

Memo

To: Maine Working Group on Tax Expenditure Review (TERWG)

From: The Pew Charitable Trusts

Date: November 4, 2021

Subject: Responses to Working Group questions

In response to the questions and conversations during previous working group meetings, we have compiled the following information based on our research and technical assistance in other states. We are happy to provide additional information or connect your staff with states listed below as the group continues its work. Please let us know if you have any other questions.

Staffing: examples from Colorado and Washington

In conversations with staff from evaluation offices in Colorado and Washington, we learned that both offices have expanded their staff to support their workloads.

- Washington's Joint Legislative Audit and Review Committee began this process with two staff members conducting evaluations, but this grew to accommodate more in-depth reviews. Today, the work involves approximately fourteen analysts, with one analyst leading at most three to four studies per year.
- After beginning this work in 2018, the Colorado Office of the State Auditor realized that, [because of the number of programs slated for review](#), they would not be able to complete all the work with the available resources at the time. The office suggested either making some programs optional for review, switching some programs to lighter, expedited reviews, or to add more staff to the roster. The number of full-time equivalents was doubled from 3.5 to 7.

Data sharing

Please note: the state summaries below are based on outreach to evaluation offices in Colorado, Indiana, Pennsylvania, and Washington.

CREC: Advancing State Data Sharing for Better Economic and Workforce Development

In 2018, the Center for Regional Economic Competitiveness (CREC) [released a report](#) on common challenges states encounter when sharing data. The report also highlights five lessons on ways states can improve data sharing. Through a State Data Sharing Initiative, CREC worked with multi-agency teams across five states to identify these challenges, provide technical assistance, and develop data sharing strategies to help the states evaluate their economic and workforce development programs. The five lessons include addressing cultural barriers to data sharing, clearly articulating laws governing data sharing, dedicating resources to data sharing efforts, maintaining efforts to preserve support for data sharing, and standardizing data sharing processes.

Colorado

While the Colorado Office of the State Auditor (OSA) does not have a memorandum of understanding for data requests from the Department of Revenue (DOR), the Auditor has worked with DOR to set up a biennial request for tax expenditure revenue impact data, monthly data requests for specific tax expenditure evaluations, and access to DOR's tax processing and information system. Specific tax expenditure evaluation requests incorporate more detailed information on tax expenditure provisions that may not be included in the biennial data transfers. In instances where DOR is unable to supply requested data, either because they don't have that level of specificity or are limited due to time constraints, OSA cites this as a data constraint in their tax incentive review. To abide by information security measures, OSA utilizes a dedicated laptop to access DOR's tax processing and information system. The state's Office of Information Technology worked with OSA to ensure that the Auditor's storage of this information meets security standards. Everyone on the tax expenditures team is also cleared through a fingerprint background check as is done with DOR staff who access federal tax information from the IRS.

Indiana

Indiana's Legislative Services Agency (LSA) receives individual and corporate income return-level tax data each year from the state's Department of Revenue (DOR). Personally identifiable information is stripped and a unique identifier is attached to track these data over time. The transferred data is stored on a secure server and is limited to fiscal office personnel who need to work with the data and are required to sign a confidentiality agreement. Only aggregate data are reported, and if less than a certain number of tax returns report data for a particular field, these data are not reported.

In order for LSA to get the required data, staff must specify the needed data fields and DOR would upload the information to be stored on the secure server. Below is a [section of statute](#) that allows for LSA's use of data for tax incentive reviews:

IC 2-5-3.1-1 Review, analysis, and evaluation of tax incentives

The legislative services agency may request a state or local official or a state agency, a political subdivision, a body corporate and politic, or a county or municipal redevelopment commission to furnish information necessary to complete the tax incentive review, analysis, and evaluation required by this section. An official or entity presented with a request from the legislative services agency under this subsection shall cooperate with the legislative services agency in providing the requested information. An official or entity may require that the legislative services agency adhere to the provider's rules, if any, that concern the confidential nature of the information.

Additional statute in Indiana further clarifies LSA's access to data and confidentiality provisions the agency must follow, including policies concerning individually identifying information, information subject to federal law, and required provisions for memoranda of understanding that allow LSA to request certain data.

