

FISCAL NOTE
Requested by Legislative Council
01/14/2015

Bill/Resolution No.: HB 1308

- 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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$66,000		
Expenditures			\$34,000	\$66,000		
Appropriations			\$34,000	\$66,000		

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

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 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 1308 requires a study of the method to calculate child support and a plan to develop and transition from the obligor model to an income shares model. The findings of the study and any legislative changes necessary to implement the plan will be presented to legislative management.

- 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.*

The request in HB 1308 will require a contract with a consultant, including a subcontract with an attorney in private practice in North Dakota at an estimated cost of \$100,000 to study and develop a plan to transition from an obligor model to an income shares model.

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.*

The Department will be able to access \$66,000 in federal funds to pay a portion of the cost to study and develop a plan.

- 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 projected 15-17 biennium costs of \$100,000 in operating expenditures, of which \$34,000 is General Fund and \$66,000 is federal funds, hires a national consultant familiar with transitioning from the current model to the income shares model and involves a private practice attorney with familiarity with the North Dakota and Minnesota models.

- 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.*

The Department will need \$100,000, of which \$34,000 is General Fund authority and \$66,000 is federal authority.

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Agency: Human Services

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Date Prepared: 01/20/2015

2015 HOUSE HUMAN SERVICES

HB 1308

2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Fort Union Room, State Capitol

HB 1308
1/21/2015
Job # 22290

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Beckie Hrege

Explanation or reason for introduction of bill/resolution:

A bill to provide for a department of human services study of the method for calculating child support payments in the state.

Minutes:

Testimony #1, #2

Chairman Weisz opened the hearing on HB 1308.

Rep. Vicky Steiner, District 37, Dickinson: Introduced and supported the bill. (See Testimony #1)

Shane Rome, Dickinson

Ten years ago I moved here and married my second wife. We had two children together and I adopted her one child. When it comes to child support in North Dakota, they don't consider that she makes a dime - my income is the only thing that supports those children. As soon as I increase my income, they take more - I can never get ahead. I have discussed this with the child support agencies and they said they consider the family to be whole and intact when it comes to finances, whether we are separated or not.

But now there are two households that have to be maintained. I have no problem supporting my kids. In this state, especially where I live, it's fairly expensive to support yourself, and another family, and two different households. I was fortunate that a friend gave me a place to live for three years after my divorce - I don't know what I would have done without that, I wouldn't have been able to see my children because I couldn't afford to.

I don't feel this is a fair system compared to Kansas, where they look at both incomes. My first wife, in Kansas, was a student when we were married. When we divorced, they implemented minimum wage to her, because she was physically able to work. My ex-wife here (in North Dakota) made very good money, almost as good as I did at the time, but I still pretty much had to pay for everything.

I don't see how this system can stay in place. Thirsty-five other states have changed their system to be more fair.

5:00

Chairman Weisz: Are you currently still paying in both states?

Shane: No. My daughter from my first marriage has moved in with me. So I don't pay there anymore. I do pay here. By the time this is changed it won't affect me, but I don't want to see other people struggle as hard as I did, just trying to maintain a relationship with my children. There were times I couldn't afford to feed them, so I didn't take them. My kids asked why, and I didn't want to tell them.

Rep. Mooney: In your divorce only your income was looked at?

Shane: No. They didn't look at her income.

Rep. Mooney: Only looking at her or the family obligation of expenses, is that the definition of 'obligor' be in that particular case then?

Shane: I'm the one paying that child support, I would be solely supporting that family. That's how they look at it.

OPPOSITION

7:12

Tony Weiler, Executive Director of the State Bar Association of North Dakota

The association as a whole, our family law section has taken a position on this bill, changing to the income shares child support model. Following the debate on Measure 6, which was defeated by 66 percent of the state of North Dakota, we talked about modifications to child support. The family law section met in November and we discussed where we wanted to go. We are going to form a taskforce to look at the issues raised during the Measure 6 debate. Hopefully bring you legislation next session.

Rep. Fehr: If we go ahead with this study, how will it fit with the taskforce you are already doing? Will the two mesh together?

