

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: \_\_\_\_\_ Amendment to: SB 2506

Requested by Legislative Council \_\_\_\_\_ Date of Request: 2-16-95

- 1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, and cities.

Narrative:

SEE ATTACHMENT 1.

- 2. State fiscal effect in dollar amounts:

	<u>1993-95</u> <u>Biennium</u>		<u>1995-97</u> <u>Biennium</u>		<u>1997-99</u> <u>Biennium</u>	
	<u>General</u> <u>Fund</u>	<u>Special</u> <u>Funds</u>	<u>General</u> <u>Fund</u>	<u>Special</u> <u>Funds</u>	<u>General</u> <u>Fund</u>	<u>Special</u> <u>Funds</u>
Revenues:	- 0 -	- 0 -	- 0 -	-( \$2,461,141)	- 0 -	-( \$2,463,550)
Expenditures:	- 0 -	- 0 -	\$4,301,643	- 0 -	\$4,177,125	- 0 -

- 3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1993-95 biennium: - 0 -
- b. For the 1995-97 biennium: This bill would eliminate the agencies
- c. For the 1997-99 biennium: and this is reflected in the figures in Subsection #2 above.

- 4. County and City fiscal effect in dollar amounts:

	<u>1993-95</u> <u>Biennium</u>		<u>1995-97</u> <u>Biennium</u>		<u>1997-99</u> <u>Biennium</u>	
	<u>Counties</u>	<u>Cities</u>	<u>Counties</u>	<u>Cities</u>	<u>Counties</u>	<u>Cities</u>

If additional space is needed, attach a supplemental sheet.

Signed *Dotty Simes*

Typed Name Dotty Simes

Department Protection and Advocacy

Phone Number 328-2972

Date Prepared: 2/27/95

## FISCAL NOTE - SB 2506

## 1. NARRATIVE

This fiscal note is an estimate of the impact of SB 2506 on the Protection and Advocacy Project, the Governor's Council on Human Resources and its three committees, and the state Developmental Disabilities Council. The Governor's Council will have a \$60,000 general fund effect. For one committee, it will have a \$206,000 special fund decrease and \$206,000 general fund increase, according to Governor's Council staff.

The Developmental Disabilities Council may have a loss of federal funds of \$838,541 in the 95-97 biennium and a loss of \$840,950 in the 97-99 biennium. This may result in the need for an increase in the same amount of general funds because the federal office administering that program states that the bill may be in violation of federal law.

According to federal funding authorities, the potential non-compliance of this bill with federal law may also result in the loss of \$1,622,600 in federal funds per biennium to the Protection and Advocacy Project. (See attached letters).

The attached letter dated 1/31 indicates: "Failure to correct this situation (noncompliance with Developmental Disabilities Act and Bill of Rights Act) could endanger Federal funding." (See highlighted area on attached letter).

Page 2 of the letter dated 2/1/95 identifies that contracting or redesignation of P&A Project to a private, non-profit, unless there is good cause, fails to comply with the Developmental Disabilities Act. Therefore federal funding is potentially jeopardized. (See highlighted area on attached letter).

The estimates for the 95-97 and 97-99 bienniums were done assuming the current staff, providing the same services with the necessary equipment and supplies. However, in the estimates for the 95-97 biennium, initial set-up expenses are included.

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	95 - 97 BIENNIUM	97 - 99 BIENNIUM
PROTECTION AND ADVOCACY		
SALARIES/WAGES	\$2,184,806	\$2,315,894
OPERATING	\$707,104	\$740,349
EQUIPMENT	\$293,928	\$10,622
TOTAL	\$3,185,838*	\$3,066,865*
GENERAL	\$1,563,238	\$1,444,265
FEDERAL	\$1,622,600	\$1,622,600
DD COUNCIL		
SALARIES/WAGES	\$114,329	\$116,738
OPERATING	\$56,934	\$56,934
GRANTS	\$667,278	\$667,278
TOTAL	\$838,541	\$840,950
FEDERAL	\$838,541	\$840,950
GOVERNORS COMMITTEE ON HUMAN RESOURCES		
SALARIES	\$148,663	\$154,610
ISD	\$1,000	\$1,200
OPERATING	\$110,130	\$112,000
EQUIPMENT	\$17,471	\$1,500
TOTAL	\$277,264	\$269,310
SPECIAL	\$277,264	\$269,310
GRAND TOTAL:	\$4,301,643	\$4,177,125

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## PROTECTION &amp; ADVOCACY

