

FISCAL NOTE
Requested by Legislative Council
02/23/2017

Bill/Resolution No.: HB 1246

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1246 would allow classified state employees to bring an action in court without exhausting administrative remedies.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Subsections 2 and 3 of the proposed new section to Chapter 54-44.3 of the North Dakota Century Code would allow classified employees to immediately sue the State for employment discrimination in district court without first pursuing available administrative remedies. Due to the many variables involved, it is difficult to provide any direct estimate of the increased cost to the State. However, it is clear that formal employment litigation is far more expensive to defend than processing employment grievances internally and resolution through the administrative process established by NDCC 54-44.3-12.2. A review of recent cases reveals an estimated average in defense costs of \$60,000 with historical defense costs as high as \$192,000. Defense costs in court proceedings are estimated to exceed those in an administrative forum by at least a factor of four. In addition, the cost of settling a case in court far exceeds the cost of settling in an administrative forum due to the increased attorney time involved and fees that may be recovered through fee shifting provisions. A recent employment case against the State that was settled early in the litigation exceeded \$140,000 in defense and indemnity costs. With an estimated 10-15 employee appeals and 5 employee appeals claiming discrimination only per biennium, increased costs to the State could range from \$0 to more than \$500,000, depending on the number of employees that bypass the administrative process and the nature of the allegations.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The increased expenditures that would result from HB 1246 will come through the Risk Management Fund established in Chapter 32-12.2 of the North Dakota Century Code.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Required agency contributions to the Risk Management Fund will correspondingly increase as costs to the Risk Management Fund increase.

Name: Tag Anderson

Agency: OMB, Risk Management

Telephone: 701-328-7580

Date Prepared: 02/27/2017