal estimates are required to be prepared on all administrative rules. In the case of economic impact assessments on bills, the Legislature would presumably have to determine through rules or some other mechanism answers to a number of procedural questions to accomplish implementation of the new requirement. Included in these determinations would be questions of: (a) who would decide which bills require economic impact estimates (the LRB currently makes that determination with respect to which bills require a fiscal estimate); (b) who would handle the preparation of requests for such estimates, the receipt of those estimates from agencies and the distribution to the Legislature; (c) who would develop the instructions, forms and possibly a manual instructing agencies on the preparation of such estimates; and (d) perhaps most importantly, who would make the decision on what information is to be developed and included in the economic impact estimates.

5. A procedural question that could be raised with regard to the proposal for DOA to prepare the economic impact assessments on administrative rules is whether the Legislature wants this information, if it is to be provided to the Legislature, to be controlled by the Department of Administration. Having DOA perform the function would presumably reduce the workload on other state agencies that could occur as a result of this new requirement and would likely provide for a more uniform type of analysis. On the other hand, the Legislature would appear to not have a role in determining what should be included in this new item of information that committees of the Legislature will be using when they review proposed administrative rules and would not be benefiting from receiving the perspective of the administering agency. The Committee could consider whether, if it chooses to approve this proposal, it wants to have DOA perform this function or whether it instead wants to place the requirement on the individual agency that proposed the rule as is currently the case with the preparation of fiscal estimates for rules.

6. The state budget office indicates that the difference between the use of term economic impact estimates in the case of bills and economic impact assessments in the case of administrative rules was because the two provisions were drafted independently of each other and that this was not intended to indicate a difference of what was expected in the estimate/assessment process. If the Committee believes that more specificity is preferred, where possible, and agrees that the more detailed language relating to "costs and benefits of complying with" the rule should also apply to the economic impact estimate requirement for bills, it could incorporate that language in the fiscal estimate requirement provision. The Committee could

also consider whether it wants to include or exclude a requirement that the economic impact statement for bills and/or rules address include the requirement that the preparer address their potential impact on the policy decisions of private persons and political subdivisions of the state. On the one hand it could be argued that it may be hard to qualify such impacts. On the other hand, it could be viewed that this is an aspect that merits discussion, even if it is not qualifiable.

7. In addition to the basic question of the nature of the information that is expected under these new requirements, a related question could be raised as to the potential workload impact that might result from these new requirements. DOA has not made any estimate of the increased workload on DOA (for administrative rules) or on state agencies and the Legislative Reference Bureau (for bills). However, the state budget office indicates that DOA will have to absorb the workload increase for preparation of economic impact statements on rules and assumes that state agencies would have to do the same with regard to preparation of economic impact estimates on bills.

8. There is no ready basis for determining how many administrative rules or how many bills would have to have economic impact statements prepared. To provide at least some frame of reference, however, the number of fiscal estimates on bills and on rules might be examined. Under current procedures, there is simply a uniform requirement that all proposed rules have a fiscal estimate prepared, even if there is no fiscal impact. Consequently, that data is not helpful. However, for the current session to date, almost 80% of the Assembly bills introduced and over 90% of the Senate bills introduced have had a requirement for a fiscal estimate. There is no way to know how many of those bills would have also required an economic impact estimate under the bill. However, if those same percentages were to apply to the number of bills requiring economic impact estimates, some state agencies might have a significant workload increase.

9. A comprehensive list of those states that have economic impact statement requirements has not been compiled by the National Conference of State Legislatures (NCSL). However, NCSL did indicate five states that it is aware of that have an established requirement for preparation of economic impact statements on legislation. Those states were Florida, Maryland, South Carolina and Tennessee. In addition, Ohio has been involved in a pilot program under which a limited number of bills could be selected by the Legislature for the preparation of an economic impact analysis. Florida, Virginia, South Carolina and Illinois are states that were identified by NCSL as requiring some sort of economic impact statement on administrative rules. While each of those states appears to have different requirements and procedures for the preparation of such statements, two themes seem apparent just among these states. One is that whether required separately or as a part of a fiscal note process, there is a focus on the bills' or rules' impacts on private businesses or on certain types or kinds of businesses. For example, Florida's requirement for economic impact statements on bills refers to the impact on the private sector of the state; Maryland's requirement is for the estimated impact on small businesses; South Carolina's requirement is relative to any bill having an impact on health care in the state and on how the private sector would be affected; and Tennessee's requirement relates to economic impact statement on any bill that would create a new mandate

