

## FISCAL NOTE

### Requested by Legislative Council

Initiated Measure - Child custody and support

**1A. 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.*

|                | 2007-09 Biennium |             | 2009-11 Biennium             |             | 2011-13 Biennium            |             |
|----------------|------------------|-------------|------------------------------|-------------|-----------------------------|-------------|
|                | General Fund     | Other Funds | General Fund                 | Other Funds | General Fund                | Other Funds |
| Revenues       |                  |             |                              |             |                             |             |
| Expenditures   | \$2,057,000      |             | \$2,497,000 -<br>\$5,741,000 |             | \$2,622,000-<br>\$6,028,000 |             |
| Appropriations | \$2,057,000      |             | \$2,497,000 -<br>\$5,741,000 |             | \$2,622,000-<br>\$6,028,000 |             |

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

| 2007-09 Biennium |        |                  | 2009-11 Biennium |        |                  | 2011-13 Biennium |        |                  |
|------------------|--------|------------------|------------------|--------|------------------|------------------|--------|------------------|
| Counties         | Cities | School Districts | Counties         | Cities | School Districts | Counties         | Cities | School Districts |
|                  |        |                  |                  |        |                  |                  |        |                  |

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis. Attach additional sheets as necessary.*

The passage of this initiated measure could have a significant impact on the judiciary, however, at this time, we are unable to measure that impact. Any estimate by us would be purely speculative. For that reason, we have limited the actual amount of the fiscal note to the known costs of additional judge units and deputy clerks, and an estimated cost for mediator units.

The above number for the 2007-09 biennium includes the cost of 11 mediators and support staff, as well as money for education and training. The estimated ranges above for 2009-11 includes these costs plus the costs for 1-8 judges, 1-10 clerks, and 1-8 reporters. The estimated ranges for 2011-13 were arrived at by increasing the 2009-11 numbers by 5% to account for inflation and miscellaneous increases. As explained below the increase in the number of judges would not necessarily be due solely to the passage of this measure.

Court-facilitated mediation is a requirement of the initiative. There is no provision to pass that cost on to the parties, regardless of their ability to pay. We do not believe it would be appropriate for judges to assume the role of mediator as well as adjudicator.

We propose a minimum of 11 mediator units (mediator, plus 1 support staff per every 2 mediators) will be required to meet the initial demand for services. One mediator would be assigned to each of the 7 judicial districts, with an additional mediator in Williston, Bismarck, Grand Forks, and Fargo. An estimated cost of the 11 mediators plus administrative staff is approximately \$2,027,000.

Because it is a new concept, we would require funds for recruitment and training, initially anticipated as a minimum of 40-hours of specialized training, with on-going continuing education. An estimated cost of education and training is \$30,000.

We are supportive of court-sponsored mediation. We have high hopes that properly trained mediators will be able to resolve highly emotional issues before they reach the adversarial process of a court trial.

We believe that upfront mediation that focuses on the long-term, personal aspects of a divorce will result in a more amicable separation that maintains the benefit of the children as the fulcrum of the relationship. The Alternative Dispute Resolution Committee and the court have been working on this concept. At least initially, there may be a tendency to reject or appeal from the mediator's solution in order to obtain a second chance to argue the case before a judge, with the goal of winning a more favorable outcome.

The addition of court-sponsored mediator units will have an impact on the counties, as they are required to provide adequate facilities for the court.

Under the proposed measure, if parties are unable to reach agreement, the court must make a finding on fitness to parent. In addition, in order to establish child support, the court must make a finding on the basic needs of the child or children. This will necessitate additional hearings, but we are unable to project with any accuracy the number of hearings or the amount of time needed for each hearing.

We do know that currently an estimated 85% of North Dakotans reach agreement in divorce and custody cases without requiring a trial. To some degree, this is because they know upfront what the child support will be. As proposed, the initiative leaves this important issue open to argument. We can be sure that a certain percentage of people will continue to settle their differences in a manner that is both fair to the adults in the relationship while still protecting the welfare of the children involved. We can be equally sure that in a certain percentage of cases, that will not occur.