IC 2.5-1.7 Access to Government Information by the General Assembly

IC 2-5-1.7-1 No effect on other provisions regarding information sharing

Sec. 1. This chapter does not limit other provisions of law directly or indirectly providing for the sharing of government information with the general assembly, the legislative services agency, or another entity within the legislative department of the state.

As added by P.L.269-2017, SEC.1.

IC 2-5-1.7-2 "Governmental entity"

Sec. 2. As used in this chapter, "governmental entity" means any of the following:

- (1) Any officer or other organizational unit, by whatever name denominated, exercising any of the powers of state government.
- (2) A state educational institution.
- (3) A political subdivision (as defined in IC 36-1-2-13).
- (4) An instrumentality of state government or a political subdivision (as defined in IC 36-1-2-13) or other entity created by law.

As added by P.L.269-2017, SEC.1.

IC 2-5-1.7-3 "Government information"

Sec. 3. As used in this chapter, "government information" refers to any information created, received, maintained, or stored by or otherwise in the control of a governmental entity, regardless of the form or the media on which the information is recorded.

As added by P.L.269-2017, SEC.1.

...

IC 2-5-1.7-6 Maintaining confidentiality; penalties

Sec. 6. With respect to government information obtained under this chapter, the legislative services agency shall maintain at least the same level of confidentiality as is required by law of the governmental entity from which the government information is obtained. Officers and employees of the legislative services agency are subject to the same statutory penalties for unauthorized disclosure or use as officers or employees of the governmental entity from which the government information is obtained.

As added by P.L.269-2017, SEC.1.

IC 2-5-1.7-7 Identification of confidential information by governmental entity

Sec. 7. A governmental entity providing government information obtained under this chapter shall assist the legislative services agency in identifying any part of the government information obtained by the legislative services agency that must be maintained by the legislative services agency as confidential government information.

As added by P.L.269-2017, SEC.1.

IC 2-5-1.7-8 Legislative services agency is agent of governmental entity sharing information

Sec. 8. To the extent permitted under state and federal law, the legislative services agency is considered an agent of the governmental entity sharing government information with the legislative services agency and is an authorized receiver of the government information under the statutory or administrative law that governs the government information. Sharing of government information under this chapter does not constitute a disclosure or release under any statutory or administrative law that governs the government information.

As added by P.L.269-2017, SEC.1.

IC 2-5-1.7-9 Individually identifying information

Sec. 9. The legislative services agency may not share confidential information containing individually identifying information with any individual or entity outside the legislative services agency, including a member of the general assembly. If confidential information is received with unredacted names and

identifying numbers, the legislative services agency shall delete, redact, or mask the names and identifying numbers as soon as practicable after receipt.

As added by P.L.269-2017, SEC.1.

IC 2-5-1.7-10 Information subject to federal law, regulation, or executive order

Sec. 10. If government information to which the legislative services agency has access under this chapter is subject to federal law, federal regulation, or federal executive order, the governmental entity shall do the following:

- (1) Provide to the legislative services agency a description of the nature and scope of the restrictions or other conditions.
- (2) Assist the legislative services agency with obtaining any approvals or waivers and comply with any conditions necessary to exercise free accessibility to the government information.
- (3) Provide access to the government information to the legislative services agency to the fullest extent permitted by the applicable federal law, federal regulation, or federal executive order.

As added by P.L.269-2017, SEC.1.

IC 2-5-1.7-11 Legislative council policies

Sec. 11. The legislative council or the personnel subcommittee of the legislative council, or both, may establish additional policies, limits, and procedures governing access to, safekeeping, or use of government information obtained by the legislative services agency under this chapter.

As added by P.L.269-2017, SEC.1.

IC 2-5-1.7-12 Data format

Sec. 12. If the governmental entity stores the data in electronic format, the data shall be provided in the original format in which the data is received or stored by the governmental entity, including data delimiters, tags, metadata, and other characters used to make the data machine readable or otherwise useful for retrieval or processing by the governmental entity, unless the legislative services agency agrees to accept the data in a different format.

As added by P.L.269-2017, SEC.1.

