2009 SENATE HUMAN SERVICES

SB 2162

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2162

Senate Human Services Committee

☐ Check here for Conference Committee

Hearing Date1-13-09

Recorder Job Number: 6900, 6920

Committee Clerk Signature Mary K Monson

Minutes:

Senator J. Lee opened the hearing on SB 2162 relating to self declaration of an individual who provides early childhood services, licensing and registration of early childhood services providers, investigation of early childhood services providers, denial or revocation of request for early childhood services provider licensure or registration, and resource referral services.

SB 2162 has a fiscal note.

Jonathon Alm, Attorney with the Dept. of Human Services, appeared in support of SB 2162. See attachment #1.

Senator J. Lee wanted clarification on the amendment on page 5 pertaining to "six or seven".

Mr. Alm explained that a person can have up to five children without a license. They need to become licensed when they have six. The family child care license only applies to up seven children. Past seven they go to group. Beyond that is child care centers and others.

Senator Dever asked if kindergarten and preschool services approved through the DPI now, referring to page 2 subsection 7d.

Mr. Alm did not have the answer.

There was no opposition to SB 2162

Sandy Bendewald, Stutsman County Social Services, was neutral (attachment #2).

Senator J. Lee asked about excluding people involved with kinship care.

Ms. Bendewald answered that there would be more than just kinship care.

Senator J. Lee asked Ms. Bendewald to visit with Mr. Alm about her concerns so they might be included in any amendments that might be addressed.

The hearing on SB 2162 was closed.

Senator Heckaman didn't see self declaration as a problem. She thought it was pretty limiting, especially in the rural areas, to only be able to do it three times.

The committee discussed facility closings both in the rural and urban areas. Lack of business plans plays an important part in that along with such things such as recruitment and retention of day care providers.

Page 5, line 17, was discussed dealing with the number of children under the age of 24 months.

The fact that the providers own children count was discussed. This would put many providers over the limit before and after school.

Self declaration was discussed. There was confusion about what it actually means and what the purpose would be. It is voluntary. It can only be done for three years then they need to be licensed if they want to continue doing it. Currently there is no reference to self-declaration, it is just being brought it.

Senator J. Lee recessed the committee.

Job #6920

Senator J. Lee brought the committee back to order.

Again, they discussed the language relating to the number of children under 24 months and the care givers children counting. Before and after school situations were discussed regarding the care givers children.

Senator J. Lee suggested asking the stakeholders to participate in helping with the after school problems. She also asked to have Mr. Alm appear again to answer some of the committees concerns.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2162

Senate Human Services Committee

☐ Check here for Conference Committee

Hearing Date: 1-14-09

Recorder Job Number: 6991, 7026

Committee Clerk Signature Mary K Monson

Minutes:

Senator J. Lee opened SB 2162 for more discussion.

Funding was discussed and it was reported that the money for SB 2123 is included in this bill. Part b of the fiscal note says this bill requires applicants of early childhood services. That doesn't necessarily mean a day care. It was felt the two bills should be looked at together.

Job #7026

Senator J. Lee asked Jonathan Alm to address committee concerns about such thing as self declared, care givers children who return from school and being counted in the number, and after school care for an older sibling of a child being cared for.

Mr. Alm explained that isn't being changed. This proposal is how children in self declarations would be counted. Part of the reason to count all children in the home was to look at the safe number a provider can provide care, supervision, and education to. He also addressed additional problems such as abuse.

Section 2 is to clarify so that all providers know the exact number of kids they can have in their care.

Senator J. Lee asked what could be done to permit a caregiver to have her own children present without being in the count after school.

Mr. Alm explained that under the current licensing a family child care provider can have two extra additional children before and after school. Other licensings don't have that.

He talked a little about the history of self declarations.

Senator J. Lee asked about the concern that this would go underground.

Mr. Alm said part of the concern was that the self-declarations wouldn't be licensed anymore. A person can care for five kids without being licensed. Self declaration is five kids or less but allows for food stamps subsidy and child care assistance.

To be on lists such as child care resource and referral lists they have to be totally licensed.

An amendment was discussed about exempting approved relatives wanting to be self declared to not being limited to the three years.

Addressing the CPR/first aide requirements he said they are looking at issuing a conditional license for a self declaration for up to six months to allow them time to become certified in first aide and CPR. This is because in smaller communities classes are sometimes only offered a couple times a year.

The fiscal notes for SB2123 and SB 2162 were discussed. Attachment #3 provided some clarification on what was included in them.

Attachment #4 provided information on numbers ND child care providers.

Senator J. Lee provided the committee with information from Kim Jacobson, Trail County Social Service, in favor of SB 2162. See attachment #5.

The committee was adjourned.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2162

Senate Human Services Committee

☐ Check here for Conference Committee

Hearing Date: 1-19-09

Recorder Job Number: 7238

Committee Clerk Signature Mary K Monson

Minutes:

Senator J. Lee opened committee work on SB 2162. She asked Mr. Alm to address the proposed amendments.

Mr. Alm explained the amendment dealing with self declarations. (Attachment #6)

Senator J. Lee pointed out that the issue about children in the family coming home after school still hadn't been addressed.

Mr. Alm explained that is already addressed on pg. 3 subsection 8 for family child care facility.. This doesn't address a self declaration holder having their children coming home after school.

Discussion turned to the money involved in this bill. There was still confusion on the funding and which bill the money is in.

The committee was adjourned.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2162

Senate Human Services Committee

☐ Check here for Conference Committee

Hearing Date: 1-20-09

Recorder Job Number: 7353

Committee Clerk Signature Mary K Morson

Minutes:

Senator J. Lee opened SB 2162 for review of revised amendments from Mr. Alm.

(Attachment #7)

Senator Erbele moved to adopt the amendment drafted by Jonathon Alm.

Seconded by **Senator Dever**.

Roll call vote (5-0) was left open for **Senator Heckaman**. **Final vote 6-0-0. Amendment adopted.**

Senator Erbele made a motion for a **Do Pass as Amended. and Rerefer to Appropriations.**

Seconded by **Senator Dever**.

Roll call vote (5-0) was left open for **Senator Heckaman**. **Final vote 6-0-0. Motion carried**.

Carrier is **Senator Dever**.

FISCAL NOTE

Requested by Legislative Council
05/01/2009

Amendment to: Engrossed SB 2162

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$82,904	$0	$82,904
Expenditures	$0	$0	$127,953	$82,904	$129,392	$82,904
Appropriations	$0	$0	$127,953	$82,904	$129,392	$82,904

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill relates to criminal history record checks for individuals who provide early childhood services, Department of Human Services employees and service providers.

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 2 of the bill approves the addition of the following criminal history checks: Department of Human Services (DHS) employees, DHS providers and their employees, and providers and applicants for early childhood services licensure, nonlicensed holders of self-declaration and in-home providers, as well as staff members of early childhood services programs.

Section 28 includes 2 FTE's for the Office of Attorney General, which should be changed to 1 FTE.

Section 29 reflects a $210 856 general fund appropriation to the Office of Attorney General, which should be changed to $127,953. The $82,904 special fund appropriation is to accept and pay the FBI fingerprint check costs from the Department of Human Services.

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 of Human Services will pay this office for the $17.25 FBI fingerprint check cost for each record check requested.

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.*

Expenditures include 1 FTE in the Office of Attorney General to process the criminal record checks. It is anticipated Office of Attorney General staff will process an additional 4,800 record checks during the 2009-11 biennium.

Also included are two .5 FTE's and 1 full-time temporary staff at the Department of Human Services to handle the child abuse and neglect checks and review the applications prior to sending them to the Office of Attorney General for the criminal history record checks. The Department of Human Service's appropriation bill includes $308,496 from the general fund for these staff and to pay the FBI fingerprint check costs.

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 is also included in the executive budget or relates to a continuing appropriation.*

The Executive Recommendation included funding for the Department of Human Services expenditures in its appropriation bill, which has remained in that bill. The Executive Recommendation included funding for the Office of Attorney General in its appropriation bill. The funding and 5.5 FTE positions for the Office of Attorney General were removed in the House.

Section 28 includes 2 FTE's for the Office of Attorney General, which should be changed to 1 FTE.

Section 29 reflects a $210 856 general fund appropriation to the Office of Attorney General, which should be changed to $127,953. The $82,904 special fund appropriation is to accept and pay the FBI fingerprint check costs from the Department of Human Services, which is consistent with the process followed for other requested record checks.

Name:	Kathy Roll	**Agency:**	Office of Attorney General
Phone Number:	328-3622	**Date Prepared:**	05/01/2009

FISCAL NOTE

Requested by Legislative Council
04/08/2009

Amendment to: Engrossed SB 2162

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$0	$0	$0
Expenditures	$0	$0	$1,250,498	$0	$935,642	$0
Appropriations	$0	$0	$1,250,498	$0	$935,642	$0

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill relates to criminal history record checks for individuals who provide early childhood services, Department of Human Services employees and service providers.

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 2 of the bill approves the addition of the following criminal history checks: Department of Human Services (DHS) employes, DHS providers and their employees, and providers and applicants for early childhood services licensure, nonlicensed holders of self-declaration and in-home providers, as well as staff members of early childhood services programs and household members of a residence out of which early childhood services are provided.

The change in expenditures and appropriations relates to a revision in DHS salaries needed in the 2011-13 biennium.

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.*

N/A

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.*

Expenditures include 5.5 FTE's in the Office of Attorney General to process the criminal record checks as well as Federal Bureau of Investigation fees. Also included are two .5 FTE's and 4 temporary staff at the Department of Human Services who will handle the child abuse and neglect checks and review the applications prior to sending them to the Office of Attorney General for the criminal history record checks. It is anticipated Office of Attorney General staff will process an additional 18,600 record checks during the 2009-11 biennium.

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 is also included in the executive budget or relates to a continuing appropriation.*

The Executive Recommendation included funding for the Department of Human Services expenditures in its appropriation bill and for the Office of Attorney General in its appropriation bill. The funding and 5.5 FTE positions for the Office of Attorney General were removed in the House.

Name:	Kathy Roll	**Agency:**	Office of Attorney General
Phone Number:	328-3622	**Date Prepared:**	04/08/2009

FISCAL NOTE

Requested by Legislative Council
01/23/2009

Amendment to: SB 2162

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$0	$0	$0
Expenditures	$0	$0	$1,240,098	$0	$925,292	$0
Appropriations	$0	$0	$1,240,098	$0	$925,292	$0

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill relates to individuals who provide early childhood services. Section 9 of this bill requires background investigations of applicants for early childhood services, their staff members, and household members of a residence out of which early childhood services are provided.

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 9 of this bill requires applicants for early childhood services, licensure or self-declaration or in-home provider, as well as staff members of early childhood services programs and household members of a residence out of which early childhood services are provided to submit fingerprints for child abuse and neglect and criminal history background checks.

The change in expenditures and appropriations relates to a revision in DHS salaries needed in the 2011-13 biennium.

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.*

N/A

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.*

Expenditures include 5.5 FTE's in the Office of Attorney General to process the criminal background checks as well as the fees that will need to be paid to the Federal Bureau of Investigation. Also included are two .5 FTE's and 4 temporary staff at the Department of Human Services who will handle the child abuse and neglect checks and review the applications prior to sending them to the Office of Attorney General for the criminal background check. It is anticipated Office of Attorney General staff will process an additional 18,000 background checks during the 2009-11 biennium.

