

FISCAL NOTE
Requested by Legislative Council
01/06/2017

Bill/Resolution No.: HB 1164

- 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 1164 creates a new income tax credit for a corporation that reimburses an employee for amounts the employee pays to provide child care for a minor under the legal guardianship of the employee.

- 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.*

Section 1 of the bill allows an income tax credit to a corporation equal to the amount paid to reimburse an employee for child care costs the employee incurs and pays as a legal guardian of a minor. The child care must be provided by a North Dakota-licensed child care provider. The credit is allowed in the tax year the reimbursement amount is paid. If the credit amount is more than the corporation’s tax liability, the corporation may apply the unused portion against its tax liability in subsequent tax years. (Note: It is uncertain if the language “legal guardian of a minor” is intended to mean a court-appointed guardian, which greatly limits the application of the bill, or if the language was intended to be broader in its application, to include parents.)

The credit is limited to corporations that pay North Dakota income tax (which are referred to as “C” corporations). Approximately 11,400 of these corporations currently file a North Dakota income tax return. Of these, it is not known how many of the individuals employed by them would meet the conditions set out in the bill. It also is not known if any of these corporations currently reimburse part or all of their employees’ child care costs, or which corporations would reimburse such costs if this bill is enacted.

If enacted, HB 1164 will potentially reduce state general fund revenues for the 2017-19 biennium. The amount of the reduction, if any, cannot be determined because the information required to make an estimate is either unavailable or is dependent on the future behavior of corporations.

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.*
- 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.*

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 701.328.3402

Date Prepared: 01/13/2017

2017 HOUSE FINANCE AND TAXATION

HB 1164

2017 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1164
1/16/2017
26898

- Subcommittee
 Conference Committee

Committee Clerk Signature

Mary Bruecker

Explanation or reason for introduction of bill/resolution:

A bill relating to a corporate income tax credit for reimbursement of employee child care expenditures.

Minutes:

Attachment 1a, 1b, 2, 3

Chairman Headland: Opened hearing on HB 1164.

Representative Pamela Anderson: Introduced bill. See attached written testimony and fiscal note email #1. (Ended testimony at 3:35) Also discussed the fiscal note. The fiscal note mentions the legal guardian and minor. A legal guardian of a minor is a parent. The fiscal note also states 78.6% of the dollars we collect from corporate income tax comes from out of state corporations; 21% of the dollars come from corporations within North Dakota. One way to look at the fiscal note is if we just said this credit only applies to corporations with a North Dakota address. I struggle with the economic workforce issue by not including all corporations. I would appreciate any thoughts from the committee on this.

Chairman Headland: Are there any questions for Representative Anderson?

Representative Steiner: Is there anything in the bill that requires that they apply it to childcare or that they do a bonus and don't just take the money?

Representative Anderson: The State Tax Department goes through the mechanics of any income tax credit so the employee would have to show the employer that it went to a qualified daycare or childcare center through Human Services.

Chairman Headland: One thing that occurs to me right away is if we start allowing this tax credit we know what happens to the cost of healthcare when companies start reimbursing and paying for health insurance for their employees.

Representative B. Koppelman: In your testimony you talked about an employer having some leeway to use this as an incentive. Do you know if there would be any legal problems with picking and choosing who you wanted to offer healthcare benefits for?

Representative Anderson: I think this would go under more of a bonus and you can offer bonuses to your employees however you wish. We talk about childcare from a workforce issue. The bottom line is we're not going to pay for childcare through the legislature. Businesses and corporations are going to have to be part of doing business. Instead of getting rid of North Dakota corporate income tax we should use some of that to take care of our kids.

Representative B. Koppelman: I presume this would be taxable if it's considered a bonus and not a credit. Wouldn't employers be able to factor this in already with one of their bonuses or incentives they have to incentivize their employees? Some businesses have their own childcare.

Representative Anderson: I think there are a lot of businesses who wouldn't be able to open up their own childcare due to expense and liability. I think it would be income to the employee. A lot of employees where a business may decide to help with childcare are probably not the executives. It would muck up your whole salary structure so this would just be defined for childcare expenses.