IC 2-5-1.7-13 Legislative services agency audits

Sec. 13. (a) This section applies when a law or the legislative council directs the legislative services agency to:

- (1) conduct an independent, objective, nonpartisan audit or other assessment of the stewardship, performance, or cost of government entity policies, programs, or operations; or
- (2) review an audit or other assessment related to the stewardship, performance, or cost of governmental entity policies, programs, or operations.

(b) Upon request, a governmental entity shall provide the legislative services agency with sufficient, appropriate evidence that provides a reasonable basis for findings and conclusions related to the objective of the assessment.

(c) The legislative services agency shall use generally accepted governmental auditing standards as a guideline for conducting or reviewing an assessment (including the nature, extent, and timing of necessary evidence and assessment activities) and determining the sufficiency and appropriateness of evidence.

(d) A governmental entity may redact material that is confidential under any law only to the extent the legislative services agency determines the legislative services agency has a reasonable basis for findings and conclusions related to the objective of the assessment without the redacted material, as determined under generally accepted governmental auditing standards.

As added by P.L.269-2017, SEC.1. Amended by P.L.86-2018, SEC.2.

IC 2-5-1.7-14 Memorandum of understanding

Sec. 14. Upon the request of the legislative services agency for a memorandum of understanding, a governmental entity shall enter into a memorandum of understanding for the sharing of government information with the legislative services agency, which must include the following:

- (1) The names and titles of the employees of:
 - (A) the legislative services agency authorized to request government information; and
 - (B) the employees of the governmental entity responsible for providing government information.
- (2) A detailed description of the type and scope of government information to be shared, which may include confidential government information if reasonable and appropriate protections are established.
- (3) The manner, process, or manner and process in which requests for government information will be made to the governmental entity.
- (4) The specific time in which a governmental entity is obligated to fulfill a request for government information under normal circumstances, as well as an expedited time for requests that are considered to be urgent by the legislative services agency.
- (5) A statement that there will be no charge or cost to the legislative services agency for the sharing of government information.
- (6) A statement that government information will be delivered in the format specified by the legislative services agency whenever reasonably possible under the circumstances.
- (7) A statement that all reasonable and appropriate measures and safeguards will be taken to ensure personal privacy and to protect personal information in a safe and secure manner.
- (8) A statement that in connection with any government information involving an analysis, forecast, projection, or other estimate, the governmental entity shall provide sufficient and appropriate government information to the legislative services agency so that the legislative services agency may independently evaluate and verify the accuracy of the analysis, forecast, projection, or other estimate.
- (9) A statement that a reasonable and appropriate process is established for the prompt resolution of any disputes that may arise over the sharing of government information.

Pennsylvania

Pennsylvania's Department of Revenue is required to provide taxpayer data for incentive evaluations, but the data are sent without taxpayer names and IDs. However, the information comes with unique identifiers that allow the Independent Fiscal Office (IFO) to track taxpayers across years. IFO does not have access to any federal tax return data that DOR matches with state returns. Any IFO staff that accesses the data must 1) have a work purpose and 2) sign a user agreement. Below is a section of [statute that authorizes IFO's data access](#) (see section "e" for tax information):

Section 609-B. Access to information.

(a) Agencies.--The director is authorized to secure information, data, expense information, estimates and statistics directly from a Commonwealth agency or a political subdivision. All Commonwealth agencies and political subdivisions shall furnish the director with all reports of expenditure for each agency and any other available material or data which the director determines to be necessary in the performance of the duties of the office, other than material, the disclosure of which would be a violation of law. The director is also authorized, upon agreement with the head of any Commonwealth agency or political subdivision, to utilize the services, facilities and personnel of the agency with or without reimbursement.

(b) Office of the Budget.--In carrying out the duties and functions of the office, the director is authorized to obtain information, data, estimates and statistics developed by the Office of the Budget and all Commonwealth agencies. The Office of the Budget shall submit to the office copies of final agency budget requests at the same time they are submitted to the General Assembly under this act.

(c) Computer database.--In order to carry out its duties under this article, the office shall have access to any computerized database of a State agency that is required to aid the office in the performance of its duties, except that any statutory requirements regarding privacy of individuals' records shall be observed in providing access.

(d) Daily revenue data.--

(1) The Secretary of Revenue and the Secretary of the Budget shall post revenue collection data for each deposit day and make the information available to the office and the chair and minority chair of the Appropriations Committee of the Senate and the chair and minority chair of the Appropriations Committee of the House of Representatives.