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 is also included in the executive budget or relates to a continuing appropriation.*

The Executive Recommendation included funding for the Department of Human Services expenditures in its appropriation bill and for the Office of Attorney General in its appropriation bill.

Name:	Kathy Roll	**Agency:**	Office of Attorney General
Phone Number:	328-3622	**Date Prepared:**	01/23/2009

FISCAL NOTE

Requested by Legislative Council
01/13/2009

REVISION

Bill/Resolution No.: SB 2162

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$0	$0	$0
Expenditures	$0	$0	$1,240,098	$0	$885,396	$0
Appropriations	$0	$0	$0	$0	$0	$0

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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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 9 of this bill requires applicants for early childhood services, licensure or self-declaration or in-home provider, as well as staff members of early childhood services programs and household members of a residence out of which early childhood services are provided to submit fingerprints for child abuse and neglect and criminal history background checks.

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.*

N/A

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.*

Expenditures include 5.5 FTE's in the Office of Attorney General to process the criminal background checks as well as the fees that will need to be paid to the Federal Bureau of Investigation. Also included are two .5 FTE's and 4 temporary staff at the Department of Human Services who will handle the child abuse and neglect checks and review the applications prior to sending them to the Office of Attorney General for the criminal background check. It is anticipated Office of Attorney General staff will process 18,000 background checks during the 2009-11 biennium.

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 is also included in the executive budget or relates to a continuing appropriation.*

The Executive Recommendation included funding for the Department of Human Services expenditures in its appropriation bill and for the Office of Attorney General in its appropriation bill.

Name:	Kathy Roll	**Agency:**	Office of Attorney General
Phone Number:	328-3622	**Date Prepared:**	01/12/2009

FISCAL NOTE

Requested by Legislative Council
01/05/2009

Bill/Resolution No.: SB 2162

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$0	$0	$0
Expenditures	$0	$0	$1,808,065	$0	$1,133,497	$0
Appropriations	$0	$0	$0	$0	$0	$0

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill relates to individuals who provide early childhood services. Section 9 of this bill requires background investigations of applicants for early childhood services, their staff members, and household members of a residence out of which early childhood services are provided.

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Section 9 of this bill requires applicants for early childhood services, licensure or self-declaration or in-home provider, as well as staff members of early childhood services programs and household members of a residence out of which early childhood services are provided to submit fingerprints for child abuse and neglect and criminal history background checks.

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.*

N/A

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.*

Expenditures include 5.5 FTE's in the Office of Attorney General to process the criminal background checks as well as the fees that will need to be paid to the Federal Bureau of Investigation. Also included are two .5 FTE's and 4 temporary staff at the Department of Human Services who will handle the child abuse and neglect checks and review the applications prior to sending them to the Office of Attorney General for the criminal background check. It is anticipated Office of Attorney General staff will process 18,000 background checks during the 2009-11 biennium.

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 is also included in the executive budget or relates to a continuing appropriation.*

The Executive Recommendation included funding for the Department of Human Services expenditures in its

appropriation bill and for the Office of Attorney General in its appropriation bill.

Name:	Kathy Roll	**Agency:**	Office of Attorney General
Phone Number:	328-3622	**Date Prepared:**	01/12/2009

Adopted by the Human Services Committee
January 20, 2009

1-21-09

PROPOSED AMENDMENTS TO SENATE BILL NO. 2162

Page 5, line 15, remove the overstrike over "~~six or~~"

Page 5, line 16, remove "up to"

Page 5, line 17, replace "four" with "three"

Page 10, line 28, after "year" insert ", provided, however, that if a provisional self-declaration document is issued to allow an applicant to certify in cardiopulmonary resuscitation and first aid, the provisional document may not be in effect longer than six months. The effective date of a provisional document is the effective date of a full self-declaration document upon the applicant meeting the conditions of the provisional document"

Page 10, line 29, after "times" insert ", provided, however, that a self-declaration holder who is also an approved relative provider for purposes of child care assistance is exempt from the three times limitation if the self-declaration holder does not provide early childhood services to nonapproved relatives"

Renumber accordingly

Date: 1-20-09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2162

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 1-20-09 - Jonathan Alm

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended ☐ Rerefer to Appropriations

☒ Adopt Amendment ☐ Reconsider

Motion Made By Sen. Erbele Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman	✓	
Senator Robert Erbele, V.Chair	✓		Senator Richard Marcellais	✓	
Senator Dick Dever	✓		Senator Jim Pomeroy	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment

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

Date: 1-20-09

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2162

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 98191.0101 Title .0200

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended ☒ Rerefer to Appropriations

☐ Adopt Amendment ☐ Reconsider

Motion Made By Sen. Erbele Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman	✓	
Senator Robert Erbele, V.Chair	✓		Senator Richard Marcellais	✓	
Senator Dick Dever	✓		Senator Jim Pomeroy	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Dever

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

REPORT OF STANDING COMMITTEE

SB 2162: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2162 was placed on the Sixth order on the calendar.

Page 5, line 15, remove the overstrike over "~~six or~~"

Page 5, line 16, remove "up to"

Page 5, line 17, replace "four" with "three"

Page 10, line 28, after "year" insert ", provided, however, that if a provisional self-declaration document is issued to allow an applicant to certify in cardiopulmonary resuscitation and first aid, the provisional document may not be in effect longer than six months. The effective date of a provisional document is the effective date of a full self-declaration document upon the applicant meeting the conditions of the provisional document"

Page 10, line 29, after "times" insert ", provided, however, that a self-declaration holder who is also an approved relative provider for purposes of child care assistance is exempt from the three times limitation if the self-declaration holder does not provide early childhood services to nonapproved relatives"

Renumber accordingly

2009 SENATE APPROPRIATIONS

SB 2162

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2162

Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 01-29-09

Recorder Job Number: 8080

Committee Clerk Signature Rose Laning

Minutes:

Chairman Holmberg called the committee hearing to order at 8:30 am in regards to SB 2162 concerning self-declaration of an individual who provides early childhood services.

Roll call was taken. All committee members were present. **Senator Fischer** absent.

Chairman Holmberg reminded everyone they will be working off the engrossed copy because the Senate Human Services committee made changes – there are two fiscal notes. The funding for the department of human services expenditure is in its appropriations bill and the office of attorney generals funding is in its appropriations bill. Even though it's a human service bill, the fiscal note was prepared by the attorney general's office.

Jonathan Alm, Attorney, Department of Human Services

(Written attached testimony # 1)

1. The bill clarifies definitions of self- declaration.
2. Defines the number of children required for certain licenses.
3. Civil Penalties
4. Prerequisites for Issuance of License
5. Self-Declaration and in-Home Providers

6. Investigations and background checks.

Senator Christmann: What section is the mandatory part?

Jonathan Alm: Section 9.

Senator Mathern: In the final version that you have before us, is the department in support of entire bill?

Jonathon Alm: Yes, the department does support this bill.

V. Chair Grindberg attended a meeting in Fargo over the concern for childcare and support for those having a tough time financially, and not enough providers with infant care. This committee has discussed about the business side of running child care business and the challenges that poses. The continuing administrative paperwork, bureaucracy and all the expense and time that goes into licensing, the intent is much needed because we want to protect, but what is your sense of another layer or criteria and more administrative burden on our providers? Has that all been talked through in policy committee?

Jonathon Alm: We currently look at the Supreme Court website, review the criminal background on the providers, but they would be required to provide the finger prints. It would go through Bureau of Criminal Investigations (BCI), and we would receive it back and interpret underneath our rules whether or not they would be disqualified as a provider or if we have issue with provisional license. We are going to look at getting fingerprint scanners. That way the fingerprint could be electronically transferred. I don't anticipate it being a lot of extra effort or red tape.

V. Chair Grindberg asked how long the process would take and Jonathon Alm replied that when they receive the background check and sent to BCI, it takes between 24-48 hours.

Senator Warner: Can you give me an order of magnitude estimate about how many people this is going to fingerprint?

Jonathon Alm: It is anticipated over all in the next two years, 18,000. Those numbers were calculated by the current individuals that we licensed that have self-declarations, in-home providers. There is an average turnaround of about 25 % per year which amounts to about 9,000 per year for background checks. It will drop off initially after two years down to 3600 people in 2011.

Senator Mathern: With this background check – and it seems fairly comprehensive, would it detect someone with a felony on the record in Florida?

Jonathon Alm: It is my understanding from the FBI background check, it would. It will register the individual as committing a felony.

Chairman Holmberg asked for anymore testimony on SB2162.

Senator Christmann: I thought there would be advocates lined up here who can explain this, but can you explain the categories of what daycares would need to finger print their people and get licensed under this. What changes do you see in the daycare industry?

Jonathon Alm: This bill allows us to fingerprint self-declarations which can provide up to five children. They are typically inside the home of the provider. That would also include family members that were adult. If it's in the home, we'd be looking at household members. If they stay in a facility, we'd scan the facility. They might have employees. Then there is the out care center which is the largest and that normally includes all the employees when they are outside the home. Currently right now, a lot of centers voluntarily submit their employers to a fair check registry which does the FBI background checks. That insures they have no criminal convictions that would bar them for employment purposes.

Senator Christmann: Self declarations – those are the daycares that I think of people that have a child or two at home and so decide to take care of 3-4 others and make a little business

if it for a few years and this would require them to be fingerprinted and have a background check. That's what you're calling self-declarations?

Jonathon Alm: Self-declaration – In this state you can be unlicensed childcare provider and care for up to five children. A self-declaration allows someone to care for five children but also apply and receive DPI benefits, food program benefits for children under their care.

Senator Warner: What's the other side of this equation, the costs and how many FTEs this is going to take do 2000 background checks?

Kathy Roll, Financial Administrator, Office of Attorney General

In the Attorney General's service budget, there are two half-time FTEs and in temporary planning to take care of the bubble, which is the bigger number that will hit the system in the first two years that will need to have the background checks. The attorney general's office asks for 5.5 FTEs to perform the background checks.

Senator Robinson: This is limited to this one project, 5.5FTEs we're hiring fulltime to handle the bubble?

Kathy Roll: We can do about 2000 background checks a year. We do need to have those people and they need to be specifically trained and that training is expensive. It takes time. Obviously then we'd also have people in our current staff who are trained.

Chairman Holmberg: Does the appropriation that is listed here, it says the appropriation is actually included in the budgets and here it says $1.2 million this biennium. Does that include salaries and benefits for those people in the Attorney General's office and the Department of Human Services?

Kathy Roll: Yes it does.

Senator Robinson: Last session we passed a very comprehensive background check bill and we put on some staff because of the bubble. Are those staff not positioned to have maybe

a workload that has lessened that they couldn't work part of their daily responsibilities to this or are they still in that bubble from the last session, 2007.

Kathy Roll: Those people are very busy doing the work that was included in that comprehensive bill from last session and we don't see that changing. Some of the phone registration was permissive and some required. So those who were permissive have slowly been coming on and we've been addressing that and hiring people as we need them. But we expect those to be on and requesting the background checks this biennium so that doesn't allow for those staff to do anything else.

Senator Robinson: So with those 5 FTEs would you hire those employees as they are needed? As we transition into this thing?

Kathy Roll: We hope we won't have that immediate workload. What we want to do is hire those people as anticipate we're going to need them. If those were required immediately, we'd hire immediately.

V. Chair Bowman: What is the percentage where they do background checks and they actually find someone they can't hire?

Kathy Roll: I don't think we have that answer.