Representative Hogan: Are you aware of any other states who do tax credits like this?

Representative Anderson: No. The only thing I could find was the Bank of America gives \$215 a month as reimbursement of childcare to everyone.

Chairman Headland: Are there any further questions? Is there any support for HB 1164?

Andy Peterson, Greater North Dakota Chamber: Distributed written testimony. See attachment #2. (Ended testimony at 12:17)

Chairman Headland: As a tax credit the total amount would be deductible. Couldn't they just add that much to the salaries?

Andy Peterson: You may be entirely correct in that aspect but that's not the bill we're addressing here. If we could do that it would be an excellent opportunity.

Representative Hogan: Do you know how many of the businesses in your organizations provide either onsite childcare or childcare subsidies?

Andy Peterson: That varies depending on the kind of business you're dealing with. The larger and wealthier organizations had more opportunity to do that sort of thing. The smaller organizations that are trying to meet ends are more challenged in doing this kind of thing. I don't have those statistics in front of me.

Representative Hogan: Having a tax credit for a corporation might incentivize some of that creative thinking.

Andy Peterson: I think it may work. I think the caution is the law of unintended consequences. Whenever you put an incentive out there some people would use it responsibly and others may take advantage of it. It may spur some creativity.

Representative Ertelt: What other methods does the chamber recommend to its members to recruit to make up for this workforce shortage?

Andy Peterson: We meet with state chambers from across the country and this is a topic of discussion. There are a variety of things out there so it just depends on the situation.

Representative Ertelt: Would you agree that workforce ultimately comes from having babies?

Andy Peterson: Yes.

Representative Ertelt: Have we tried other methods other than incentivizing people from leaving the home?

Andy Peterson: Yes. I believe we've tried as many as we can.

Chairman Headland: Are there any other questions? Is there further testimony in support?

Jennifer Greuel, Executive Director of Economic Development Association of North Dakota: Distributed written testimony in support. See attachment #3. (Ended testimony at 19:51)

Chairman Headland: I think all of us on the committee understand the problems associated with paying and finding adequate childcare in the state. The corporation is not subsidizing this in any way. The total cost of this bill is passing the cost of childcare onto the state.

Jennifer Greuel, Executive Director of Economic Development Association of North Dakota: We were thinking of it as a creative way to attract people to North Dakota that may seek childcare as a major issue.

Chairman Headland: Is there further testimony in support? Is there any opposition to HB 1164? There are a couple questions for the tax department. This is in no way limited to instate operations only. If you're a corporation that has taxable income in the state of North Dakota without any employees you could still, if you had employees in other states, deduct the cost of childcare on the North Dakota tax form.

Matt Peyerl, Office of State Tax Commissioner: A corporation that files a tax return in North Dakota has some sort of activity here, not necessarily payroll here. The intent of the language would be to reimburse our North Dakota employees for their childcare expenses. I'm not sure if the language is clear in this bill or not.

Chairman Headland: It's not clear to me if it is. If you're an employee that lives here will you have some type of tax document saying that you've received a direct benefit from your employer?

Matt Peyerl: The sponsor's comment about offering it as a one-time bonus or incentive would be a taxable fringe benefit generally includable as wages on a W-2.

Chairman Headland: Are there any other questions?

Representative Grueneich: If the corporation gave a \$3,000 childcare credit then they would claim the \$3,000 and the recipient would benefit \$2,400, if they used a 30% tax bracket, so the corporation would benefit \$600 by each person as a deduction?

Matt Peyerl: I believe the mechanics of it would be different. The employee incurring an expense such as paying a daycare provider and submitting that documentation to the employer then the employer is reimbursing 100% of that back to the employee. Being a tax credit is the compensating component of that.

Chairman Headland: Are there any other questions? Hearing closed on HB 1164. I think this is passing the cost of childcare on to the state, at least at the corporate level where they are going to fund this. I'm going to support a do not pass.

Vice Chairman Dockter: I also support a do not pass. Different companies are getting creative. Private sector and private companies can work together to come up with solutions without the state having to give a tax credit.