(2) The Governor, the Attorney General, the Auditor General and the State Treasurer shall cause to be prepared any other revenue data as may be requested by the office.

(e) Tax information.--For the purposes of carrying out its official duties under section 605-B and notwithstanding any other law of this Commonwealth, the office shall be authorized to access any information in the possession of the Department of Revenue that is obtained from tax payments, returns or reports, including adjustments or corrections made by the Department of Revenue. The information accessed under this section shall be confidential except for official purposes, and any person divulging the information shall be subject to section 731 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

Washington

While Washington State does not have income tax, their Joint Legislative Audit and Review Committee does receive business level tax return data from the state's Department of Revenue in calendar-year and fiscal-year segments. They also receive business level employee data from Washington's Employment Security Division, broken down by total hours worked and total employee positions each calendar-year quarter.

To facilitate this work, JLARC works with legislative IT security staff to maintain secure drives to store the tax data. More information can be found on this process on [page 2 of this explanatory document](#). All JLARC staff also sign confidentiality disclosure statements, and the staff have adopted internal filing requirements to further protect confidential data.

Improving data capture

Washington, D.C.'s Office of Tax and Revenue (OTR) now requires eligible companies who wish to claim the city's Qualified High Technologies Tax Credit to [annually certify online](#) before receiving benefits. Any certifications that do not include all requested information are automatically rejected, ensuring that the city receives all the requested data before approving benefits. The transition to online certification was accomplished through the city's [Modernized Integrated Tax System](#), which replaced an outdated legacy system and serves all of OTR's tax administration and compliance systems.

As mentioned in our brief, [How States Can Gather Better Data for Evaluating Tax Incentives](#), Iowa's Department of Revenue created a database – the [Tax Credit Award, Claim and Transfer System](#) (also known as “CACTAS”) – to track tax incentive awards and claims, connecting information from across several state agencies and authorities. This helps the department “track which companies receive

credits and when they apply the credits to their taxes,” which helps the state evaluate its incentives and forecast their costs. The system was recognized by [The Federation of Tax Administrators in 2017](#) for its outstanding research and analysis. The FTA noted that the system offers “detailed information on tax credit awards and utilization, enabling forecasters to better understand how credits are claimed in current and future years.” A PowerPoint overview of CACTAS is available [here](#).

Wisconsin’s Economic Development Corporation (WEDC) [maintains a database](#) that includes information on all state economic development programs in response to a 2007 law that requires administering agencies report on these programs each year. The database includes an interactive map that lists the size, location, date, recipient, and type of award, in addition to expected investment and jobs created/retained. The database is also searchable by award and can be downloaded into a spreadsheet. WEDC has an internal compliance database to collect this information from across the agencies – we would be happy to connect your staff to their office for more information.

Reviewing proposed tax incentive legislation

Several states have adopted procedures for reviewing proposed tax incentives before they become law. [Pew has identified three practices](#) that provide lawmakers with the necessary information to consider incentive proposals as they move through the legislative process, including:

1. Establishing principles for designing tax incentives,
2. Developing procedures to consider proposed incentives in a deliberative manner, and
3. Conducting upfront analysis of proposed incentives to forecast their effectiveness.

For example, New Mexico’s Legislative Finance Committee utilizes six “tax expenditure policy principles” that help policymakers both to evaluate new tax incentive proposals and changes to existing programs (see the sidebar on [page 1 of this report](#)). An example of how these policy principles are incorporated into a proposed incentive’s fiscal note is shown below:

LFC Tax Expenditure Policy Principle	Met?	Comments
Vetted	✓	
Targeted		
Clearly stated purpose	✗	A lack of purpose statement makes the credit difficult to analyze.
Long-term goals	✗	
Measurable targets	✗	
Transparent	✗	No requirements for reporting are included in the bill.
Accountable		
Public analysis	✗	
Expiration date	✓	
Effective		
Fulfills stated purpose	✗	Without a purpose statement, effectiveness is indeterminable.
Passes “but for” test	✗	
Efficient	✗	
Key: ✓ Met ✗ Not Met ? Unclear		

Source: [2021 New Mexico SB 153](#)