V. Chair Bowman: It shouldn't be too hard to figure out. If you do 2000 in a year and two of them are rejected.

Kathy Roll: We don't make that decision. We provide that information to the employer and they make the decision.

Jonathon Alm: We do our own through the ND court system. It is more than a couple that we reject or deny. It's just the providers that are applying. Some of those are sexual offenses, assault offenses, more "crimes against person" offenses so we do weed out some of those, but there is a lot of population on either side of the state that we can't check.

Senator Kilzer: DO you have any reason to suspect that some daycare centers that have a shady background are staying unlicensed and staying under five children just to avoid the criminal background check?

Jonathon Alm: We don't have any way of checking or any regulatory authority of those individuals. There might be some instances where they were self-declaration denied.

Senator Kilzer asked if there was a high degree of suspicion, would they be able to do something and **Jonathon Alm** replied that under current legislation, there is nothing they can do unless legislative change is made in the bill. If someone does apply and is denied, sometimes we do send out letters to the parents if they are providing care. We consult and may revoke that license. The parents receive notice of that. The parents can decide if they want to continue to go with that provider or not. We also encourage parents to check out the ND Supreme Court website. There is also child care resource and referral that they can turn to and ask whether or not this provider has any background or what the status or how are they as a provider. There are ways and means that parents can get, but as far as under the current law, we just don't have any authority over those individualists.

Chairman Holmberg asked for other testimonies. Hearing none, he closed the hearing on SB 2162.

V. Chair Bowman: Is this all new? I thought we did something last session.

Senator Christmann: It's a state check, but this would be national.

Senator Mathern: That's why I asked the question about someone from Florida and which records are looked at. Someone could have charge for pedophilia in MN and we don't know about it.

Chairman Holmberg said the money is in House so we need to think about it.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2162

Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 2-10-09

Recorder Job Number: 2162

Committee Clerk Signature

Minutes:

Chairman Holmberg opened the discussion on SB 2162 regarding background checks.

Senator Mathern stated this is a bill and the money is over there. This is a pretty important legislation concerning background checks. The money is in governor's budget.

Chairman Holmberg the money is all across all we are doing is moving the concepts along.

Discussion was held about the repercussions of this bill, the requirements for the background checks, the day care centers that need to do checks, the concern of some centers closing,

Senator Mathern moved a do pass on SB 2162; Senator Warner seconded. A roll call vote was taken resulting in 9 yes, 4 no, and 1absent. The bill will be carried by Senator Dever in the Human Services Committee.

Chairman Holmberg closed the discussion on SB 2162.

Date: 2/10/09
Roll Call Vote #:

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2162

Senate _____ Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☑ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Mathern Seconded By Warner

Representatives	Yes	No	Representatives	Yes	No
Senator Fischer	✓		Senator Warner	✓	
Senator Christmann		✓	Senator Robinson	✓	
Senator Krebsbach	✓		Senator Krauter	✓	
Senator Bowman	✓	✓	Senator Lindaas		
Senator Kilzer	✓		Senator Mathern	✓	
Senator Grindberg	✓		Senator Seymour	✓	
Senator Wardner		✓			
Chairman Holmberg		✓			

Total Yes 9 No 4

Absent 1

Floor Assignment Policy Committee Human Services

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

REPORT OF STANDING COMMITTEE

SB 2162, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman) recommends **DO PASS** (9 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2162 was placed on the Eleventh order on the calendar.

2009 HOUSE HUMAN SERVICES

SB 2162

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2162

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: March 3, 2009

Recorder Job Number: 10040

Committee Clerk Signature Vicky Crabtree

Minutes:

Chairman Weisz opened the hearing on SB 2162.

Jonathan Alm, attorney for DHS: Testified in support of bill. **See Testimony #1.**

Chairman Weisz: We've had the self declaration before and it keeps coming back trying to get rid of it. Do you have data that supports that they are at greater risk at the self declared as they are in the licensed facilities? I have yet to see any data shows (inaudible) complaints with those providers. Have you got information to justify why you are trying to eliminate them?

Jonathan Alm: I did and believe left that in my office. The self declarations for denial and revocation are issued more often than licensed providers. We see more issues of children being abused in those centers and injuries occurring in those centers. The department is not looking at reducing day care providers.

Chairman Weisz: How many additional background checks? How many are we doing now?

Jonathon Alm: Currently we do voluntary criminal background checks. I believe there is 150 people listed on that.

Rep. Conrad: If a person leaves one center and goes to another, does there criminal background check follow them?

Jonathan Alm: One time check and required they attest to they have never been charged with any criminal activity.

Rep. Porter: Page 5, Section 2, with the expansion of the new language, does that include the at home facilities, say a grandchild comes by after school, that would have to be counted as one child then?

Jonathan Alm: If grandma held the license she would be able to have that child underneath her two child. If she was a self declaration holder that child would be counted as a child underneath her 5 limit.

Rep. Porter: Your comments on page 6, of about a modest civil penalty increase from $50 - $200. That's fairly high to me along with all of your fee increases inside of this bill.

Jonathan Alm: The increase is really to address some of the big problems that we might see.

Rep. Porter: It doesn't say in the bill that the department promises to use only in egregious cases. And the civil penalty is on top of that person. Isn't there a criminal penalty that is already available to the department?

Jonathan Alm: You are looking at the $200 increase for somebody provided services without being licensed. That would be addressing those individuals who aren't licensed and providing 15 kids. We have not prosecuted anybody in the last year.

Rep. Porter: My other concern is it is not a civil penalty that is imposed by a court, it is a civil penalty imposed by the department and then on line 28, the department gets to keep any civil penalties it collects. That's like telling a highway patrolman going down the road saying you can keep any speeding tickets from 5-10 miles over the speed limit, you can put those in your pocket, but then anything over 10 miles an hour you have to turn back into the courts. That is not the way we do business in the state.

Jonathan Alm: you are correct and the law says we can collect it and we can keep it for investigating and pursuing the action. Would that cover all the cost, I don't know.

Rep. Holman: How did you come up with that number for criminal background checks?

Jonathan Alm: Numbers came up with 14,426 providers and employees that was included in this. There is an average turnaround rate of 25% and that's where we came up with $18,000.

Chairman Weisz: The 1500 that are currently being done now. How many of those are kicking something up?

Jonathan Alm: Last week we had two out of Grand Forks that had assault charges.

Rep. Conrad: Are you going to collect those number so we can see the statistics. It would be very helpful.

Jonathan Alm: We could.

Rep. Porter: On page 12 we are expanding the individuals who need the criminal background check to household members. What is the definition of a household member?

Jonathan Alm: It is listed on page 3, line 19.

Rep. Porter: Do they have to notify the department if a college son or daughter has moved back home for a month or two? Do they have to go through a background check?

Jonathan Alm: That's correct.

NO OPPOSITION.

Chairman Weisz closed the hearing.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2162

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: March 9, 2009

Recorder Job Number: 2162

Committee Clerk Signature	Vicky Crabtree

Minutes:

Chairman Weisz: I'm going to appoint a subcommittee on 2162 consisting of myself, Rep. Pietsch and Rep. Conrad.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2162

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: March 16, 2009

Recorder Job Number: 11042

Committee Clerk Signature Vicky Crabtree

Minutes:

Chairman Weisz: Let's take a look at 2162. Rep. Porter do you have amendments?

Rep. Porter: Section 10. This particular issue with it being inside of the AG's budget and discussion taken place there, it gives us more time to work on the policy side of what they are asking, I would make an amendment to the bill to remove Section 10 which deals with the background checks. And that will remove the fiscal note off from the bill. That aspect of the bill can be worked out with appropriations side of it and keep the rest of the policy side of it over here to be continued to be looked at.

Chairman Weisz: The amendment is taking out the mandated background check from basically everyone that has contact and that would take out the $1.2 million fiscal note that is in this bill, which the 5 ½ FTEs are in or were in or that's the discussion the (inaudible) budget is currently in. This will give us the opportunity to work on the other issues.

Rep. Holman: That $1.2 million what does (inaudible)?

Chairman Weisz: It had the fiscal note based on 18,000 background checks. And so that would go away. Then this bill wouldn't have to go to appropriations so we can deal with the other issues.

Rep. Kilichowski: The $1.2 million was the 5 FTEs?

Chairman Weisz: 18,000 additional backgrounds checks. The FTEs were already in the budget. If this bill was sent out without the background checks in it, the shift would be to the Human Services because they are going to end up funding the 5 ½ FTEs.

Rep. Porter: Motion to move amendment.

Rep. Kilichowski: Second.

Voice Vote: 13 yeas, 0 nays, 0 absent.

MOTION CARRIED.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2162

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: March 23, 2009

Recorder Job Number: 11385

Committee Clerk Signature Vicky Crabtree

Minutes:

Chairman Weisz: 2162 which is the child care bill, I'm sitting on that one. We are waiting for appropriations. They would like to figure out what they are doing first. At this point we are going to hold that bill and we may have to meet late Friday morning depending on, they are working on a couple of other bills.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2162

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: April 1, 2009

Recorder Job Number: 11620

Committee Clerk Signature Vicky Crabtree

Minutes:

Chairman Weisz: This is our last bill to take up 2162. Your subcommittee did meet and if anyone was listening on the floor we killed SB 2123 on the pretense we were going to look at a couple of parts of that to put into SB 2162. Although there were changes the committee agreed on we will take those up and take up any further amendments and look at those. The committee looked at page 2, line 8 and 9 it defines what daycare is. Your committee agreed to change it from two hours, 2 days a week or more to two hours, 3 or more days a week. The thought was you could probably catch a whole lot of babysitters make them by definition they would be daycare providers. If they do it for pay they have to be licensed. If you care for someone for pay more than 2 hours and 2 days you have to be licensed. You are considered a daycare provider. We felt it was a little restrictive for those who babysit on the weekend so we made the change.

Rep. Frantsvog: If you are concerned about this causing a conflict with someone babysitting, why don't you add something to that for more than one consecutive week?

Chairman Weisz: It is not uncommon for someone to babysit every weekend too.

Rep. Kilichowski: If a neighbor kid was watching the neighbor's child after school one or two hours a day for five days.

Chairman Weisz: It doesn't count because it doesn't exceed the two hours. You could make exceptions and we talked about that in the subcommittee, but the question then is then do you catch everyone. The subcommittee agreed there needs to be a definition where before there really wasn't a definition.

Rep. Conrad: On page 3, line 22, the in-home provider, the person who does in the child's home. That's an exemption? Number 11.

Chairman Weisz: That's just a definition.

Rep. Conrad: Ok, doesn't work.

Chairman Weisz: Section 9, we eliminated the lines that had to do with the background checks. What the committee did (interrupted for pictures).

Rep. Kilichowski: Exempt an in-house babysitter?

Chairman Weisz: You can, but you have to define what you mean by that. They may want a definition for what a program is. If we do that exemption then other things will crop up and should we do this as an exemption. I think they were trying to get away from that, they wanted to be clear that educational programs are exempt. Let's go to section 9, we talked about taking the whole Section 9 out. What your subcommittee did, in SB 2123 the language requiring background checks , the committee decided to change to "the department may require criminal history record (inaudible) of the department determined the appropriate for employees of the department upon hiring provided licensed by the department and providers and/or applicants for early childhood services licensure or self-declaration or in-home providers as well as staff members of early childhood services programs, household members of the residence". In other words look on page 11, the language under 1 down to line 30 where the

comma is after provided. They can do background checks on anybody, but not mandatory. Appropriations and the Governor's office is comfortable with this.