Representative Olson: Do we presently provide a tax deduction for childcare expenses made by any individual?

Matt Peyerl: The deduction that's allowed right now goes through your federal return and flows through the North Dakota return as our starting point. There's not a separate dependent care expense at the state level but if you participate in a flexible spending account and exclude that from your taxable income that exclusion flows through to your North Dakota return and is similarly excluded.

Representative Olson: At the federal level childcare expenses are deductible?

Matt Peyerl: A lot of employers have qualified plans that you can pay your healthcare expenses through a flexible spending plan or dependent care expenses through a flexible spending plan.

Representative Olson: That sounds the best way for something like this to happen since federal income tax is the lion's share of where we're being taxed anyway.

Representative Hogan: I think this is really a family friendly bill that recognizes that employers would be a partner. I think we would need to modify it to assure it is for North Dakota based employees and employers. I think this would expand our pool. I'm strongly supporting this bill.

Chairman Headland: You would support this bill for a corporate credit placing the full cost of the burden on the state? What about individuals who don't work for corporations but work for small businesses that won't have that same advantage of their burden being taken over by the state?

Representative Hogan: I think many of our tax policies are not applied consistently across all jurisdictions, particularly economic development. If our goal is workforce development and appropriate childcare I think this is one major tool that would expand the resource in our community. It's good public policy. As a nation we want to have public private partnerships and this is a way to enhance that.

Chairman Headland: Is there any other discussion?

Representative Olson: It's not North Dakota's fault that families can't afford childcare. The lion's share of our income taxes are going to the feds. We need to look at what is causing the problem that requires both parents to be working and simultaneously we find childcare unaffordable. I don't think it has anything to do with policy of the state of North Dakota.

Representative Trottier: If my wife makes \$20,000 a year, we have two children in daycare, and we're paying \$15,000 in daycare, how much of that \$15,000 is deductible on the federal income tax?

Matt Peyerl: That flexible spending plan is \$5,000 per child so you could funnel \$5,000 per child through that. What you don't funnel through you can get an income tax credit for it at the federal level for dependent care expenses which is equivalent of another \$1,000 per child. You could maybe get the equivalent of \$12,000 deductible through the federal deductions and credits.

Chairman Headland: Is there any other discussion?

Vice Chairman Dockter: **MADE A MOTION FOR A DO NOT PASS.**

Representative Olson: **SECONDED.**

ROLL CALL VOTE: 11 YES 2 NO 1 ABSENT
MOTION CARRIED

Representative Olson will carry this bill.

Date: 1-16-17
Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1164

House Finance and Taxation 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. Dockter Seconded By Rep. Olson

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland	✓		Representative Hogan		✓
Vice Chairman Dockter	✓		Representative Mitskog		✓
Representative Ertelt	✓				
Representative Grueneich	✓				
Representative Hatlestad	✓				
Representative Howe	✓				
Representative Koppelman	✓				
Representative Olson	✓				
Representative Schobinger	✓				
Representative Steiner	✓				
Representative Toman	✓				
Representative Trottier	✓				

Total (Yes) 11 No 2

Absent 1

Floor Assignment Rep. Olson

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

REPORT OF STANDING COMMITTEE

HB 1164: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **DO NOT PASS** (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1164 was placed on the Eleventh order on the calendar.

2017 TESTIMONY

HB 1164

#1a
1-16-17
HB 1164

Testimony in Favor of House Bill 1164

I am Pamela Anderson, Representative from District 41, Fargo, North Dakota. Childcare in North Dakota is a huge workforce issue- access, affordability and quality. We need to retain and recruit qualified workers across the state, increase the pool of skilled workers and this bill will help do that. The percent of children in North Dakota 0 to 5 with both parents in the workforce is 72.2%, 6 to 13, 78.9%. If families cannot find or afford childcare, they cannot be in the workforce.

Vision West suggests that a solution for our childcare workforce issue and I quote "The government and private business need to provide subsidies for childcare and tax incentives that assist the employees;"

HB 1164 says if a corporation reimburses an employee for qualified child care expenditures it is allowed a credit against their North Dakota corporate income tax. The business would have total control over who they reimburse and how much they reimburse and why they reimburse. We have many, many corporate income tax credits and I feel assisting with employee's childcare would rise to the top of my list for economic development.

