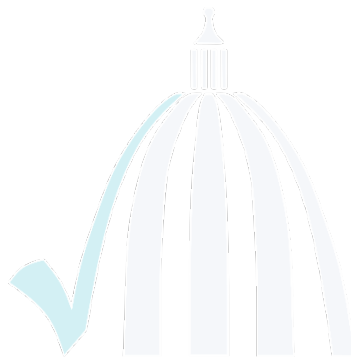




2022 Fiscal Note Post Enactment Review

NOVEMBER 30, 2022





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Introduction

The Legislative Budget Office (LBO) Fiscal Note Post Enactment Review is an annual review of select fiscal notes on legislation that has passed into law. The goal of the Review is to assess and improve upon the accuracy of fiscal notes and to increase transparency regarding the fiscal effect of legislation. To this end, the Review will compare the estimates found on the fiscal note to the fiscal outcomes of an enacted piece of legislation.

It is important to note that the review is for a sample of fiscal notes. The LBO can only assess the accuracy of fiscal notes for legislation that has passed, which make up a portion of all completed fiscal notes in a session. This means that the accuracy cannot be determined for most fiscal notes that the LBO completes each year. The review also does not include all enacted legislation with a fiscal note for a given year. Circumstances such as time allowed to implement, ramp-up or implementation time frames, and differences in language between the bill and the enacted legislation can impact whether a fiscal note is included in the review.

The following report is the inaugural Fiscal Note Post Enactment Review and is a pilot endeavor. As such, the post enactment review of four fiscal notes is included:

- 2020 SF 2898-2A – Hairstyling and Makeup Svcs Licensing Requirement
- 2021 HF 1162 – Task Force; Aiding and Abetting Felony Murder
- 2021 SF 565 – 911 Telecommunicator Working Group
- 2021 SF 1467 – Legislative Commission on Data Practices

The LBO intends to perform additional reviews in future years. The number of reviews will be dependent on legislation that is passed and the capacity of the LBO to perform such reviews.

The review for each fiscal note includes tables with data from the fiscal note as well as data provided by the agencies and verified by the LBO of the fiscal impact of implementation. Data was collected from agencies to perform the analysis of each of the reviews. Data from the fiscal note is provided for all years where a fiscal note estimate was provided. Data for the actual fiscal impact is provided for years that have been closed out, with the most recent data coming from Fiscal Year 2022. Information was then analyzed and vetted by the LBO. Analysis of the data and any further explanation from the agency follows.

Various factors impact the LBO's ability to draw causal conclusions about the impact of implemented legislation. Many of the programs impacted by legislation are also impacted by other factors that cannot be controlled for in this analysis, such as fluctuations in enrollment, macroeconomic factors like inflation, other legislative changes, and more. While fiscal notes ask agencies to isolate the impact of only the bill on which the fiscal note is requested, it can be difficult or impossible to do so once the legislation is enacted. The review that follows attempts to do so as much as possible, while explaining the factors that impact the ability to provide an isolated analysis. The analysis that follows, therefore, should be understood in this context.

Fiscal Note: 2020-SF 2898-2A – Hairstyling and Makeup Svcs Licensing Requirement

Agency: Board of Cosmetology Examiners

Session Law Citation:	Minnesota Laws, 2020 Regular Session, Ch. 106
Bill Passed Date:	May 27, 2020
Effective Date:	August 1, 2020

Bill Summary

This bill defines hairstyling and makeup services and exempts those services provided at certain types of special events, including weddings, from licensure by the Board of Cosmetologist Examiners. It requires those who perform only these services to take a four-hour course in health and safety.

Table 1 – Fiscal Impact Table

Impact Type	FY2019	FY2020	FY2021	FY2022	FY2023
Appropriation			(\$12,000)*	(\$12,000)	(\$12,000)
Fiscal Note Estimate			\$12,000	\$12,000	\$12,000
Actual Fiscal Impact			---**	---**	
Variance (Estimate – Actual)			(\$12,000)	(\$12,000)	

*The operating appropriation for the Board was decreased by \$12,000, the amount of revenue reduction estimated in the fiscal note.

**Insufficient Data – see analysis sections

Table 2 – Full Time Equivalent (FTE) Table

FTE Impact*	FY2019	FY2020	FY2021	FY2022	FY2023
Fiscal Note Estimate					
Actual FTE Impact					
Variance					

*No FTE impact as a result of this legislation

Report Analysis

For this fiscal note, it is not possible for the agency or LBO to determine the precise fiscal impact of the proposed legislation because the bill eliminates the requirement that certain services have a license. The agency cannot track the number of licenses that would have been purchased. Beyond that, the demand for licenses fluctuates from year to year and is impacted by a myriad of variables. In fiscal years 2020 and 2021, license demand was also affected by the COVID-19 pandemic. In the context of the Board’s \$2.7 million annual total receipts collected in FY2022, as reported in *Board of Cosmetology Biennial Report July 1, 2020 to June 30, 2022*, the annual revenue reduction estimated in the fiscal note of \$12,350 represents just under 0.5% of annual receipts.