Rep. Conrad: The department would make estimate of how many they want to do a year and put that in there appropriation request.

Chairman Weisz: They are already now doing a certain amount of background checks which is already funded. (Rep. Conrad said something inaudible.) They will have to take that up in the future with budget. It shouldn't be a lot. Committee, there were some four suggested amendments by Jonathan Alm. We adopted the top three suggestions.

Rep. Conrad: Motion to move amendments.

Rep. Pietsch: Second.

Rep. Uglem: I'm confused on page 2, early childhood program means any program licensed, a babysitter is not licensed, so where do they fit in?

Chairman Weisz: They have to be licensed if they do what is in lines 8 and 9. That's the thing. If they are providing services under these terms, they have to be licensed.

Rep. Holman: Is there any discussion about, I'm still bothered about 6 hours a week since I (drops sentence.)

Chairman Weisz: Minimal, too much?

Rep. Holman: As far as I'm thinking about all the people that have been thrown into that group and are required to be licensed. Somebody is working nights and you've got somebody staying with the kids every night 3 or 4 hours while they are waitressing someplace. They would need to be licensed?

Chairman Weisz: They would need to be licensed.

Rep. Holman: DHS don't have a problem with the licensing they are asked for?

Chairman Weisz: They are the ones that asked for it.

Rep. Kilichowski: Is there a minimum of kids that (drops sentence).

Chairman Weisz: If you have one, you are a daycare provider. The exception right now if licensed and keep less than 2 hours the kids don't count against our total.

Rep. Kilichowski: We have three in Minto alone that half a dozen kids and I don't think they are licensed.

Chairman Weisz: If they aren't, I don't want to know about it.

Rep. Porter: On Rep. Kilichowski's concerns with the self-declared and smaller daycares in smaller cities. If you look on page 4, line 25, it gives you a definition. (Reads those lines from the bill.) If you flip to page 10, starting on line 28, now what use to be a voluntary qualification and certification process that you just did and was good for (inaudible). This bill limits that to a maximum of three years. Those individuals running those facilities would have to move up to more expensive license and more owner responsibilities once the three time limitation goes into effect. I don't mind parts of Section 7 that talks about the prerequisites for that type of service are included in the bill, I have a problem with the time limitation maximum of three times.

Rep. Porter: I move we remove subsection 2, starting on page 10, line 28 through line 7 on page 11.

Rep. Frantsvog: Second.

Rep. Conrad: I don't know what the expense of the license is that Rep. Porter talks about. To allow three years to be licensed is reasonable. I resist the motion.

Rep. Porter: When we talk about the road block that exists in government and why people aren't doing things and why we have problems with daycare and why we have problems getting the people interested in doing these things. Somewhere it falls back to the erroneous regulations that we put in place as the government. I think by taking something that is currently

working and you have a one-time self-declaration and pay the fee, I haven't heard from anybody that is at that process and those one-time declarations aren't working. To put them into an every other year licensing process where they are running small in-home daycare centers, is another one of those things where the government has become to onerous in the regulations on a business. I think we have something that works, I didn't hear anybody say that it is not working. I don't know why we need to change something again that is currently working. The rural communities are telling us in three or four different bills that we need more daycare in our community. We don't need to mess with self-declaration as it is working.

Rep. Conrad: In the taskforce we heard over and over again about stories about children left unattended. Self-declaration is a thing of the past, we want licensing and quality for everybody not just for those people who can afford it.

Rep. Holman: The purpose of this legislation is to protect kids.

Rep. Frantsvog: This takes care of the issue Rep. Kilichowski was talking about.

Chairman Weisz: Yes.

Rep. Frantsvog: If that's the case, getting back to what Rep. Conrad was saying, I understand what you are talking about as it relates to what your taskforce is running into. Maybe there is something the political subdivisions or the cities could do as it pertains to licensing or could include this. There is nothing from stopping any city from establishing a licensing procedure for daycare.

Chairman Weisz: There are a lot of requirements in self-declaration so from a quality standpoint I don't know if we can say that a parent would have that assurance. It does now provide for an inspection.

Rep. Kilichowski: I oppose the removal. Let's pass it out with original amendments. If that part isn't working, we will be back here in two years.

Rep. Porter: I would take it to the other extreme level than that. Apparently it is working because we haven't heard of any problems and every time that you increase things back onto a small business, those fees and charges are going to be passed onto the consumer. The consumer in this case parents are ultimately the ones that choose what level and who takes care of their kids. There hasn't been an outcry. If a community has an outcry they should take care of it. What we are doing here is covering every large and small city across the state. I'd hope we could take that piece out and move ahead with the bill.

Roll Call Vote: 9 yes, 4 no, 0 absent.

Motion Carried.

Rep. Conrad: Motion Do Pass as Amended.

Rep. Nathe: Second.

Roll Call Vote: 13 yes, 0 no, 0 absent.

MOTION CARRIED DO PASS AS AMENDED.

BILL CARRIER: Rep. Conrad.

Date: 3-16-09

Roll Call Vote #:

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2162

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Rep. PORTER Seconded By Rep. Kilichowski

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN ROBIN WEISZ			REP. TOM CONKLIN		
VICE-CHAIR VONNIE PIETSCH			REP. KARI L CONRAD		
REP. CHUCK DAMSCHEN			REP. RICHARD HOLMAN		
REP. ROBERT FRANTSVOG			REP. ROBERT KILICHOWSKI		
REP. CURT HOFSTAD			REP. LOUISE POTTER		
REP. MICHAEL R. NATHE					
REP. TODD PORTER					
REP. GERRY UGLEM					

VOICE

Total (Yes) 13 No 0

Absent 0

Bill Carrier _____

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

Motion carried an amendment to take out FN

98191.0201
Title.0300

Adopted by the Human Services Committee
April 2, 2009

YR
4/16/09
1052

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2162

Page 1, line 1, after "enact" insert "a new section to chapter 50-06 and"

Page 1, line 2, after "to" insert "criminal history record checks and to"

Page 1, line 3, after "reenact" insert "subdivision g of subsection 2 of section 12-60-24 and"

Page 1, line 7, after "to" insert "criminal history record checks,"

Page 1, after line 13, insert:

"**SECTION 1. AMENDMENT.** Subdivision g of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

g. The department of human services for ~~carecheck registrations under section 50-11.1-06.2~~ criminal history record checks authorized under section 2 of this Act.

SECTION 2. A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

Criminal history record checks. The department may require criminal history record checks as the department determines appropriate for:

1. Employees of the department upon hiring;

2. Providers licensed by the department under chapter 50-12, as well as for any employees of those providers; and

3. Providers holding and applicants for early childhood services licensure, nonlicensed holders of a self-declaration, and in-home providers under chapter 50-11.1. The department also may require criminal history records checks for staff members of those providers and for household members of a provider if the provider is providing early childhood services within the provider's home and the household member resides within that home."

Page 2, line 9, replace "two" with "three"

Page 10, remove lines 28 through 31

Page 11, remove lines 1 through 7

Page 11, line 8, replace "3." with "2."

Page 11, line 27, replace "Applicants" with "Upon a determination by the department that a criminal history record check is appropriate, a provider holding or an applicant", replace the first "or" with an underscored comma, and after "self-declaration" insert an underscored comma

Page 12, line 10, after "the" insert "provider or"

Page 12, line 20, after the first "the" insert "provider or"

Page 13, line 2, replace the first "or" with an underscored comma and after "denial" insert ", or revocation"

Page 19, line 11, replace "7" with "9"

Page 23, line 29, replace "3" with "5"

Renumber accordingly

Date: 4-1-09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2162

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Rep. Conrad Seconded By Rep. Kretsch

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN ROBIN WEISZ			REP. TOM CONKLIN		
VICE-CHAIR VONNIE PIETSCH			REP. KARI L CONRAD		
REP. CHUCK DAMSCHEN			REP. RICHARD HOLMAN		
REP. ROBERT FRANTSVOG			REP. ROBERT KILICHOWSKI		
REP. CURT HOFSTAD			REP. LOUISE POTTER		
REP. MICHAEL R. NATHE					
REP. TODD PORTER					
REP. GERRY UGLEM					

Total (Yes) 13 No 0

Absent 0

Bill Carrier _____

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

motion For Amendments

Date: 4-1-09
Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2162

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Rep. PORTER Seconded By Rep. FRANTSVOG

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN ROBIN WEISZ	√		REP. TOM CONKLIN	√	
VICE-CHAIR VONNIE PIETSCH	√		REP. KARI L CONRAD		√
REP. CHUCK DAMSCHEN	√		REP. RICHARD HOLMAN		√
REP. ROBERT FRANTSVOG	√		REP. ROBERT KILICHOWSKI		√
REP. CURT HOFSTAD	√		REP. LOUISE POTTER		√
REP. MICHAEL R. NATHE	√				
REP. TODD PORTER	√				
REP. GERRY UGLEM	√				

Total (Yes) 9 No 4

Absent _____

Bill Carrier _____

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

Motion To Remove Sub. 2 lines 28

Date: 4-1-09
Roll Call Vote #: 3

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2162

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended

Motion Made By Rep. Conrad Seconded By Rep. Nathe

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN ROBIN WEISZ	✓		REP. TOM CONKLIN	✓	
VICE-CHAIR VONNIE PIETSCH	✓		REP. KARI L CONRAD	✓	
REP. CHUCK DAMSCHEN	✓		REP. RICHARD HOLMAN	✓	
REP. ROBERT FRANTSVOG	✓		REP. ROBERT KILICHOWSKI	✓	
REP. CURT HOFSTAD	✓		REP. LOUISE POTTER	✓	
REP. MICHAEL R. NATHE	✓				
REP. TODD PORTER	✓				
REP. GERRY UGLEM	✓				

Total (Yes) 13 No 0

Absent 0

Bill Carrier Rep. Conrad

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

Motion Carried
Do Pass
as
Amended

REPORT OF STANDING COMMITTEE

SB 2162, as engrossed: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2162 was placed on the Sixth order on the calendar.

Page 1, line 1, after "enact" insert "a new section to chapter 50-06 and"

Page 1, line 2, after "to" insert "criminal history record checks and to"

Page 1, line 3, after "reenact" insert "subdivision g of subsection 2 of section 12-60-24 and"

Page 1, line 7, after "to" insert "criminal history record checks,"

Page 1, after line 13, insert:

"**SECTION 1. AMENDMENT.** Subdivision g of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

g. The department of human services for ~~carecheck registrations under section 50-11.1-06.2~~ criminal history record checks authorized under section 2 of this Act.

SECTION 2. A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

Criminal history record checks. The department may require criminal history record checks as the department determines appropriate for:

1. Employees of the department upon hiring;

2. Providers licensed by the department under chapter 50-12, as well as for any employees of those providers; and

3. Providers holding and applicants for early childhood services licensure, nonlicensed holders of a self-declaration, and in-home providers under chapter 50-11.1. The department also may require criminal history records checks for staff members of those providers and for household members of a provider if the provider is providing early childhood services within the provider's home and the household member resides within that home."

Page 2, line 9, replace "two" with "three"

Page 10, remove lines 28 through 31

Page 11, remove lines 1 through 7

Page 11, line 8, replace "3." with "2."

