

Report of the
NORTH DAKOTA LEGISLATIVE COUNCIL

Submitted to the
North Dakota Secretary of State
Under North Dakota Century Code Section 16.1-01-17
Tuesday, October 3, 2006

BACKGROUND

In 2004 the electorate of this state approved a constitutional amendment to Article III, Section 2, of the Constitution of North Dakota which authorized the Legislative Assembly to provide by law for a procedure through which the Legislative Council may establish an appropriate method for determining the fiscal impact of an initiative measure and for making the information regarding the fiscal impact of the measure available to the public.

In 2005 the Legislative Assembly enacted North Dakota Century Code (NDCC) Section 16.1-01-17, which requires the Legislative Council to hold hearings, receive public testimony, and gather information from agencies, institutions, or departments on the estimated fiscal impact of an initiated measure. At least 30 days before the public vote on the measure, the Legislative Council is to submit a statement of the estimated fiscal impact of the measure to the Secretary of State. Within 30 days of the close of the first complete fiscal year after the effective date of an initiated measure approved by the voters, the agencies, institutions, or departments that provided the estimates of the fiscal impact of the measure to the Legislative Council are to submit a report to the Legislative Council on the actual fiscal impact for the first complete fiscal year resulting from the provisions of the initiated measure and a comparison to the estimates provided to the Legislative Council, and the Legislative Council is to issue a report of the actual fiscal impact of the initiated measure.

Two initiative measures qualify for the ballot for the general election on Tuesday, November 7, 2006--an initiated constitutional measure relating to the taking of private property and an initiated statutory measure relating to child custody and support.

The Legislative Council followed the procedure required by statute, which is similar to the procedure for obtaining fiscal impact information which the Legislative Assembly follows during legislative sessions--those state agencies determined to have either the best information on the impact of a measure or the primary responsibility for compiling and maintaining the information that is needed were invited to prepare fiscal notes and present their findings at a meeting held by the Legislative Council on Monday, September 11, 2006.

**INITIATED MEASURE REGARDING
TAKING OF PRIVATE PROPERTY**

This initiated measure amends Article I, Section 16, of the Constitution of North Dakota which relates to the taking of private property for public use. This language is added to the section:

For purposes of this section, a public use or a public purpose does not include public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health. Private property shall not be taken for the use of, or ownership by, any private individual or entity, unless that property is necessary for conducting a common carrier or utility business.

The Department of Transportation presented information on the estimated fiscal impact of this measure. A copy of the fiscal note requested of the department is attached as [Appendix A](#).

The Department of Commerce presented information on the estimated fiscal impact of this measure. A copy of the fiscal note requested of the department is attached as [Appendix B](#).

**Statement of Estimated
Fiscal Impact of the Measure**

The fiscal note prepared by the Department of Transportation states the department pays just compensation for property and the department may incur administrative costs if a project is challenged as being exclusively for economic development but there is no way to determine what those costs may be before they are incurred.

The fiscal note prepared by the Department of Commerce states it is not possible to estimate the fiscal effect of the initiated measure because it is unknown how many potential economic development projects could be affected, but the department does have a fair degree of certainty that the state fiscal impact with respect to expenditures and appropriations is zero.

**INITIATED MEASURE ON
PARENTING PLANS AND CHILD
CUSTODY AND SUPPORT**

This initiated measure enacts NDCC Section 14-09-06.7 to provide that parents retain joint legal and physical custody of their children unless a parent

has been denied custody by being declared unfit by clear and convincing evidence, to require parents to develop a joint parenting plan, to require the court to facilitate production of a parenting plan if the parents cannot agree, to provide that parents who previously have not had a fitness hearing may petition the court for a fitness hearing at any time, and to provide that child support payments may not be greater than the actual cost of providing for the basic needs of the child.

The Supreme Court presented information on the estimated fiscal impact of this measure. A copy of the fiscal note requested of the Supreme Court is attached as [Appendix C](#).

The Department of Human Services presented information on the estimated fiscal impact of this measure. A copy of the fiscal note requested of the department is attached as [Appendix D](#).

Statement of Estimated Fiscal Impact of the Measure

The fiscal note prepared by the Supreme Court states (1) the passage of the initiated measure could have a significant impact on the judiciary; (2) at this time, the court is unable to measure that impact and any estimate by the court would be purely speculative; and (3) the court has limited the actual amount of the fiscal note to the known costs of additional 1 to 8 judges, 1 to 8 clerks, 1 to 8 reporters, 11 mediators and 22 support staff, education and training, and inflation and miscellaneous increases. The fiscal note states a fiscal effect of \$2,057,000 in expenditures for the 2007-09 biennium to recruit and train 11 mediators and 22 support staff and because of uncertainties as

to the impact on judicial workload, a range of \$2,497,000 to \$5,741,000 for the 2009-11 biennium and a range of \$2,622,000 to \$6,028,000 for the 2011-13 biennium.

The fiscal note prepared by the Department of Human Services states (1) based on the language of the measure, the state's compliance with federal regulations could be compromised; (2) the fiscal note reflects the amount of federal funding that is at risk; and (3) ultimately, whether the state loses the federal funding is a federal determination. The fiscal note states a fiscal effect of a reduction in federal funds of \$71,106,009 for the 2007-09 biennium, which consists of \$18,306,391 for the child support enforcement (CSE) program and \$52,799,618 for the temporary assistance for needy families (TANF) program; a reduction in federal funds of \$71,938,036 for the 2009-11 biennium, which consists of \$19,138,418 for the CSE program and \$52,799,618 for the TANF program; and a reduction of \$73,103,567 for the 2011-13 biennium, which consists of \$20,303,949 for the CSE program and \$52,799,618 for the TANF program. The fiscal note also states that although undeterminable, there would be an impact on counties due to increased staffing needs at the regional child support enforcement units and county social services offices due to additional staff time needed on future cases, home studies related to fitness hearings, and reprocessing existing cases as they are redone to include parenting plans.

[ATTACH:4](#)