Weiler: Yes, it could. The information that comes out of the study could be used to look whether the current support model we use is best, or to look at the income shares model. It would provide information.

Rep. Muscha: If the study does go forward, how might you find other parents to be part of your stakeholders group? Would you look to legislators?

Weiler: The proponents of Measure 6 are very vocal, and I think we could round up several rather quickly. I believe it would be a good task force to include legislatures to include proponents. There were several attorneys that were proponents who may be a part of the taskforce.

12:14

NEUTRAL

12:36

Jim Fleming, Director of Child Support Division of the Department of Human Services (See Testimony #2)

20:54

Rep. Mooney: Do you remember why three times the amount was the exception?

Fleming: A legislator currently came up with the three to one ratio.

Rep. Kiefert: When you formulate that, do you have a graph on what it takes to raise a child, then look at the income, then do a maximum percentage that they can apply against that, is that how they figure it now?

Fleming: Yes, you hit it on the head. It's much like taxes by determining the income of the obligor parent, then you apply the guidelines which reflect a general percentage of the income. The percentage goes up based on the number of children.

Rep. Kiefert: If the parent doesn't make enough money where the child is living, is it up to them to supply the rest? Based on the percentage of the income from one parent but the child is living with the other parent, you've reached that maximum percentage that's available, but that's only half the amount. Then the burden to supply the rest is placed on the parent where the child is living.

Fleming: That is how it works. Legally the amount due from the obligor is set in a court order, that's their legal obligation. We use census data and USDA data on the cost of raising children to make sure the numbers are in line. The order established is the contribution from the obligor parent, the custodial parent is left with the balance.

I would agree with Mr. Weiler, I was at the family law section session. The members talked about Measure 6 and the things that should be looked at. We would look forward to being a part of that conversation and to your guidance in terms of what you want us to do, if this study should move forward.

NO OPPOSITION

Chairman Weisz closed the hearing on HB 1308.

2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

HB 1308
1/21/2015
Job #22322

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Beckie Sturge

Explanation or reason for introduction of bill/resolution:

A bill to provide for a department of human services study of the method for calculating child support payments in the state.

Minutes:

Chairman Weisz opened up HB 1308.

Rep. Hofstad: I motion a Do Not Pass.

Rep. Damschen: Seconded.

Chairman Weisz: We've seen this previous sessions and the argument is to consider the obligees income. Generally when you do the whole analysis, child support payments rarely change to any large degree. We did make that change in an earlier session that if there was an extreme disparity, then the tables would change for their child support obligation. The only way to make an income shares model work is if her income has greater weight then his. Then, in almost all cases, their obligation would go down. As Mr. Fleming mentioned, it does double the workload.

Rep. Hofstad: Measure 6 has precipitated another look at this. A taskforce is going to be put together to look at this. I think we can let this go and look at it next session. If this bill goes through we are looking at a substantial fiscal note of about 100,000 dollars. From the past sessions that we've looked at this I don't think we will be in a better place by going with that model. We will have more information to look at next session.

Rep. D. Anderson: Looking at the fiscal note, there is 66,000 dollars federal money here.

Rep. Damschen: I think we could spend the money and not notice an appreciable difference for those who are dissatisfied with it now.

Chairman Weisz: Every time we have had this, this room was packed. People are unhappy and they want to change it. We've made a lot of changes with calculation, and the

tables, and we have the Child Support Guidelines Committee. I was stunned no one was here today from either side. The complaints are getting less.

7:50

Rep. Rich Becker: Can you review the definition of obligor and income methods?

Chairman Weisz: The obligors do not have custody and they have to pay. The obligee has custody and they receive the payment - they are physically paying the cost of the child. The obligor contributes to the obligee for the cost of raising the child. The obligor method takes into account the income of the non-custodial parent. A chart, based on the number of children and the obligor's income, is followed.

In the income support model, they would look at the custodial parent's income and add that in with the non-custodial parent. A percentage of the total income that each parent contributes is decided according to the chart. For example, if 60 percent of the income was the non-custodial parent, and the child support was 1200 dollars per month, the non-custodial parent would then have to pay 720 dollars per month. The rest would be allocated to the custodial parent.