Page 11, line 27, replace "Applicants" with "Upon a determination by the department that a criminal history record check is appropriate, a provider holding or an applicant", replace the first "or" with an underscored comma, and after "self-declaration" insert an underscored comma

Page 12, line 10, after "the" insert "provider or"

Page 12, line 20, after the first "the" insert "provider or"

Page 13, line 2, replace the first "or" with an underscored comma and after "denial" insert ", or revocation"

Page 19, line 11, replace "7" with "9"

Page 23, line 29, replace "3" with "5"

Renumber accordingly

2009 SENATE HUMAN SERVICES

CONFERENCE COMMITTEE

SB 2162

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2162

Senate Human Services Committee

☒ Check here for Conference Committee

Hearing Date: 4-23-09

Recorder Job Number: 12152

Committee Clerk Signature Mary K Monson

Minutes:

Senator Dever opened the conference committee on SB 2162. All members were present: Senator Dever, Senator Erbele, Senator Pomeroy, Rep. Weisz, Rep. Porter, and Rep Conrad.

Rep. Weisz gave a little background. Some of the language dealing with criminal history checks from 2123 which was killed in the House was put in 2162.

The house took out the mandatory on the record check – the fiscal note didn't change.

They changed the language to "may" so checks could be done.

They made a change in the definition of day care to three days a week from two days a week.

They kept in the self certification and they made some technical changes on behalf of the department.

Rep. Porter added that he still believed there were a couple of areas that were not addressed in this bill that now would be under this bill – (1) babysitting and (2) relatives that choose to provide daycare for grandchildren, nieces, and nephews would now also have to be self declared. He felt that babysitting had been taken from the neighborhood pastime and made into something that requires some sort of licensure.

(Meter 45) The discussion followed about licensing requirements. Page 6, version .0300 – a license for a family child care is required if early childhood services are provided for 4 or more children ages 24 mo. and under, or 6-7 children through age 11. If a person is babysitting for a family of 4 more than 2 hours a day and three or more days a week then that person has to be licensed.

Jonathon Alm (Attorney with the Dept. of Human Services) explained different scenarios.

(meter 9:50) He pointed out that the department has never licensed babysitters. All the regulations for licensure is for 18 and older.

Rep. Porter asked where it shows a person has to be over 18 before this section of code applies.

Mr. Alm – Administrative rules.

Rep. Porter asked then if a nanny who meets the number of children requirement would have to have at the minimum a self certification.

Mr. Alm – depending on the total number of children and the hours they care for those kids they might need to be licensed. No one is required to become a self cert. A self cert is benefit for an unlicensed provider who wants to obtain food benefits from the DPI program and also job care assistance. Those programs require a person to have a document in hand to benefit from the program.

Rep. Porter then asked if, under existing law, nannies are required to be licensed.

Mr. Alm – if a nanny is caring for six children 5 days a week they would have to be licensed. If they are caring for 2 kids in a house 5 days a week they would not have to be licensed. Or if they were caring for 4 kids in a house they would not have to be licensed unless those children were all underneath the age of 24 mos. In most circumstances they don't see babysitters or nannies caring for that many children under 24 mos.

He continued that in the self cert rules it says that applicants for standard compliance certification shall be at least 18 years of age. He thought that same requirement was also in family licensure.

Rep. Porter asked, if a 17 year old meets the requirements of the law but doesn't make the age requirement of the law, how they can do the babysitting.

Mr. Alm didn't think they have ever come across that issue. (Meter 15:18)

Rep. Porter asked what the department's position is when they aren't allowed to be licensed but they are operating without a license.

Mr. Alm said it hasn't come up before. (Meter 16:08)

Rep. Conrad asked if the self certification is only for the food program.

Mr. Alm – anybody who is providing care for 5 or less kids can request the self cert. They have to meet minimum rule requirements.

Rep. Conrad asked if the department has recommended a limit of 3 years.

Mr. Alm said it was in the Senate bill. The department looked at what both the Senate and House did with this bill and their only concern was to allow the dept. to issue provisional self declarations and home providers. (Meter 18:00) He explained when a provisional would be issued.

Rep. Weisz asked how they are doing it now.

Mr. Alm said that currently there is no legislation on self cert/self declaration and they do not issue provisional self declarations. They do have the ability to issue a provisional license.

Rep. Weisz asked why the fiscal note didn't change when the bill changed.

Mr. Alm replied that it was his understanding the number of providers that could be background checks remain the same.

Rep. Weisz – so it's the department's intent to do all these new background checks even though the mandatory part was taken out.

Mr. Alm replied that he didn't know if it was the department's intent.

Rep. Weisz pointed out that is what the fiscal note said and the fiscal note won't say that unless that is what the intent is.

Discussion continued on the fiscal note and Kathy Roll from the Attorney General's office said there is no appropriation on this bill. There is a fiscal note that indicates what the cost will be as soon as the background checks that are provided for in the bill are sought. When there is permissive language they need to assume that those background checks will be requested. If they don't and they come in and ask for 18,000 background checks it will bump everyone else in line (meter 22:44).

Senator Dever asked about the FTE's

Ms. Roll said the 5.5 FTE's that were originally included in the Governor's budget in the office of the Attorney General have been removed by the House. The FTE's that were originally in the Dept. of Human Services are still in their appropriation.

Rep. Porter said on the appropriation side of this fiscal note it does show a general fund appropriation of 1.25 million for the 09-11. Where does that money come from?

Ms. Roll replied that would need to be general fund appropriation to the office of the Attorney General.

Rep. Porter – if we pass the bill as is, there is no money in this bill.

Ms. Roll – that is correct (meter 24:00). Bills of this type - normally the appropriation is included in the agency's budget.

Rep. Porter – we know that's not the case. 1.2 million is not in the Attorney General's budget.

Ms. Roll – as bills work their way through the legislature there's often the sense of the Appropriations Committees that "Let's wait until these bills are resolved and see if they are passed or not and then make adjustments in conference committee".

Rep. Porter – if this bill is passed with this new language in it, the intent is someone is going to go to appropriations and tell them we need an additional 1.25 million in our budget.

Ms. Roll – actually what we need in our budget is $906,000. The other amount is already in the Dept. of Human Services budget.

Senator Dever asked if there was any additional information the committee needed for the next meeting.

Rep. Weisz said the issue was the 1.2 million.

Rep. Porter didn't think that was a general discussion item. His understanding from the House standpoint, when that language was changed they didn't think there would be 18,000 background checks necessary during the next biennium. Those that would be required by the department would be provided for inside of existing funds of budgeted items and inside of existing procedures.

Senator Dever said that unless there is a request for further information there needed to be conversations on both sides.

Committee work for the day was closed.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2162

Senate Human Services Committee

☒ Check here for Conference Committee

Hearing Date: 4/24/09

Recorder Job Number: 12198

Committee Clerk Signature Mary K Monson

Minutes:

Senator Dever called the conference committee to order. All members were present.

Rep. Weisz reported that he was still waiting for some information before he would be at a point he could proceed on the background check part.

He pointed out that there were amendments addressing the provisional that inadvertently was taken out in the House.

Rep. Porter said that from his standpoint he thought the bill was still weak in some of the definition provisions of what they are doing with respect to babysitting and in regard to relatives providing day care for relatives (meter 02:00).

He said he wasn't very comfortable with the permissive language and the department's position that they are still going to request all of the background checks and there is no money in the Attorney General's budget to do it. If that's the case he felt there needs to be an appropriation attached to this bill so the merits of the bill are part of the discussion. He didn't feel they could rely on Appropriations, at this late stage, to go back and amend almost a million dollars back into the Attorney General's budget to handle the burden this bill puts on their agency. If this is made permissive language then it should go in as a low priority background check (meter 04:45).

Rep. Weisz said that is why he said earlier he wasn't prepared. Some of the conversations that need to occur with appropriations and others haven't happened yet. When they sent this out of the House they thought they were clear, based on the intent that permissive language wasn't meant to be 18,000 background checks.

Discussion continued on restoring "shall". The House wasn't comfortable with "shall". A comparison was made to another bill dealing with background checks for nursing home administrators (meter 07:00). SB 2162 is different in that it is a huge expansion of who is going to be checked.

An amendment based on the .0300 version was discussed – Attachment #1. Jonathan Alm clarified where it fit in (meter 12:30).

Senator Dever moved the discussion to babysitting, relative day care, 17 year olds. Background checks on 17 year olds would probably be problematic.

Rep. Porter asked if the department would discuss the issues with them so they would be clear if they need a definition for exempting or how it will be handled. He suggested they walk through those policy issues (meter 16:00).

Mr. Alm said that all the changes originally proposed by the department and all the amendments that have been made thereafter have not changed how the department looks at licensing individuals either 18 and over or younger than 18. Page 2 line 22 is where the definition of early childhood program is.

Rep. Porter asked if they could focus on that definition and how they could make it clear that it doesn't encompass babysitting. He wanted to make sure they weren't setting people up to be outside administrative rules and, where administrative rules and the law clash, the law wins.

(Meter 18:00) Discussion followed with different scenarios given and whether licensure would be required in those situations. The current law doesn't define number of hours and days.

Mr. Alm explained that on page 3 they struck out the portion of 2 or more hours per day and part of 3 or more days per week. It's a matter of clarifying what is a program and what is considered a service.

Rep. Porter said maybe it is existing between the definition of the program and the service and the interpretation of the department may be existing but that doesn't necessarily mean that it's the correct way to have it in the century code. His concern is that as they encompass things as common as babysitting he doesn't know if it was ever anyone's intent to make a babysitter be licensed. He thinks it overextends the reach of what the purpose is.

Rep. Weisz asked why the current law is 2 hours/day for 3 days/week and why they wanted to go to 2 hours/day for 2 days/week.

Mr. Alm didn't know the history on the 2/3 as to why it was put in. The thoughts on changing it down to 2/2 was the only providers it would necessarily affect would be the preschool providers that were offering 3 days/week - to make them licensed like other preschools that are licensed full time.

(Meter 24:30) The issue of relatives watching direct relatives requiring a license was discussed. The scenario was given of a relative (an aunt or an uncle) watching 7 nieces and nephews and it's over the time period of the 3 and the 2. They would be under the definition of provider child care and would have to be licensed if they are getting paid.

Page 2 line 29 talks about in exchange for money goods or other services.

Senator Dever asked the House members to have the necessary conversations on their side with appropriations and put together language for the next meeting.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2162

Senate Human Services Committee

☒ Check here for Conference Committee

Hearing Date: 4/27/09

Recorder Job Number: 12281

Committee Clerk Signature Mary K Monson

Minutes:

Senator Dever brought the conference committee on SB 2162 to order with all members present.

He referred to attachment #2 and suggested that the dollars had been addressed in it.

Rep. Conrad had a question about the difference between the BCI and the FBI checks and how the dollar amount is affected by this.

Senator Dever asked if anyone would like to respond to that question.

Judy Volk, Attorney General's Office, addressed the differences between the BCI checks and the FBI checks (meter 1:00). The BCI checks are strictly for ND and some of the information cannot be provided to the FBI. The FBI includes some information from ND and other states.

Senator Dever asked what background checks they were talking about in this bill.

Ms. Volk replied both.

Rep. Porter directed a question on the fiscal portion to Kathy Roll. This bill does not contain an appropriation and there is no appropriation in anybody's budget. He wanted to know what the appropriation necessary to do this portion of the bill would be.