	<u>95 - 97</u> <u>BIENNIUM</u>	<u>97 - 99</u> <u>BIENNIUM</u>
Salaries/Wages	\$1,591,170	\$1,686,640
Fringe	<u>\$593,636</u>	<u>\$629,254</u>
TOTAL	\$2,184,806	\$2,315,894
Data Proc-ISD	\$51,449	\$56,594
Travel	\$119,151	\$132,858
Lease Bldg/Equip	\$161,141	\$177,255
Dues/Prof. Dev	\$26,180	\$28,798
Operate Fees/Serv.	\$262,483	\$285,331
Office Supplies	\$19,964	\$21,960
Printing	\$15,048	\$16,553
Prof. Mat/Ref	<u>\$51,688</u>	<u>\$21,000</u>
TOTAL	\$707,104	\$740,349
Equipment	<u>\$293,928</u>	<u>\$10,622</u>
TOTAL	\$293,928	\$10,622
GRAND TOTAL	\$3,185,838*	\$3,066,865*





ADMINISTRATION FOR CHILDREN AND FAMILIES  
370 L'Enfant Promenade, S.W.  
Washington, D.C. 20447

JAN 3 1994

Barbara C. Braun  
Director  
P&A Project for the Developmental Disabilities  
400 E. Broadway, Suite 515  
Bismarck, North Dakota 58501

Dear Ms. Braun:

I am writing in response to your letter regarding interference by the State of North Dakota in the hiring and personnel finance decisions of your agency, the North Dakota Protection and Advocacy Project, which was designated by the Governor to implement the Protection and Advocacy (P&A) System in your State.

The Administration on Developmental Disabilities (ADD) finds that the review by the North Dakota Governor's Emergency Hiring Council of the hiring of personnel paid for solely with Federal funding is not in compliance with the funding requirements set out in the Federal authorizing legislation for the P&A program for persons with developmental disabilities (PADD). This legislation is in Sections 141, 142, and 143 of the Developmental Disabilities Assistance and Bill of Rights Act, as amended in 1994. Section 142(a)(2) of this Act sets out the minimum requirements for a P&A system, including subparagraph (J), which states that such system must:

hire and maintain sufficient numbers and types of staff, qualified by training and experience, to carry out such system's function, except that such State shall not apply hiring freezes, reductions in force, or prohibitions on staff travel, or other policies, to the extent that such policies would impact staff or functions funded with Federal funds and would prevent the system from carrying out its functions under the Act.

The Emergency Hiring Council is a mechanism whereby North Dakota does indeed freeze hiring of needed types of staff, and thereby impacts the ability of the P&A system to fulfill its functions supported by Federal funds.

To resolve this issue, ADD will require a Corrective Action Plan laying out the steps and time frames whereby the State will return to compliance in a reasonable amount of time. Failure to correct this situation could endanger nearly \$1 million in Federal funding for this and other Federal P&A programs in the State and for the Developmental Disabilities Council in North Dakota.

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We recommend that the Corrective Action Plan be developed in conjunction with the appropriate State officials, and we expect that evidence of the State's participation will be included as part of the Plan document. It should be submitted within 45 days of receipt of this letter to our Regional Office in Colorado for review and approval:

Frank Fajardo, Regional Administrator  
Department of Health and Human Services  
Administration for Children and Families  
Federal Office Building  
1961 Stout Street, Room 1185  
Denver, Colorado 80294-3538

ATTENTION: Bob Calderon, Program Specialist  
Developmental Disabilities Programs

Our staffs are available to assist you in developing the plan for coming into compliance with the Federal requirements.

We in ADD are available to provide technical assistance to assist North Dakota in correcting this compliance issue. If the State is concerned about not being able to control hiring for a State agency with functions partly supported with Federal funding, a possible solution would be to pursue a mutually agreeable redesignation of the system, similar to actions in Nevada or New Jersey.

If you or other North Dakota officials want to discuss this compliance issue with Federal staff while in the course of exploring corrective actions, please contact Bob Calderon in our Regional Office at (303) 844-3100, x363, or call John Gridley of my staff at (202) 690-5906.

Sincerely,



Bob Williams  
Commissioner  
Administration on Developmental  
Disabilities

cc. Mr. Frank Fajardo, Regional Administrator  
ACF, Region VIII -- Colorado  
Dr. Stephen W. Ragan, Chairperson  
Developmental Disabilities Council





ADMINISTRATION FOR CHILDREN AND FAMILIES  
370 L'Enfant Promenade, S.W.  
Washington, D.C. 20447

FEB 1 1995

Barbara C. Braun, Director  
Protection and Advocacy Project  
400 E. Broadway, Suite 515  
Bismarck, North Dakota 58501

Dear Ms. Braun:

This is in response to your request for an analysis of the proposed bills being considered by the North Dakota Legislative Assembly. House Bill No. 1290 and Senate Bill No. 2506 do not comply with the governing board requirements of the Developmental Disabilities Assistance and Bill of Rights Act of 1994. (The DD Act). The Senate bill also violates the DD Act in relation to the requirements for redesignation.