In general, the income support model wouldn't change the payment much because it's based on the income.

Rep. Rich Becker: It sounds to me the income method doesn't give any incentive for the non-custodial parent to work harder and strive for a larger income.

Chairman Weisz: It wouldn't have any affect. Example: Both custodial and non-custodial make 50,000 dollars per year.

Under the current system it would be 20 percent on the table, which would come to 500 dollars a month.

Under the income method, where both parents are each making 50,000 dollars, and the total income is 100,000 dollars total. On the table it comes to 20 percent, where child support is 1,000 dollars a month. The non-custodial contributes half the income and would pay have the child support at 500 dollars a month.

If the custodial parent is making 100,000 dollars, and the non-custodial is making 50,000 dollars, and the total income is 150,000 dollars. The child support goes to 1,500 dollars per month, and the non-custodial parent pays one-third, 500 dollars a month.

Unless the custodial parent's income became three times greater, there wouldn't be any affect.

Rep. Damschen: Under either plan, is there any kind of a cap?

Chairman Weisz: We have capped the amount you pay in child support.

Rep. Mooney: I would have been ok with the study process if there would have been any plan of action as an end result. I like that the State Bar Association and other stake holders will be getting involved, it might be a better product in the end.

Chairman Weisz: In the end, the court determines the child support. They do have the ability to deviate from the guidelines.

A roll call vote was taken. Yes: 11 No: 0 Absent: 2 (Rep Fehr, Rep Porter)

Do Not Pass carries.

Representative Dick Anderson will carry the bill.

Date: 1-21-15
Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1308**

House Human Services Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Hofstad Seconded By Rep. Damschen

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz	✓		Rep. Mooney	✓	
Vice-Chair Hofstad	✓		Rep. Muscha	✓	
Rep. Bert Anderson	✓		Rep. Oversen		
Rep. Dick Anderson	✓				
Rep. Rich S. Becker	✓				
Rep. Damschen	✓				
Rep. Fehr	A				
Rep. Kiefert	✓				
Rep. Porter	A				
Rep. Seibel	✓				

Total (Yes) 11 No 0

Absent 0

Floor Assignment Rep. Dick Anderson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1308: Human Services Committee (Rep. Weisz, Chairman) recommends **DO NOT PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1308 was placed on the Eleventh order on the calendar.

2015 TESTIMONY

HB 1308

House Bill 1308-recommend Do Pass To Study

#1
1-21-15
HB 1308

Chairman Weisz and members of the Human Service Committee,

For the record, my name is Rep. Vicky Steiner, District 37, Dickinson, N.D.

I bring this bill on behalf of one of my constituents, Shane Rome.

He has experience in divorce decrees in other states and he believes that North Dakota's method is not the best method that it could be.

House 1308, as a study, will create much needed discussion on how North Dakota works with families undergoing divorce and the settlement of resources.

Currently, North Dakota uses the "obligor" system. 35 other states use the "income" method, according to Legislative Council, to consider the resources of child payments.

This system is entrenched but it would be beneficial to see if it could be improved.

Please consider a Do Pass recommendation.

Thank you Mr. Chairman.

#2
1-21-15
HB 1308

Testimony
House Bill 1308 – Department Of Human Services
House Human Services Committee
Representative Weisz, Chairman
January 21, 2015

Chairman Weisz, members of the House Human Services Committee, I am Jim Fleming, Director of the Child Support Division of the Department of Human Services (Child Support). I am here to testify on House Bill 1308 and provide information on an income shares model for child support.

House Bill 1308 requires Child Support to study and develop a plan for converting North Dakota's child support guidelines from an obligor model to an income shares model.

Under an income shares model, a basic child support obligation is computed based on the combined income of both parents. This basic obligation is then prorated in proportion to each parent's income and adjusted to account for work-related child care costs and often any extraordinary medical expenses. A child support order is then entered with respect to the obligor's share of the basic child support obligation and child care costs.