Ms. Roll said it was her understanding that the number of background checks to be done next biennium had been reduced to about 7800. Based on that, it would be about $362,000.

Discussion: The number would reflect only the new people who have checks. Section 27 of the amendment gives them permission to hire FTE positions but there still is no money. The end game of this bill has to include an appropriation to the Attorney General's office. (Meter 07:34) Each FTE can do about 2000 checks per year. If the 7000 plus are newly licensed then that is ongoing.

Jonathan Alm explained what the amendment does. Anybody who is a new applicant without a background check, anybody with a new employee hired without a background check, and a new member of the household would have to have a background check. That reduces the number that is anticipated down to 7200 for a biennium for early childhood services background checks. Then the department has 600 employees. He wasn't sure if that number was for a biennium or a year.

Senator Dever asked if somebody is a home care provider every member of the family has to have a background check.

Mr. Alm said if they are a current provider underneath this amendment they wouldn't need a background check.

Rep. Porter – if a new in-home provider comes on board, everyone in the household has to have it. Basically this is grandfathering in existing providers.

Mr. Alm believed the language addressed that. If it is the legislative intent, then it would only apply to new applicants.

(Meter 10:00) Discussion that followed clarified that new license would have the requirement to have everyone go through a background check. If they are a self declaration or licensure and are new then it would be any adult household member over the age of 18 that would have to have a background check.

Rep. Conrad asked if an existing provider gets a new employer or a new husband would those people have to be checked.

Mr. Alm – yes that would be the new employee and also new household member.

(Meter 13:20) A discussion followed on the fiscal note and the suggestion to add an appropriation of $362,000 to the amendment.

Rep. Weisz said he wanted to see the actual fiscal note for both Dept. of Human Services and the AG office. He was not prepared to vote on anything at this point.

Rep. Porter said the other issue was that if the House was going to recede from their amendments and amend they needed to make sure that the other amendments that were passed by the House are still there. He wanted one clean set of amendments that tie it back to the version the Senate sent to the House.

The discussion that followed indicated agreement that it would be best for the House to recede from their amendments. The new language plus the language from the House relating to self declarations and other areas of concern should be part of the new amendments. They also agreed to include a section that follows the fiscal request. That documentation necessary to put the actual appropriation for the next biennium into this bill could be provided by the Attorney General's office.

Section 27 authorizes the hiring of FTE's but what they don't have is money. It doesn't specify how many positions. That would be limited by the dollars put in.

Rep. Conrad had a question about whether a background check could be requested by a parent on an existing care provider without a background check if there is a concern about something going on at the daycare.

Mr. Alm – an early childhood services complaint could be filed with the department to look into it or a CPS complaint. Parents also can look and do their own search as far as backgrounds of providers.

Senator Dever asked if there were any other points the committee wanted addressed in the amendments to be drafted.

There being none, the meeting was adjourned.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2162

Senate Human Services Committee

☒ Check here for Conference Committee

Hearing Date: April 29, 2009

Recorder Job Number: 12391

Committee Clerk Signature Mary K Monson

Minutes:

Senator Dever called the meeting of the conference committee to order. All members were present except Representative Conrad . (Senator Dever, Senator Erbele, Senator Pomeroy, Representative Weisz, Representative Porter)

Senator Dever asked Jonathon Alm to explain the amendments.

Jonathon Alm, attorney with the Department of Human Services, said the amendment combines the House amendments and the department's prepared language that was submitted on Monday. It still gives the department authorization to do record checks for applicants and takes out the ability to do background checks on current providers. The other amendments are housekeeping. He reviewed the rest of the amendment. (2.42)

Representative Porter asked if the section 2 total is still 7500 people.

Jonathon Alm said the number has been reduced. Department employees are still 600 per biennium, child care providers, new employees and household members are 6400 for a total of 7000.

Representative Porter asked how many licensed day care providers operate out of their home.

Jonathon Alm said if we exclude household members, there would still be 600 department employees and 4207 applicants and new employees.

Representative Porter asked about the cost.

Jonathon Alm said the cost is $17.25 per provider for the FBI, BCI is free.

Representative Porter said they would not need to hire as many people, the fiscal note is for FTEs not for the fee for the checks.

Jonathon Alm said Judy Volk might be able to answer that.

Representative Porter said he heard each FTE can do 2000 checks per year so by reducing it, you are cutting out one FTE. The other side is the FBI side. So the special funds is reduced by $17.25 per check.

Judy Volk, Criminal History Records Manager, BCI, said their financial administrator is currently at the BCI budget hearing and is unavailable. She ran some numbers for the scenario. She distributed and explained a printout (attached).

Representative Porter asked if this was for the exclusion of the household members.

Judy Volk confirmed it was excluding household members and relatives of providers.

Representative Porter said the first version of the amendment has an appropriation of $238,406 and $120,750 in special funds (FBI checks). Mr. Alm gave us the numbers of 600 department employees and 6400 which is 7000 total.

Judy Volk said her handout excludes relatives of providers and household members which brings the total to 4806 per biennium.

Representative Porter said that would be $210,856 and $82,904. He passed out amendment #2. The difference is in section 2, #3 the household members are excluded. Page 3 shows the difference in the money. (12.58) He said he does not have a problem with background checks on providers but to include household members is a stretch. He thinks technically they are not special funds, that is a general fund inside the Department of Human Services budget.

Representative Weisz said he is more comfortable with the second version.

Senator Dever asked how big the problem has been with household members.

Jonathon Alm said the largest problem with criminal history and backgrounds has been people in the household.. Last year he did a search. They had a provider in Bismarck who had a sex offender living with her. In Fargo, they had licensed a sex offender and had to revoke once they found out. There was another sex offender that was charged with gross sexual imposition and previously convicted of assault which would have barred his wife from having licensure.

Senator Dever asked if those sex offenders would have been restricted from contact with children.

Jonathon Alm said yes. Will the police contact Human Services? Does Human Services have the manpower to go check the sex offender website? They use the website. This is an FBI level. They could do everything that is free to them in the state but it doesn't count all those providers that live along borders with other states. The FBI level check would help with that.

Representative Porter asked if it is already a condition of their license to not have those individuals around. They are already breaking a condition of their license.

Jonathon Alm said that is correct.

Representative Porter said if they are already willing to break the law do you think they are going to tell you that person is in their household so they can do a background check or will be just punish all the law abiding citizens and family members by putting them through a background check to come up clean.

Jonathon Alm said that might be the case in some circumstances, the other situation is the provider is unaware, it could be a boyfriend or a new husband who never disclosed. It could be used as a tool if they do not inform Human Services it would be reason to revoke the license.

Representative Porter said those circumstances are already reason to revoke the license. The licensed provider and the sex offender would both be breaking the law.

Jonathon Alm said if they go into a house to do a licensing visit and they see three adults living there and they do not disclose. They look at the state data base and see nothing. They do not have the tools to look at instances out of state. The FBI check would do that.

Representative Porter asked how many onsite inspections are done per year.

Jonathon said one is scheduled and one is unannounced per year. For self declared, they only investigate upon a complaint.

Senator Pomeroy asked if in some cases the person who wants to be a child care provider would decide not to do so because they found out there was a background check of household members.

Jonathon Alm said he believes that is correct.

Representative Porter moved amendment #2, seconded by Representative Weisz.

Senator Erbele said he has some discomfort due to the past discussion, he likes the numbers better. He does not like the potential of having an offender in the home and not checking.

Senator Dever said we are taking a step and can take another step next session if necessary.

Representative Weisz said this bill is quite a leap from where we were before. It is a compromise and we will need to revisit it next time.

The motion passed 5 – 0 – 1.

Senator Dever will carry the bill to the Senate floor.

Representative Weisz will carry the bill to the House floor.

Date: 4-23-09

Roll Call Vote #: _____

2009 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2162 as (re) engrossed

Senate Human Services Committee

☒ Check here for **Conference Committee**

Action Taken
- ☐ SENATE accede to House Amendments
- ☐ SENATE accede to House Amendments and further amend
- ☐ HOUSE recede from House Amendments
- ☐ HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ pages(s) _____--_____

- ☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

Motion Made By _____ Seconded By _____

Senators				Yes	No		Representatives				Yes	No
Senator Dever	P						**Rep. Weisz**	P				
Senator Erbele	P						**Rep. Porter**	P				
Senator Pomeroy	P						**Rep. Conrad**	P				

Vote Count _____ Yes _____ No _____ Absent

Senate Carrier _____ **House Carrier** _____

LC NO._____._____ of amendment

LC NO._____._____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

Date: 4-24-09

Roll Call Vote #: _____

2009 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2162 as (re) engrossed

Senate Human Services Committee

☒ Check here for **Conference Committee**

Action Taken
- ☐ SENATE accede to House Amendments
- ☐ SENATE accede to House Amendments and further amend
- ☐ HOUSE recede from House Amendments
- ☐ HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ pages(s) _____--_____

☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

Motion Made By _____ Seconded By _____

Senators				Yes	No		Representatives				Yes	No
Senator Dever	P						**Rep. Weisz**	P				
Senator Erbele	P						**Rep. Porter**	P				
Senator Pomeroy	P						**Rep. Conrad**	P				

Vote Count _____ Yes _____ No _____ Absent

Senate Carrier _____ **House Carrier** _____

LC NO._____._____ of amendment

LC NO._____._____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

Date: 4-27-09

Roll Call Vote #: _____

2009 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2162 as (re) engrossed

Senate Human Services Committee

☒ Check here for **Conference Committee**

Action Taken
- ☐ SENATE accede to House Amendments
- ☐ SENATE accede to House Amendments and further amend
- ☐ HOUSE recede from House Amendments
- ☐ HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ pages(s) _____--_____

- ☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

Motion Made By _____ Seconded By _____

Senators				Yes	No		Representatives				Yes	No
Senator Dever ✓	P						**Rep. Weisz**	P				
Senator Erbele	P						**Rep. Porter**	P				
Senator Pomeroy	P						**Rep. Conrad**	P				

Vote Count _____ Yes _____ No _____ Absent

Senate Carrier _____ **House Carrier** _____

LC NO._____._____ of amendment

LC NO._____._____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

98191.0202
Title.0400

Adopted by the Conference Committee
April 29, 2009

4-30-09
1 of 3

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2162

That the House recede from its amendments as printed on pages 1249 and 1250 of the Senate Journal and pages 1251 and 1252 of the House Journal and that Engrossed Senate Bill No. 2162 be amended as follows:

Page 1, line 1, after "enact" insert "a new section to chapter 50-06 and"

Page 1, line 2, after "to" insert "criminal history record checks and to"

Page 1, line 3, after "reenact" insert "subdivision g of subsection 2 of section 12-60-24 and"

Page 1, line 7, after "to" insert "criminal history record checks,"

Page 1, line 11, after the first semicolon insert "to provide a statement of legislative intent;" and after the second semicolon insert "to provide an appropriation;"

Page 1, after line 13, insert:

"**SECTION 1. AMENDMENT.** Subdivision g of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

g. The department of human services for ~~carecheck registrations under section 50-11.1-06.2~~ criminal history record checks authorized under section 2 of this Act.

SECTION 2. A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

Criminal history record checks. The department may require criminal history record checks as the department determines appropriate for:

1. Employees of the department upon hiring;

2. Providers licensed by the department under chapter 50-12, as well as for any employees of those providers; and

3. Applicants for early childhood services licensure, nonlicensed holders of a self-declaration, and in-home providers under chapter 50-11.1. The department also may require criminal history record checks for new staff members of those applicants, providers of an applicant, and a provider if the provider is providing early childhood services within the provider's home."