The proposed bills give the governor the authority to appoint two members of the governing board. The president of the North Dakota Senate and the speaker of the House of Representatives are also empowered to each appoint one member to the P&A board. You pointed out that the president of the senate is also the lieutenant governor. As I noted in my previous letter, Section 142e(2) of the DD Act requires that;

(2) not more than 1/3 of the membership of the governing board may be appointed by the chief executive officer of the State involved, in the case of any State in which such officer has the authority to appoint the membership of the board;

Compliance with the DD Act requires that appointments are not conducive to undue influence by the governor. The DD Act fosters the independence of the P&A. The 1990 House Report shows that congressional intent was to limit gubernatorial appointments to prevent undue influence by the governor. H.Rep. 803, 101st Cong., 2d Sess. 25 (1990).

The DD Act mandates that P&A's work to increase the independence, productivity, integration and inclusion of persons with developmental disabilities. P&A's can only accomplish these goals in an environment committed to the full participation of citizens with disabilities, free of undue influence. The North Dakota legislation does not establish an independent environment for the P&A.

The proposed legislation states that P&A board members broadly represent or are knowledgeable about issues impacting the lives of individuals with disabilities. However, the bills do not contain a clear provision for the appointment of consumers.

Section 142(e)1 of the DD Act specifically requires that the a multi-member governing board;

shall be selected according to the policies and procedures of the system except that--

(1) the governing board shall be composed of members who broadly represent or are knowledgeable about the needs of the individuals served by the system and include individuals with developmental disabilities who are eligible for services, or parents' family members, guardians, advocates or authorized representatives of such individuals;

The proposed legislation also fails to comply with the DD Act in allowing service providers on the board of the P&A. You indicated that out of the three associations authorized by the bill to appoint members, each association provides direct services to individuals with developmental disabilities. You also stated that the North Dakota Special Education Study Council is actually a service provider. This clearly violates the DD Act. Senate Report 101, 101st Cong., 2nd Sess. 24 (1990) states;

Governing Boards of Protection and Advocacy Systems should not consist of providers of services to persons with developmental disabilities who may potentially be the focus of the advocacy of the Protection and Advocacy System.

In addition, you also indicated that the advocacy associations authorized to make appointments, provide direct services. This is another violation of the DD act, if these direct services are essential. Senate Report 24 (1990).

Senate Bill 2506 also presents additional violations of the DD Act. The bill states that the [advisory] committee shall contract with a private non-profit person to carry out any responsibilities of the [P&A] project." This is contrary to the DD Act which requires that in order to receive funding for DD programs the State must have in effect a system to protect and advocate the rights of individuals with developmental disabilities, Section 142 (a) (1). The Senate Bill also fails to comply with section 142 (a) (4) which provides;

(4) the agency implementing the system will not be redesignated unless there is good cause for the redesignation.



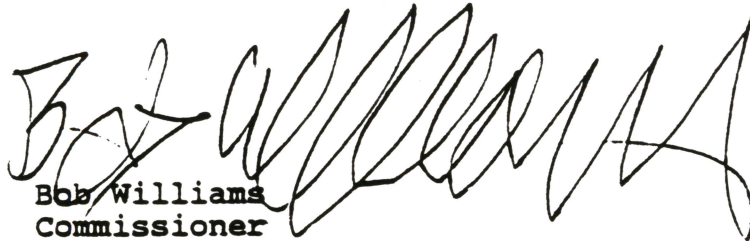
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Redesignation can not be accomplished through legislation such as the North Dakota House and Senate bills. The P&A must be provided with notice of the proposed redesignation and an explanation of "good cause" for the redesignation. Section 142 (a) (4).

The actions of the P&A must provide the basis for redesignation, not a states wish to restructure the system or the perceived potential of another agency to better administer the program.

ADD recognizes that the composition of P&A's governing board is tied to the effectiveness of the P&A. Accordingly the board's membership must adhere to all of the requirements of the DD Act. If I can be of further assistance, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bob Williams', written in a cursive style.

Bob Williams  
Commissioner  
Administration on Developmental  
Disabilities