on the health insurance industry. The second is that there appears to be considerable variation in what is expected to be actually included in economic impact statements. For example, Maryland's law refers to estimates directly addressing such factors as the cost of providing goods and services, effect on the workforce and the cost of housing, effect on capital investment, taxation, competition and economic development and the effect on consumer choice. In contrast, South Carolina's requirement on economic impact statements on rules is permissive as to the types of things that may be included in the statement and includes among other things a determination of the costs and benefits associated with the regulation. At the same time, though, South Carolina's statute contains the statement that these requirements are not to be interpreted to require numerically precise cost-benefit analysis. This suggests that there is not a uniform approach that is being followed in those states. It could be argued that a more thorough review of the current practices in those states that have such requirements, a study of what types of cost/benefit information is reasonably attainable, and an evaluation of what would be most useful to the Legislature under a cost/benefit or economic impact analysis should be conducted before such requirements are set in place.

10. Two technical concerns that could be raised if the Committee chooses to approve the proposals would be: (a) whether there should be a delayed effective date for these provisions so that it is clear that they would not apply until the next biennium; and (b) whether it should be specified that the economic impact estimate requirement for bills would not be effective until the joint rules of the Legislature have been amended to: (a) specify the procedures by which economic impact estimates are to be prepared by state agencies and provided to the Legislature; and (b) such other details as the Legislature chooses to include in such rules.

11. If the Committee believes that these proposed changes would be beneficial to the Legislature and its members in review of proposed legislation and administrative rules, then it may wish to approve the Governor's recommendations for the preparation of economic impact estimates on bills by state agencies and/or the preparation of economic impact assessments on administrative rules by the DOA. Another option would be for the Committee to approve only the proposal for the requirement for economic impact assessments on administrative rules and provide that it be a session law provision effective only on a trial basis for the next biennium.

12. Alternatively, if the Committee believes that these changes are not warranted at this time, it could delete the Governor's recommendations. On the other hand, the Committee may wish to have further study of these proposals done before considering such statutory changes. Under this option, the Committee could require that the Department of Administration, in consultation with the Legislative Reference Bureau and the Legislative Council staff, review these proposals in the interim before the next biennial legislative session and direct that the Department of Administration provide a detailed report to the Governor and the Legislature, including an estimate of the costs and benefits of each of the two proposed changes relative to economic impact statements, an evaluation of the different types of economic impact analyses that might be required and an examination on how each of these two requirements might be implemented administratively if they were to be mandated by the Legislature. A report could be required to be provided to the Governor and the Legislature by December 1, 2002 .

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation.

2. Delete the Governor's recommendations and instead include a session law provision directing the Department of Administration, in consultation with the Legislative Reference Bureau and the Legislative Council staff, to review the proposed language included in the bill and the experiences of other states with regard to mechanisms and procedures for attachment of economic impact statements on bills and on administrative rules. Require that the Department of Administration prepare a report providing its findings and conclusions, including an evaluation of the different ways in which cost/benefit analyses and economic impact evaluations can be used in providing economic impact statements on bills and on administrative rules and submit the report to the Governor and the Legislature by December 1, 2002.

3. Maintain current law.

4. Adopt the Governor's recommendations with one or more of the following modifications:

A. Economic Impact Assessments on Administrative Rules

(1) Include only the proposal for the preparation of economic impact assessments on administrative rules by the Department of Administration.

(2) Provide that the preparation of economic impact assessments on administrative rules be established as a session law directive and be effective only for the 2003-05 biennium.

(3) Provide that the economic impact assessments be prepared by the state agency promulgating the proposed rule rather than by the Department of Administration.

(4) Delete from the proposal the provision that economic impact assessments on administrative rules include an evaluation of the potential impact of the proposed rule on the policy decisions of private persons and political subdivisions of the state.

B. Economic Impact Estimates on Bills

(1) Include only the proposal for the preparation of economic impact estimates on bills.

(2) Include the requirement that economic impact estimates include an evaluation of the costs and benefits of complying with the proposed legislation.

(3) Include the requirement that economic impact estimates include an evaluation of the potential impact of the proposed legislation on the policy decisions of private persons and political subdivisions of the state.

C. Technical Modifications

(1) For any portion of the Governor's recommendations that are included, provide that effective date provisions be included to specify that the economic impact assessments for administrative rules or the economic impact estimates for bills would be first effective beginning with the 2003-2004 biennial session period of the Legislature.

(2) If the portion of the Governor's recommendations related to economic impact estimates for bills is adopted, include a session law provision stating that before these requirements become fully effective, the Legislature must amend the joint rules of the Legislature to specify the procedures to be followed by state agencies in the preparation of economic impact estimates on bills and to address any other details of such procedures as the Legislature may choose to include in the joint rules.

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