What can be reviewed is the number of licenses and revenue collected prior to the enactment of Minnesota Session Law, 2020 Chapter 106. The change in the number of licenses and resulting change in revenue can be compared to the estimates in the fiscal note to give a sense of the legislation’s relative impact. Again, this is not a true representation of the effect of the bill’s enactment, as that cannot be specifically isolated. Rather, it indicates the direction of any change; whether that is in line with the estimated direction of the fiscal note is a question for consideration.

Table 3 shows the number of licenses from FY2019 to FY2022. The number of permits under the special events permit and decreased by 67 from calendar years 2019 to 2022. These two years can act as reference points since 2019 was the last year before the pandemic, and 2022 is the only reference point to a possible post-pandemic market for the special event permit. The total revenue change under this licensure type over this period was \$5,025. The fiscal note also assumes a change in licenses for the Cosmetology Salon License and the Cosmetology Renewal License. The impacts on those licenses are also included in Table 3. Still, these are on a three-year renewal cycle, making the comparison more complex year-over-year.

Table 3 - Licensure Volume

	FY2019	FY2020	FY2021	FY2022	Change from FY2019-2022
Special Event Permit	83	60	24	16	(67)
Cosmetology Salon License	602	546	634	617	15
Cosmetology Salon Renewal	1,383	1,328	1,499	1,349	(34)
Total Licenses in Impacted Categories	2,068	1,934	2,157	1,982	(86)

The fiscal note for SF 2898-2A assumes a decrease in all three of the permits and licenses listed in Table 3. Table 4 provides the fiscal note estimates of those changes. The fiscal note assumes a decrease of 101 total permits and licenses.

Table 4 - Fiscal Note Estimates of Licensure Volume Reduction

License Type	Estimated Annual Reduction
Special Event Permit	75
Cosmetology Salon License	7
Cosmetology Salon Renewal	19
Total	101

The total decrease in actual permits and licenses from 2019 to 2022 was 67 resulting in a reduction of \$7,238. The fiscal note estimated permits and licenses would drop by 101 for an estimated reduction of \$12,350. Once again, these two numbers cannot be compared to determine the variance between the estimated impact to the actual impact of implementing the bill. The fiscal note estimate attempts to isolate the impact of the proposed legislation. In contrast, the actual license and revenue are impacted by many variables.

The fiscal note also referenced some costs on behalf of the Board for information technology (IT) database changes and rulemaking that were assumed to be absorbed in the fiscal note. The Board did not implement those changes after they were deemed unnecessary to implement the bill, so there were no expenditures incurred or absorbed because of the bill's passage.

The Board provided information from their internal licensing database that showed a decrease in the number of licenses and permits issued under each category. In particular, the number of permits issued under the Special Event Permit Fee, assumed to be most impacted by this bill, went from 83 permits in FY2019 to 16 permits in FY2022, as shown in Table 4. This analysis does not include the full, true impact of the bill, as there is no way to isolate all the variables impacting the change; however, the actual numbers reflect a magnitude of decrease that corresponds with the decrease assumed in the fiscal note.

Agency Comments

The Board has indicated that because of the myriad variables that impact the number of licenses they provide and, therefore, their revenue collected, it is impossible to attribute any variance in revenue in the time frame analyzed here to the bill itself.

Fiscal Note: 2021-HF 1162 – Task Force; Aiding and Abetting Felony Murder

Agency: Department of Corrections

Session Law Citation: 2021, 1st Special Session, Chapter 11, Article 2, Section 53

Bill Passed Date: June 30, 2021

Effective Date: July 1, 2021

Bill Summary

This bill establishes a task force to collect and analyze data on sentencing under the Minnesota legal doctrines of aiding and abetting felony murder. Under Minnesota law, a person who contributed to a felony can be charged with and punished for murder if a death occurs during the commission of the felony even if the person did not cause or intend to cause death. The task force is to review data on charges, convictions, and sentences in Minnesota, as well as relevant state statutes and court decisions outside of Minnesota, to understand both advantages and harmful effects of the law. The task force was to submit a report and make recommendations for legislative action as determined by their research by January 15, 2022.

