STATES REQUIRING FISCAL NOTES FOR ADOPTION OF ADMINISTRATIVE RULES

Introduction

Whether it is called a fiscal note, a regulatory analysis, a cost-benefit analysis, or an economic impact statement, many of the fifty states require that an agency which intends to adopt an administrative rule must accompany the rule with an analysis of the costs involved in complying with the rule. South Dakota requires a fiscal note. This memorandum lists the states that require a similar document and describes variations in the requirements from selected states.

Definition

The definition in a given state of an analysis of costs involved in adopting or complying with an administrative rule is not a dictionary definition but a statutory description of the requirements that the state has for the document under the particular name that it chooses. The model act is an example.

The Uniform Laws Commissioners' Model State Administrative Procedure Act (1981)
requires a regulatory analysis that contains six different elements that have to be quantified, but only if a request is made by interested parties, as specified in the model, within twenty days after a rule is proposed. The elements required by the model act include the classes of persons who will bear the cost of the proposed rule and those who will benefit from the rule; the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, on the affected classes of persons; the probable cost to agencies of implementation and enforcement and the anticipated effect on state revenues; a comparison of the costs and benefits of the proposed rule to the costs and benefits of inaction; documentation of less costly or less intrusive methods for achieving the purpose of the rule; and any alternative methods seriously considered by the agency, with the reasons for rejection.

Survey of Fiscal Note Requirement

According to the 1995-1996 *State & Federal Survey* published by the Administrative Codes & Registers Section of the National Association of Secretaries of State, twenty-seven states require a fiscal note of some kind. These states are as follows:

Alabama	New York
Arizona	Ohio
Florida	Oklahoma
Idaho	Oregon
Illinois	Pennsylvania
Iowa	South Carolina
Kentucky	South Dakota

Louisiana	Texas
Maryland	Utah
Massachusetts	Vermont
Michigan	Virginia
Missouri	Washington
New Hampshire	Wisconsin
New Jersey	

The following states do not require a regulatory analysis or fiscal note:

Alaska	New Mexico
Arkansas	North Carolina
Indiana	Tennessee
Minnesota	West Virginia
Mississippi	Wyoming
Montana	

The information is unknown for other states that participated in the survey. Colorado, Connecticut, Delaware, and Rhode Island did not submit information for the survey.

Provisions of Selected States

South Dakota requires a statement of the effect the proposed rule will have on the revenues, expenditures, or fiscal liability of the state or its agencies and subdivisions and an explanation of the computations. The fiscal note must be filed with each set of proposed rules. If a rule will affect a municipality, county, or school board adversely, the agency is required to direct the Bureau of Finance and Management to send a copy of the fiscal note to the South Dakota Municipal League, the South Dakota County Commissioners Association, and the Associated School Boards of South Dakota before the hearing.

Iowa, one of our neighboring states, has three different requirements for measuring fiscal impact of a rule: an economic impact statement, a fiscal impact statement, and a small business regulatory flexibility analysis. After a notice of intended rule making, the Iowa Administrative Procedure Act allows two members of Iowa's Administrative Rules Review Committee to request an agency, under Iowa Code section 17A.4 (1) "c," "to publish in the Iowa Administrative Bulletin an estimate of the economic impact of a proposed rule upon all persons affected by it and upon the agency itself."

Section 17A.31 of the same act requires an agency to issue a small business regulatory flexibility analysis if it is requested by the Administrative Rules Review Committee, the governor, a political subdivision, twenty-five persons who qualify as a small business and sign the request, or a registered organization representing at least twenty-five persons. The agency must consider twelve methods for reducing the impact of proposed rules on small business in its analysis and must publish a concise summary of the analysis in the Iowa Administrative Bulletin.

If an Iowa administrative rule mandates combined annual expenditures of more than $100,000 by political subdivisions or agencies and entities which contract with political subdivisions to provide services, the proposed rule must be accompanied by a fiscal impact statement outlining the costs.

New Hampshire's requirements in RSA 541-A:5 for a fiscal impact statement combine similar elements found in Iowa's laws. Agencies in New Hampshire must file a fiscal impact statement with each rule making. The agency supplies information to the Legislative Budget Assistant, who prepares the statement. The information compares costs of the amended rule with the previous rule and addresses state and federal mandates and the costs and benefits to the state general fund, any state special funds, the political subdivisions of the state, the citizens of the state, and any independently owned or small business of the state. Once a fiscal note is prepared, it is published in the Rulemaking Register and the language of the rule cannot change until after the public hearing. If the rule changes as a result of the public hearing, the agency requests an amended fiscal impact statement which is filed as part of the final rule.

New Hampshire's Joint Legislative Committee on Administrative Rules can object to a final rule if the committee thinks the rule has a substantial economic impact not recognized in the fiscal impact statement. If an objection stands after the agency has an opportunity to respond, the rule making is invalid.

The requirements of the other twenty-four states for an analysis of fiscal impact are as varied as those in South Dakota, Iowa, and New Hampshire.

Legislation Being Considered by Other States

North Carolina's Economic Impact of Rules Committee, a legislative committee, submitted a report to the 1995 General Assembly that contained a draft of a bill that would require state agencies to prepare and provide to the public a fiscal analysis of all proposed rules that have a substantial economic impact. Substantial economic impact is defined as an aggregate financial impact on all persons affected of at least $1,000,000 over twelve months. The Office of State Budget and Management would prepare the fiscal note, which would be required to contain a description of the persons who would be affected by the rule, the types of expenditures that would have to be made to comply with the rule and an estimate of the expenditures, the purpose and benefits of the proposed rule, and the method of computation of the estimate of expenditures.

New York is going beyond the requirement for an analysis of the costs of complying with rules and is currently considering an amendment to its finance law that would require state agencies to estimate the disbursements it will make for regulatory programs or purposes, including administrative rule making, hearings, and licensing processes. The bill to require a regulatory budget has passed the Senate and is in a House committee.

Conclusion

Twenty-seven states, South Dakota among them, currently require an analysis of the costs involved in complying with a given administrative rule, under such names as fiscal note, regulatory analysis, economic impact statement, and small business regulatory impact statement. The requirements for the analysis are as varied as the names. North Carolina is considering moving from the "have not" states to the "haves," and New York is going beyond the fiscal note requirement to a requirement for a regulatory budget. It is evident that more than half of the states are aware of the fiscal impact of rules and that the trend to require justification and public knowledge of that impact is continuing.

This issue memorandum was written by Rosemary Quigley, Administrative Rules Analyst for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.