Page 2, line 9, replace "two" with "three"

Page 9, line 12, after "neglect" insert ". The department may issue a provisional in-home provider registration document in accordance with the rules of the department"

Page 10, remove lines 28 through 31

Page 11, remove lines 1 through 7

Page 11, line 8, replace "3." with "2."

Page 11, after line 9, insert:

"3. The department may issue a provisional self-declaration document in accordance with the rules of the department."

Page 11, line 27, replace "Applicants" with "Upon a determination by the department that a criminal history record check is appropriate, a provider holding or an applicant", replace the first "or" with an underscored comma, and after "self-declaration" insert an underscored comma

Page 11, line 28, after the second "as" insert "new"

Page 11, line 29, after "and" insert "new"

Page 12, line 20, overstrike "the applicant"

Page 13, line 2, replace the first "or" with an underscored comma and after "denial" insert ", or revocation"

Page 13, after line 3, insert:

"9. Any individual who is providing early childhood services solely for the provider's own children, grandchildren, nieces, nephews, and cousins as a licensed provider, a nonlicensed holder of a self-declaration, or an in-home provider may not be required to submit to a criminal history record check authorized under section 2 of this Act."

Page 19, line 11, replace "7" with "9"

Page 23, after line 27, insert:

"**SECTION 28. LEGISLATIVE INTENT - FULL-TIME EQUIVALENT POSTIONS - BACKGROUND CHECKS.** It is the intent of the sixty-first legislative assembly that of the new 2.0 full-time equivalent positions authorized for the attorney general to assist with conducting background checks under this Act, the attorney general may fill the positions only as necessary to meet workload demands for the biennium beginning July 1, 2009, and ending June 30, 2011.

SECTION 29. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $210,856, or so much of the sum as may be necessary, and $82,904 in special funds, to the attorney general for the purpose of conducting background checks under this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011."

Page 23, line 29, replace "3" with "5"

Renumber accordingly

Date: 4-29-08

Roll Call Vote #: _____

2009 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2162 as (re)engrossed

Senate Human Services Committee

☒ Check here for **Conference Committee**

Action Taken
- ☐ SENATE accede to House Amendments
- ☐ SENATE accede to House Amendments and further amend
- ☐ HOUSE recede from House Amendments
- ☒ HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ pages(s) 1249 -- 1250

- ☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) 2162 was placed on the Seventh order of business on the calendar.

Motion Made By Rep. Porter Seconded By Rep. Weisz

Senators				Yes	No		Representatives				Yes	No
Senator Dever	P			✓			Rep. Weisz	P			✓	
Senator Erbele	P			✓			Rep. Porter	P			✓	
Senator Pomeroy	P			✓			Rep. Conrad	A				

Vote Count 5 Yes 0 No 1 Absent

Senate Carrier Sen. Dever **House Carrier** Rep. Weisz

LC NO. 98191.0202 of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

REPORT OF CONFERENCE COMMITTEE

SB 2162, as engrossed: Your conference committee (Sens. Dever, Erbele, Pomeroy and Reps. Weisz, Porter, Conrad) recommends that the **HOUSE RECEDE** from the House amendments on SJ pages 1249-1250, adopt amendments as follows, and place SB 2162 on the Seventh order:

That the House recede from its amendments as printed on pages 1249 and 1250 of the Senate Journal and pages 1251 and 1252 of the House Journal and that Engrossed Senate Bill No. 2162 be amended as follows:

Page 1, line 1, after "enact" insert "a new section to chapter 50-06 and"

Page 1, line 2, after "to" insert "criminal history record checks and to"

Page 1, line 3, after "reenact" insert "subdivision g of subsection 2 of section 12-60-24 and"

Page 1, line 7, after "to" insert "criminal history record checks,"

Page 1, line 11, after the first semicolon insert "to provide a statement of legislative intent;" and after the second semicolon insert "to provide an appropriation;"

Page 1, after line 13, insert:

"**SECTION 1. AMENDMENT.** Subdivision g of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

g. The department of human services for ~~carecheck registrations under section 50-11.1-06.2~~ criminal history record checks authorized under section 2 of this Act.

SECTION 2. A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

Criminal history record checks. The department may require criminal history record checks as the department determines appropriate for:

1. Employees of the department upon hiring;

2. Providers licensed by the department under chapter 50-12, as well as for any employees of those providers; and

3. Applicants for early childhood services licensure, nonlicensed holders of a self-declaration, and in-home providers under chapter 50-11.1. The department also may require criminal history record checks for new staff members of those applicants, providers of an applicant, and a provider if the provider is providing early childhood services within the provider's home."

Page 2, line 9, replace "two" with "three"

Page 9, line 12, after "neglect" insert ". The department may issue a provisional in-home provider registration document in accordance with the rules of the department"

Page 10, remove lines 28 through 31

Page 11, remove lines 1 through 7

Page 11, line 8, replace "3." with "2."

Page 11, after line 9, insert:

"3. The department may issue a provisional self-declaration document in accordance with the rules of the department."

Page 11, line 27, replace "Applicants" with "Upon a determination by the department that a criminal history record check is appropriate, a provider holding or an applicant", replace the first "or" with an underscored comma, and after "self-declaration" insert an underscored comma

Page 11, line 28, after the second "as" insert "new"

Page 11, line 29, after "and" insert "new"

Page 12, line 20, overstrike "the applicant"

Page 13, line 2, replace the first "or" with an underscored comma and after "denial" insert ", or revocation"

Page 13, after line 3, insert:

"9. Any individual who is providing early childhood services solely for the provider's own children, grandchildren, nieces, nephews, and cousins as a licensed provider, a nonlicensed holder of a self-declaration, or an in-home provider may not be required to submit to a criminal history record check authorized under section 2 of this Act."

Page 19, line 11, replace "7" with "9"

Page 23, after line 27, insert:

"**SECTION 28. LEGISLATIVE INTENT - FULL-TIME EQUIVALENT POSTIONS - BACKGROUND CHECKS.** It is the intent of the sixty-first legislative assembly that of the new 2.0 full-time equivalent positions authorized for the attorney general to assist with conducting background checks under this Act, the attorney general may fill the positions only as necessary to meet workload demands for the biennium beginning July 1, 2009, and ending June 30, 2011.

SECTION 29. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $210,856, or so much of the sum as may be necessary, and $82,904 in special funds, to the attorney general for the purpose of conducting background checks under this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011."

Page 23, line 29, replace "3" with "5"

Renumber accordingly

Engrossed SB 2162 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

SB 2162

#1

Same given to Senate Approp.

Testimony
Senate Bill Number 2162 – Department Of Human Services
Senate Human Services Committee
Senator Judy Lee, Chairman
January 13, 2009

Chairman Lee, members of the Senate Human Services Committee, I am Jonathan Alm, an attorney with the Department of Human Services. I am here today in support of Senate Bill 2162.

The bill is designed to accomplish several goals. First, it updates, clarifies, and includes additional definitions used in licensing and providing early childhood services. Second, it modifies how the Department would count the number of children to determine what type of licensing is required. Third, it increases the civil penalty for providing early childhood services without a license. Fourth, it amends the prerequisites for issuance of a license and in-home provider approval. Fifth, it establishes a statutory provision to address self-declaration as one of the options early childhood service providers currently have and applies other statutory provisions to self-declarations and in-home providers. Sixth, it establishes a criminal background check.

1. Definitions

Section 1 of this bill provides a change to the definition of an early childhood "facility" to an early childhood "program"; this change is reflected throughout the bill. While the safety of the premises is part of the Department's review and is relevant to the Department's determination to grant, deny, or revoke a license, self-declaration, or in-home provider registration, the change to "program" helps to clarify that the Department licenses the program and not the facility or building out of which services are offered. The bill includes a definition of "household

member", "owner" or "operator", and "staff member" as used in the proposed provision requiring all owners, operators, household members, and staff members to have a mandatory FBI level criminal background check as set forth in section 9 of this bill. A definition for "self-declaration" is added to the definition section to reflect another type of child care the Department currently calls a standard compliance certification document.

2. Number of Children

Section 2 of this bill does not modify or change the number of children required for certain licenses. We are requesting an amendment to this bill on page 5, line 15, remove the overstrike over "six of", line 16, remove "up to", and line 17, to replace "four" with "three." This amendment will be consistent with the current language of section 11-11.1-03 and current rules of the Department. This bill clarifies how the Department will count the number of children receiving early childhood services by requiring all children present on the premises and under the age of twelve years to be counted when identifying the number of children for whom the licensee, registrant, or certificate holder may provide care. This number includes the children of the provider.

3. Civil Penalties

Section 3 of this bill increases the civil penalty from fifty dollars to two hundred dollars per day for each day of operation of an early childhood program without a license. This increase in penalty identified in subsection 7 of section 3 of this Act is effective through July 31, 2011. This change is being made in the hope that it will deter individuals from providing early childhood services without a license. The sunset clause is added to ensure the Department assesses the impact of the increased

fine during the course of the 2009-2011 biennium. Section 14 also increases the fiscal sanctions resulting from noncompliance with a correction order from twenty five dollars to an amount not to exceed one hundred dollars.

4. Prerequisites for Issuance of License

Section 4 of this bill limits an owner, operator, or applicant from obtaining a license to provide early childhood services if they had a previous license or self-declaration denied or revoked within the twelve months prior to the date of the current application or if they have had three or more licenses or self-declaration certificates denied or revoked. This same standard applies to self-declarations as set forth in section 7. Currently, the Department only considers denials or revocations within the past six months. A requirement is also being added for family child care owners or operators to receive training in cardiopulmonary resuscitation and first aid to ensure children's safety while in their care.

The bill allows the Department to consider an individual's child abuse and neglect history, criminal background history, prior early childhood services history prior to approval, denial or revocation of a license, self-declaration, or in-home provider as outlined in sections 4, 5, 7, 9, and 10.

5. Self-Declaration and In-Home Providers

The Department currently issues standard compliance certification documents that would be named self-declarations under this bill. The changes in this bill to sections 5 through 20 and 23 will ensure consistency among providers, regardless of their level of licensure, certification, or registration in regards to approval, denial, revocation, injunctions, and criminal penalties based upon the health and safety of

the children, including criminal background and child abuse and neglect investigations, prior early childhood services history, and number of children receiving services.

Section 7 adds a new provision to the statute that the Department may only approve a self-declaration a maximum of three times.

Section 12 also amends the correction order provision to allow the Department to issue a correction order against a holder of a self-declaration or an in-home provider registrant. In addition, a self-declaration document or an in-home provider registrant may be suspended during an investigation of a report of child abuse and neglect in accordance with section 17.

6. Investigations

Section 9 establishes a mandatory criminal background check for applicants, staff members, and household members before an application is approved. The Department currently reviews the criminal history of applicants, employees, and household members, when applicable, by using the search tool provided by the North Dakota Supreme Court through its website. This provision will ensure that all criminal activity of an applicant, including any that occurred outside the jurisdiction of this state, will be reviewed before the Department approves an application. This bill also clarifies that the Department has a right to investigate and inspect an early childhood program, or holder of a self-declaration or a registration document.

The Department's fiscal impact of Section 9 of this bill was included in the Governor's budget.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.