Impacts of changing to an income shares model:

In order for income shares to lead to a reduction in an obligor's support amount, the obligor must earn substantially less income than the parent with primary residential responsibility. Even though the child support guidelines provide the presumptively correct amount of support, the presumption may be rebutted for certain reasons listed in the guidelines. In 2007, North Dakota law was changed, through an amendment

proposed by this committee, to require the child support guidelines to include a rebuttal criteria "based on the proportionate net income of the obligor and the obligee when the net income of the obligee is at least three times higher than the net income of the obligor." In essence, North Dakota already uses an income shares model in this circumstance when use of that model results in a reduced child support obligation.

There are additional provisions in the current guidelines that are designed to promote fairness and responsiveness to obligors. The guidelines also include a deduction for when an obligor is authorized by the court to have extended periods of parenting time, and take into account when an obligor owes support to multiple families. These provisions would no longer exist if North Dakota changed to an income shares model.

One of the challenges in an income shares model is how to account for the contribution of the parent with primary residential responsibility in caring for the child a greater portion of the time, particularly overnight. Although this is a responsibility that most parents gladly bear, it has undeniable value. In addition, in an income shares model, child care costs are often added proportionately to each parent's obligation. This is not information that Child Support currently gathers from either parent.

Under the current guidelines, when the parents share equal or split residential responsibility, the income of each parent is considered and an obligation is determined for each parent. This results in an outcome that closely resembles an income shares model.

Establishing child support orders in the amount provided by the child support guidelines using an income shares model, and periodically

reviewing those obligations using current income information, would increase administrative costs for Child Support. The Department's fiscal note for an income shares model bill in 2005 estimated that changing to an income shares model would require an additional ten full-time equivalent positions (FTE), along with at least \$150,000 in computer programming costs (which is in 2005 dollars and would be higher today) and the operating costs associated with additional staff and mailings to parents. The need for additional staff is the result of the time required to review income information from both parents, rather than only the obligor, and to take the necessary actions to obtain such information from unwilling or unresponsive parents with primary residential responsibility. If the study called for in House Bill 1308 results in legislation to implement an income shares model, additional funding (FTE and operating expenses) would be needed in the 2017-2019 biennium.

House Bill 1308 will also require considerable analysis and report preparation time by a contractor who is familiar with income shares models in other states. The contractor will need to work with existing Child Support staff and enter into a subcontract with a private attorney who practices in North Dakota. The fiscal note on this bill reflects an estimate Child Support received from the leading national consultant on child support guidelines to conduct the study proposed in House Bill 1308.

When the income shares model was proposed in 2005, Child Support offered a substitute amendment listing the targeted circumstances under which a review of the obligor's obligation would occur outside the normal three-year review cycle. At the time, I informed the committee that I had asked our customer service manager, who has been handling customer calls daily for many years, what she thought was the cause of

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more obligor complaints: the fact that the obligation was determined without regard to the custodial parent's income, or that the obligor had changes in his or her income but could not obtain help from us in changing the ongoing child support obligation outside the three-year review cycle. She told me that without a doubt, the much more common complaint was that the obligor lost a job or experienced some other change in income that made it hard to afford the current child support obligation.

In response to House Bill 1308, I posed the same question to our customer service manager, and the response above is still accurate.

In May 2006, Child Support voluntarily began reviewing obligations outside the three-year review cycle in certain circumstances. Please see the attached list of exceptions to the three-year review cycle (Attachment 1). The House of Representatives recently voted (House Bill 1111) to streamline the review and adjustment process with a goal of allowing Child Support to review obligations on a two-year cycle rather than the federal minimum of three years. Although these accelerated reviews are not mandated by the federal or state government, we believe providing these reviews upon request promotes a comparable perception of greater fairness as an income shares model, but in a much more tangible way.

The accelerated review process is only one example of the enhanced services offered by Child Support to promote fairness to obligors. Others include:

- Suppression of judgment interest for as long as the obligor honors a payment plan to retain a driver or hunting license and pay down the total arrearage.
- PRIDE – a parental employment project, often initiated as part of the contempt of court process, that connects obligors with Job Service North Dakota to improve job skills and find employment.
- Filing motions to stop the current support from accruing when the obligor is now taking care of the child, rather than waiting for one of the parents to file the motion.
- A new web-based child support calculator which allows courts, attorneys, and parents to complete their own guideline calculations and prepare appropriate court documents showing how the guideline amount was calculated.