According to the attached email from the Tax Commissioner's Office, 9,279 corporations paid \$85,287,229 in corporate income tax, of those 3,216 have a North Dakota mailing address and paid \$18,27,463.

As you can see from the sponsors, there is bi-partisan support for this bill. I know we have many challenges this session with the budget but helping corporations with one of their more challenging work force issues and helping employees with childcare expense is a win-win. I would be happy to answer any questions. Thank you.

#16
1-16-17
HB 1164

Anderson, Pamela K.

From: Peyerl, Matthew J.
Sent: Wednesday, January 11, 2017 8:44 AM
To: NDLA, HMin-Asst - Grabinger, Alexis
Subject: Corporate Income Tax - stats - HB 1164

Alexis –

Per our conversation this morning, below is the corporate income tax data we discussed –

Tax Return Year 2015

Total Number of Returns Filed 9,279
Total Net Tax Liability Reported \$85,287,229

Number of Returns Filed – ND mailing address 3,216
Net Tax Liability Reported – ND mailing address \$18,271,463

This data is as of 1/2/17 and is approximately 90% of a full year of tax filings, as there are some corporations that have a fiscal year-end later than 12/31/15 and an extended due date which have not yet filed the 2015 return.

If you have any follow up questions, feel free to let me know.

Matt Peyerl
Associate Director, Tax Administration
ND Office of State Tax Commissioner
701-328-2706

**Testimony of Andy Peterson
Greater North Dakota Chamber of Commerce
HB 1164
Finance & tax
Craig Hedland - Chair
January 16, 2017**

Mr. Chairman and members of the committee, my name is Andy Peterson and am here today representing the Greater ND Chamber, local chambers of commerce, and other business associations throughout north Dakota. Some members of the media describe the GNDC as the most prominent business organization in North Dakota. As a group we stand in support of HB 1164 and urge a do pass from the committee on this bill.

This bill, as nearly as I can tell, allows for corporations to gain a tax credit if they reimburse, or pay for, child care for their employees. In certain cases this may be the deciding factor in a parent working or staying home due to high childcare costs. It also allows the free market to sort out the details of who might be providing the care and if a company wants to use the credit to increase workforce.

Workforce is the key to the future when deciding where to invest their dollars in the coming decades. This bill allows companies to directly invest in their future workforce, and it allows, in some cases, employees the ability to work and increase their station in life.

If possible, given the current fiscal situation, a do pass on HB 1164. Thank you and I'll stand for any questions.



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HB 1164

**Testimony of Jennifer Greuel, Executive Director
Economic Development Association of North Dakota (EDND)
In Support of HB 1164
January 16, 2017**

Chairman and members of the House Finance and Taxation Committee:

My name is Jennifer Greuel and I am the executive director of the Economic Development Association of North Dakota. I am testifying in support of HB 1164.

EDND represents more than 80 large and small and rural and urban economic development organizations on the front line of growing businesses and communities in North Dakota. The primary purpose of the organization is to support the creation of new wealth and the diversification of North Dakota's economy.

Workforce availability is the most significant challenge facing North Dakota businesses, limiting the growth potential of the state's economy. EDND supports the development of workforce attraction, development and retention strategies that address the needs of the state's companies.

Childcare availability and cost is a major issue facing young families making up North Dakota's potential workforce pool. Childcare expenses can result in fewer workers, detracting from the state's productivity and ability to attract new talent into the state. According to Childcare Aware, the average cost of sending a child to a daycare center in North Dakota is more than \$8,000 per year. For a single parent or a married family at the poverty line with two children, they estimate that expense at almost 80 percent of the family's income.

#3 p. 2012
1-16-17
HB 1164

HB 1164 encourages companies to use childcare reimbursement as a creative way to attract and retain talent.

Thank you for the opportunity to address the committee and express support for this bill and for your continued commitment to working together to address North Dakota's workforce needs.