Table 5 – Fiscal Impact Table

Impact Type	FY2021	FY2022	FY2023	FY2024	FY2025
Appropriation		\$25,000			
Fiscal Note Estimate		\$25,000			
Actual Fiscal Impact		\$24,903			
Variance (Estimate – Actual)		\$97			

Table 6 - Full Time Equivalent (FTE) Table

FTE Impact	FY2021	FY2022	FY2023	FY2024	FY2025
Fiscal Note Estimate		0.25			
Actual FTE Impact		0			
Variance		(0.25)			

Report Analysis

The duties of the task force include collecting and analyzing data on charges, convictions, and sentences as well as mitigating the departure of defendants and codefendants for aiding and abetting felony murder; reviewing relevant state statutes and state and federal court decisions; receiving input from individuals convicted of aiding and abetting felony murder; and receiving input from victims’ family members. The Task Force was mandated to have members appointed by July 30, 2021. The Office of the Minnesota Secretary of State shows eleven of the twelve direct appointments and members with terms beginning prior to July 30, 2021, with the last appointment beginning August 6, 2021.

The Commissioner of Corrections or designee was to convene the task force’s first meeting no later than August 1, 2021. On July 30, 2021, the first meeting occurred with Nick Kimball, Director of Communications and Community Engagement, representing the Department of Corrections (DOC) as a task force member. The Task Force divided into three subcommittees to complete its assigned duties. The fiscal note estimated an impact of \$25,000 for hiring a part-time high-level professional position for six months to provide necessary assistance to the task force.

Instead of hiring the .25 FTE staff person estimated in the fiscal note, the DOC contracted with the Wilder Foundation in November 2021 to analyze data, review literature, and write the report to the legislature. The report was due on January 15, 2022. The task force requested and received an extension from the legislature. The completed report analyzed the benefits and consequences of the Minnesota aiding and abetting liability and felony murder statutes with recommendations to the legislature. The task force submitted the [Task Force on Aiding and Abetting Felony Murder Report to the Minnesota Legislature](#) on February 1, 2022. The actual cost to contract with the Wilder Foundation was \$24,903, which was invoiced on February 11, 2022, and paid on March 2, 2022.

Fiscal Note: 2021-SF 565 – 911 Telecommunicator Working Group

Agency: Department of Public Safety

Session Law Citation: 2021, 1st Special Session, Chapter 11, Article 1, Section 14, Subd. 8E

Bill Passed Date: June 30, 2021

Effective Date: July 1, 2021

Bill Summary

The bill creates a telecommunicator working group under the charge of the Commissioner of Public Safety. The working group is tasked with submitting a report to the legislature by January 15, 2022, which includes the following information:

- A statutory definition of 911 telecommunicators
- Minimum training and continuing education standards for certification of 911 telecommunicators
- Standards for certification of 911 telecommunicators
- Funding options for mandated 911 telecommunicators training
- Other recommendations the group deems appropriate

Table 7 – Fiscal Impact Table

Impact Type	FY2021	FY2022	FY2023	FY2024	FY2025
Appropriation		\$9,000			
Fiscal Note Estimate		\$9,000			
Actual Fiscal Impact		\$27,000			
Variance (Estimate – Actual)		(\$18,000)			

Table 8 - Full Time Equivalent (FTE) Table

FTE Impact*	FY2021	FY2022	FY2023	FY2024	FY2025
Fiscal Note Estimate					
Actual FTE Impact					
Variance					

*No FTE impact as a result of this legislation.

Report Analysis

The legislature appropriated \$9,000 to DPS in fiscal year 2022 to convene, administer, and implement a 911 telecommunicator working group with participating members serving without compensation.

The working group convened its first meeting in July 2021 and concluded its work on January 15, 2022. The project implementation mirrored the fiscal note estimate in that there were, on average, two meetings per month from August to December 2021. The report was submitted to the legislature by January 15, 2022.

The actual cost of the working group was \$18,000 more than the fiscal note estimate. The variance was due to an increase in the duties completed by the contractor. The contractor, Federal Engineering, Inc., referenced in the fiscal note, was used for implementation. However, the cost projections from that contractor changed once the workload was fully evaluated. Ultimately, two consultants from Federal Engineering, Inc. completed the work, rather than the one consultant and existing DPS staff indicated in the fiscal note. These tasks completed by Federal Engineering, Inc. included: initial correspondence and planning for the Telecommunicator Working Group (TCWG), task initiation and planning activities, support activities (e.g., leading, facilitating, etc.) in collaboration with Federal Engineering, Inc. to the TCWG, facilitating weekly TCWG virtual meetings for information gathering and subgroups, researching and drafting development activities, and assistance on the final report mandated by statute.

Agency Comments

The appropriation was used, and additional funding came from the division's operating budget. The working group accomplished its legislative requirement within the specified 6-month time frame.