We believe there will be some confusion as to joint parenting and how parenting time issues are resolved. The provision of equal time between parents may result in poorly designed schedules for children and increased need for court intervention when disputes arise because the parents cannot reach an agreement or having reached an agreement subsequently disagree on its terms or operation.

Currently cases can be re-opened at any time if the parties can show a substantial change in circumstances or danger to the child. The initiated measure removes these basic thresholds and, instead, grants a hearing by right. It is unknown how many litigants will seek a hearing on change of custody as a matter of right if the initiated measure passes.

We anticipate that there may be a substantial increase in the number of child support hearings that are required, but again, have no reliable way to predict the number. It follows there could also be a substantial number of appeals of child support and custody issues, again without any reliable way to predict an actual number.

The subjective "actual cost of the basic needs of the child" standard that is being proposed as the basis for determining child support is apparently subject to a case-by-case determination. There has been a suggestion that the legislature can define this, however, this is an initiated measure, not a proposed constitutional amendment. If approved, the provisions of the initiated measure could not be appealed or amended for seven years after its enactment date, except by a two-thirds vote of the members of both houses. Rather than a legislative definition, it is more likely that the standard will be developed through case law. Case law develops slowly, on a case-by-case basis, in which the Supreme Court is only able to address those issues that are directly before the court in a given case. It may be years before any consistency in establishing child support can emerge.

At the current time, our weighted caseload studies show a statewide judge shortage of five judges. We are not now prepared to ask for those judgeships because we are only beginning to be able to discern the trends in locations where additional judges are necessary. At this point, it would be premature to add additional judges because we do not have a sense of how many more hearings under the initiated

measure will be required or the average length of the hearings. The biennial cost of a judge at current salary levels is approximately \$263,000. The estimated biennial cost for a court reporter for a judge is \$94,000.

Our current weighted staffing studies show a deputy clerk shortage of 7 clerks statewide. We have not requested any additional deputy clerk staff this biennium because it is our hope that we can alleviate at least some of the shortage by sharing staff between counties. We know that additional deputy clerk time will be required to process the paperwork for the increased number of motions and hearings. The biennial cost of a deputy clerk is approximately \$83,000.

If the initiated measure passes, we may need to request additional judge units and deputy clerks in the 2009-2011 biennium. How many and where they will be located will depend upon the actual impact of the initiated measure. In the event that the initiated measure does pass, we will attempt to absorb the need for additional judges and clerks as best as possible, with the understanding that there may be considerable delay in obtaining hearing dates, rendering of decisions, and the processing of paperwork. Changes in family law cannot override the need to continue to provide adequate services in criminal law, juvenile law, probate law, and civil law.

Additional judge units and deputy clerks will have an impact on the counties, as they are required to provide adequate facilities for judges and court reporters.

We currently receive \$1 million in federal IV-D monies that flow through the State Disbursement Unit to offset the costs of providing court services for child support hearings. We are informed the initiated measure could result in a loss of federal funds for the state disbursement unit. If that occurs, these funds would no longer be available to the courts, and the cost of providing current clerk services, plus additional services required because of increased demand for court hearings, would need to be funded through general revenue. However that is not reflected in this fiscal note because we are informed that this potential loss is included in the DHS fiscal note.

**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 Supreme Court receives approximately \$1,000,000 in federal IV-D monies through DHS that would no longer be available if this initiative results in a loss of federal funds. We are informed this potential loss of revenue is reported on the fiscal note prepared by DHS, since they receive the money and pass it through to the courts.

**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.*

A range of potential expenditures includes salaries and benefits for 1 to 8 judges, 1 to 10 additional clerks, 1 to 8 court reporters, and 11 mediators and 5 staff. Training and education is also included.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

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|------------------------|-----------------------|
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