In addition, a significant body of case law has developed on the meaning of the current guidelines, and the number of appeals regarding the guidelines has dropped to only one or two per year. The value of that case law would be completely lost with a new guidelines model, and the calculator above will be rendered obsolete just a few short years after it was created.

Compliance and Monthly Support

For the last federal fiscal year, 74.2 percent of the current support that accrued was collected on time, which is the second highest compliance rate in the country. This level of compliance is directly related to the proactive customer service described earlier in my testimony, and suggests that the perception of fairness is not as much of a concern today as it perhaps once was.

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The average monthly amount of child support per child that is due in North Dakota is \$338.

Chairman Weisz and members of the committee, this concludes my testimony on House Bill 1308, and I would be glad to answer any questions the committee may have.

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Exceptions to the three-year rule

- There is a zero dollar (\$0) child support order in the case.
- The child support order was based on imputing minimum wage to the non-custodial parent and the non-custodial parent has now been earning more than minimum wage for at least four (4) consecutive quarters.
- The child support order was entered by default and without financial information from any source as a result of the non-custodial parent's failure to cooperate and the non-custodial parent is now willing to provide financial information and otherwise cooperate. Note: this exception may only be used to benefit the non-custodial parent one time during the life of the support obligation.
- After the order was entered, the non-custodial parent was determined to be eligible for Supplemental Security Income or other disability benefits (e.g., from the Social Security Administration or Department of Veterans Affairs).
- The child support order was based on the non-custodial parent's receipt of Supplemental Security Income or other disability benefits (e.g., from the Social Security Administration or Department of Veterans Affairs) and then the disability determination is reversed.
- After the order was entered, the non-custodial parent was sentenced to incarceration for at least one year with no possibility of being released before actually serving at least one year. This exception also applies if the non-custodial parent was previously sentenced to incarceration for multiple years and must still serve at least one year of actual incarceration before being released.
- The child support order was based on the non-custodial parent's incarceration (e.g., minimum wage was imputed to the non-custodial parent) and it has been at least 12 months since the non-custodial parent was released from incarceration.
- After the order was entered, the non-custodial parent was activated for military duty for at least one year. This exception also applies if the activation has already occurred and there are at least 12 months of active duty remaining.
- The child support order was based on the non-custodial parent's activation for military duty and it has been at least six (6) months since the non-custodial parent was released from active military duty.
- The child support order includes a requirement for the non-custodial parent to provide dependent health insurance coverage, the non-custodial parent was not providing coverage at the time the order was entered and did not receive a deduction from gross income for a portion of the premium payments, and has now been providing coverage at a cost of at least \$100 per month for at least nine (9) months (e.g., health insurance is available through the employer and has been enforced through the National Medical Support Notice).
- The child support order includes a requirement for the non-custodial parent to provide dependent health insurance coverage, the non-custodial parent was providing coverage at the time the order was entered at a cost of at least \$100 per month and received a deduction from gross income for a portion of the premium payments and now discontinues coverage.
- The child support order includes a requirement for the non-custodial parent to provide dependent health insurance coverage, the non-custodial parent was providing coverage at a cost at the time the order was entered and received a deduction from gross income for a portion of the premium payments and now the cost of coverage has increased by at least \$100 per month.
- The child support order includes a requirement for the non-custodial parent to provide dependent health insurance coverage, the non-custodial parent was providing coverage at a cost at the time the order was entered and received a deduction from gross income for a portion of the premium payments and now the cost of coverage has decreased by at least \$100 per month.
- After the order was entered, the non-custodial parent experienced an involuntary job loss or demotion resulting in a decrease in income. Note: for purposes of this exception, an involuntary job loss or demotion is one that occurs through no fault of the non-custodial parent. If the non-custodial parent was terminated or demoted for cause, this exception does not apply.
- After the order was entered, the non-custodial parent experienced a job change or promotion resulting in an increase in income and the increase in income has been maintained for at least four (4) consecutive quarters.