Fiscal Note: 2021-SF1467-0 – Legislative Commission on Data Practices

Agency: Legislature

Session Law Citation: 2021 1st Special Session, Chapter 11, Article 1, Section 12

Bill Passed Date: June 30, 2021

Effective Date: July 1, 2021

Bill Summary

This bill reestablishes the Legislative Commission on Data Practices and Personal Data Privacy, which was established in 2014 and expired in 2019. Responsibilities of the commission include studying issues relating to government data practices and individuals' data privacy rights, reviewing legislative proposals, and making recommendations on legislative proposals.

Table 9 – Fiscal Impact Table

Impact Type	FY2021	FY2022	FY2023	FY2024	FY2025
Appropriation		\$60,000	\$60,000	\$60,000	\$60,000
Fiscal Note Estimate	\$2,000	\$25,000	\$25,000	\$25,000	\$25,000
Actual Fiscal Impact		\$34,500			
Variance (Estimate – Actual)	\$2,000	(\$9,500)			

Table 10 - Full Time Equivalent (FTE) Table

FTE Impact	FY2021	FY2022	FY2023	FY2024	FY2025
Fiscal Note Estimate		0.25	0.25	0.25	0.25
Actual FTE Impact		0.25			
Variance		0.00			

Report Analysis

The duties of the Data Practices Commission (DPC) are to:

- Review and provide the legislature with research and analysis of emerging issues related to government data practices.
- Review and make recommendations on legislative proposals related to the Minnesota Government Data Practices Act.
- Review and make recommendations on legislative proposals impacting privacy rights and data security.

All legislative members of the DPC for FY2022 were appointed between July 30, 2021, and Aug 18, 2021. The commission met four times in FY2022, with its first meeting on September 21, 2021. All meetings were held remotely via Zoom. During its four meetings, the commission reviewed nine introduced or prospective bills related to data practices and took public testimony.

A part-time analyst I was appointed on January 5, 2022, to work primarily with the DPC. Prior to the appointment, House, Senate, and Legislative Coordinating Commission (LCC) existing staff supported the work of the commission and costs were absorbed. The absorbed costs include the following:

- Senate Counsel, Research, and Fiscal Analysis provided approximately 24 hours of staff time for an approximate cost of \$1,200 in FY2022 – about six hours of staff time for each of the four meetings in FY2022.
- The House Research Department and Fiscal Department provided approximately 24 hours of staff time for an approximate cost of \$1,200 in FY2022 – about six hours of staff time for each of the four meetings in FY2022.
- The LCC provided approximately 24 hours of staff time for an approximate cost of \$1,700 in FY2022 – roughly six hours of staff time for each of the four meetings in FY2022. This included around 10 hours of time from the LCC executive director.

The part-time analyst I resigned on July 5, 2022. Therefore, all the FTE requirements estimated by the fiscal note did not fully occur for FY2023. Once appointments are made to the commission for the 2023-24 session, arrangements will be made to appoint part-time staff for the DPC again.

The DPC receives an annual appropriation of \$60,000. In addition, the LCC has carried forward the 2015 appropriation for DPC expenses. The carryforward balance from the 2015 appropriation at the end of FY2022 is \$45,829. The LCC used a combination of FY2022 appropriation and carryforward to cover expenses of the commission in FY2022.

Of the DPC costs incurred in FY2022, there were \$31,021 in personnel costs and \$2,328 in operational costs that were expensed to the new appropriation. \$1,170 in operational costs was expensed to the carryforward appropriation. In total, \$34,519 was incurred in FY2022.

Agency Comments

An account for the appropriation was created in the state system to separate this funding from other LCC operational costs. The personnel cost of dedicated hired staff for the DPC is set up to expense against the account in Statewide Employee Management (SEMA4). In addition to the new appropriation under Minnesota Laws 2021, 1st Special Session, Ch 11, Art 1, Sec 12, the LCC also has available appropriated funds that were received before the commission was reenacted during the 2021 legislative session from Minnesota Laws 2015 Ch 77, Art 1, Sec 2. The LCC has been carrying forward the 2015 appropriation for DPC expenses. All DPC expenses are noted as such and are expensed to the appropriation account in Statewide Integrated Financial Tools (SWIFT) and approved by the LCC executive director or LCC deputy director. System-generated Manager Financial Reports with Reconciliation are pulled to track personnel cost and expenses against the account. The reports are reviewed by the LCC Fiscal Service Office, the LCC deputy director, and the LCC executive director for accuracy.

A total of \$1,162 has been incurred to date in FY2023. There was no DPC member meeting participation cost in FY2022. There has yet to be any member meeting participation cost incurred in FY2023.