#2

Senate Bill 2162
Senate Human Service's Committee
January 13, 2009

Senator Lee and members of the Senate Human Services Committee, my name is Sandy Bendewald. I am the director of Stutsman County Social Services. I am here representing Stutsman County Social Services and not the entire ND County Director's Association because we have not taken an official stand on this bill. I have spoken with other directors in the state however and am expressing some of their views also.

My stand is neutral on this bill because I believe there are many important concepts in this bill. We need to maintain the quality providers we have and also strive to increase quality in others. Licensure is a step to helping accomplish that. This bill which would only allow a provider to be self certified for three years is a move towards encouraging licensure.

At first glance that is a good thing. However there is concern in the state about this bill because of the already lack of child care available in many parts of the state. Directors from some of the smallest counties have expressed concern that making it impossible for providers to continue as registered may indeed decrease the amount of providers because of the unwillingness of some providers to become licensed. They would then rather stop doing child care instead of moving towards licensure.

Another concern is in the area of relative providers. These are providers who are caring for their relatives and are choosing to become self certified to become qualified for the

food program. These relatives are often low income themselves and would be unable to care for their grandchildren, nieces and nephews etc without the child care assistance and food program. These relatives are often times vital in allowing parents to go to work or in some cases to help us keep children out of foster care. There are many times where this is needed for more than three years and the fear is that this bill will make it impossible for them to continue to meet this great need.

Following the hearing where I presented this testimony I and other county directors met with Jonathon Alm and others from DHS to talk through the above issues and the issue of CPR/First Aide requirement for relative providers. We agreed on the following.

1. Amend the bill to include an exemption for the three year limit for approved relatives taking care of family members. This would require a fiscal note of an estimated $10,000 to provide a system change. We believe the cost of this is much less than the cost of even one child having to be placed in foster care due to the lack of this support.
2. Change the requirement for the CPR/First Aide for self certified to allow a provisionary status of up to six months to complete the CPR/First Aide classes.

I am comfortable with these changes in that they will address my concerns for the relative providers. I am still concerned about the effect on the availability of child care when these changes take place however since the bill allows three years of being a registered provider and the legislature meets again in two years, it allows us time to analyze the

affects of this legislation on the availability of providers and the ability to come in with proposed changes at that time if we see fit. I will pass this information on to the county directors at the ND Association meeting this week. If they disagree with this analysis I will ask that they let you know of their concerns.

#3

NDLA, S HMS

From: Lee, Judy E.
Sent: Monday, January 19, 2009 6:24 PM
To: NDLA, S HMS; NDLA, Intern 02; Dever, Dick D.; Erbele, Robert S.; Heckaman, Joan M.; Pomeroy, Jim R.; Marcellais, Richard
Subject: FW: Question on the fiscal note on 2162

Here is the information about the appropriations for 2162 and 2123.

From: Muhlhauser, Tara L.
Sent: Thursday, January 15, 2009 6:53 PM
To: Lee, Judy E.
Cc: Alm, Jonathan E.; McDermott, Debra A.
Subject: Question on the fiscal note on 2162

Senator Lee,

As requested, I have reviewed the fiscal notes on both bills (2162 and 2123) and conferred with our fiscal expert, and the costs for child care providers (and the sum of the fiscal note on 2162) **IS** included within the fiscal note for 2123. If you have any other questions, give me a call…

Tara

Tara Lea Muhlhauser, J.D.

Director
CFS Division-ND Department of Human Services
State Capitol, Bismarck, ND 58505
701.328.3587 FAX: 701.328.3538

SB 2162 #4

N.D. Child Care Providers

Source: Linda Jagielo, Child Care Administrator, DHS Children & Family Services Division, from a Sept. 2008 report.

Provider Type	Program Number	Estimated Staff Count Per Type***	Estimated Total Staff
Air Force Base Child Care Center	NA	NA	NA
Licensed Child Care Center (care for 19+ kids)	125	20	2500
Preschool Education Facility	63	4.5	284
Licensed Family Child Care	407	4	1628
*Licensed Group Child Care Home (8-18 children)	860	5	4300
*Licensed Group Child Care Facility (8-18 children)	102	5	510
In-Home Child Care**	3	1	3
School-Age Child Care (after school programs)	54	8.5	459
Multiple License (Licensed as a child care center AND a preschool)	47	12	564
Public Approvals	2	0	0
Approved Relative Providers (TANF/child care assistance) *Unlicensed*	768	2.5	1920
Registration for Tribes	180	0	0
Self-Certified Providers (required to self-declare meet certain safety guidelines in order to receive child care assistance) *Unlicensed and no site visits.*	903	2.5	2258
TOTALS	3514		14426

NOTES

*Group child care homes and group child care facilities abide by same licensing rules. Location is the only difference.

** In-Home Care is child care for children with disabilities who need care in their own homes while a parent works or runs errands.

*** Estimated number includes teens and other adults in a household where child care services are provided

Other Notes

- CareCheck Registry, N.D.'s database of caregivers who are voluntarily undergone FBI-level criminal background checks has about 1,300 providers in it according to CFS.
- Together ND licensed and unlicensed providers that DHS has a record of have the capacity to serve about 43,261 children age 13 and younger
- Head Start programs may appear in the numbers above as pre-school programs or centers. There is no consistency. Staffs at Head Start programs are required by the federal government to have criminal background checks.

#5

Lee, Judy E.

From: Kim Jacobson [kim.jacobson@co.traill.nd.us]
Sent: Tuesday, January 13, 2009 11:41 AM
To: Lindaas, Elroy N.; Holman, Richard G.; Kaldor, Lee A.; Lee, Judy E.
Cc: Jacobson, Kim K.
Subject: SB 2162

At this time I am writing to you regarding SB 2162. This bill calls for an Act to create and enact two new sections to chapter 50-11.1 of the NDCC and to amend various sections of the current language. This bill relates to Early Childhood Services.

I am in support of the proposed modifications of this bill along with the two new sections.

One of the new sections (Section 7, #2) may receive marked attention and commentary. This section proposes the limiting affidavit (self-certified/registered) providers to no greater than three years. While is this controversial, the ND Department of Human Services and County Social Service Boards are mandated to protect children. Therefore, I feel this change is necessary.

As self-certified providers are exempt from monitoring and licensing regulations, it creates an inequity of standards and the system becomes very confusing to parents. Many parents assume that any child care facility with a document of approval from the state must meet the same standards. However, this is untrue. Additionally, the current language in NDCC limits the ability of the Department and Social Service Boards to effectively protect children enrolled in self-certified early childhood services.

My professional history has given me a unique perspective on this matter. In my current role as County Social Service Director in Traill County, I oversee early childhood services in this community. However, prior to my current position, I was the Child and Adult Care Food Program (CACFP) Manager for the State of ND within NDDPI. During that time, I visited thousands of child care programs throughout all of ND including self-certified homes. I served in this capacity for 14 years and truly witnessed things that few have seen. Together, from these onsite observations combined with my current responsibilities of oversight for the safety of children is the premise for my email to you.

From my experiences, self-certified homes often had problems that could not be addressed due to lack of jurisdiction and authority. These providers are not required to uphold licensing standards. They do not receive regular reviews or drop in visits. In addition, they are not required to participate in any type of training or professional development including CPR training nor are they required to have fire inspections.

Of course there are exceptions. I observed excellent self-certified providers. However, this was not the norm. Without adequate oversight, child safety concerns become paramount. However, there lacks public policy to address these concerns. This bill would limit the number of times a provider could be self-certified. Local County Social Service Offices would work with the self-certified providers to assist them in removing barriers to becoming licensed. This would create a relationship between the provider and the local agency. Providers who are committed to the profession would become licensed and would be monitored and subject to public policy. Providers who choose not to become licensed or fail to meet the standards would not be approved by the State or County Agency.

Based on these reasons, I feel that SB 2162 takes a good step in creating program uniformity and helps to protect North Dakota's youngest citizens. Thank you for your time and interest in this matter. If you have any questions or require additional information, please feel free to contact me at your convenience.

Sincerely,

Kim Jacobson, Director
Traill County Social Services
PO Box 190
Hillsboro, ND 58045
(701) 636-5220
(701) 636-5221 (fax)
(701) 367-6508 (cellular)

"There are two lasting bequests that we can leave our children. One is roots, the other is wings." Holding Carter, Jr.

---------Confidentiality Statement---------

This transmission is intended only for the use of the individual to whom it is addressed and may contain information that is made confidential by law. If you are not the intended recipient, you are hereby notified any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please respond immediately to the sender and then destroy the original transmission as well as any electronic or printed copies. Thank you.

Jonathan Alm
1-19-09

#6

PROPOSED AMENDMENT TO SENATE BILL NO. 2162

Page 5, line 15, remove the overstrike over "~~six or~~"

Page 5, line 16, remove "up to"

Page 5, line 17, replace "four" with "three"

Page 10, line 28, after "year" insert ", provided, however, that if a provisional self-declaration document is issued to allow an applicant to certify in cardiopulmonary resuscitation and first aid, the provisional document may not be in effect longer than six months. The effective date of a provisional document will be the effective date of a full self-declaration document upon the applicant meeting the conditions of the provisional document"

Page 10, line 29, after "times" insert ", provided, however, that a self-declaration holder who is also an approved relative provider for purposes of child care assistance is exempt from the three times limitation, if the self-declaration holder does not provide early childhood services to non-approved relatives"

Renumber accordingly

The amendments for page 10 have been prepared at the request of the Senate Human Services Committee chairman. There is expected to be a fiscal impact for these amendments which is not accommodated in the Governor's budget.

#1

Testimony
Senate Bill Number 2162 – Department Of Human Services
House Human Services Committee
Representative Robin Weisz, Chairman
March 3, 2009

Chairman Weisz, members of the House Human Services Committee, I am Jonathan Alm, an attorney with the Department of Human Services. I am here today in support of Senate Bill 2162.

The bill is designed to accomplish several goals. First, it updates, clarifies, and includes additional definitions used in licensing and providing early childhood services. Second, it modifies how the Department would count the number of children to determine what type of licensing is required. Third, it increases the civil penalty for providing early childhood services without a license. Fourth, it amends the prerequisites for issuance of a license and in-home provider approval. Fifth, it establishes a statutory provision to address self-declaration as one of the options early childhood service providers have and applies other statutory provisions to self-declarations and in-home providers. Sixth, it establishes a fingerprint-based criminal history record investigation for early childhood services providers, their employees and some family members at no cost in accordance with the Executive Budget recommendation.

1. Definitions

Section 1 of this bill provides a change to the definition of an early childhood "facility" to an early childhood "program"; this change is reflected throughout the bill. While the safety of a "facility" is part of the Department's review and is relevant to the Department's determination to grant, deny, or revoke a license, self-declaration, or in-home provider

registration, the change to "program" helps to clarify that the Department licenses the entire program and doesn't just consider the facility or building out of which services are offered. The bill includes a definition of "household member", "owner" or "operator", and "staff member" as used in the proposed provision requiring all owners, operators, household members, and staff members to have a mandatory FBI fingerprint-based criminal history record investigation as set forth in section 9 of this bill. A definition for "self-declaration" also is added to reflect another level of child care "licensure" the Department currently calls a standard compliance certification document.

2. Number of Children

Section 2 of this bill does not modify or change the number of children for which licensure is required. The engrossed bill reflects an amendment that was adopted by the Senate on page 5, line 15. This amendment is consistent with the current language of section 11-11.1-03 and with the current rules of the Department. This bill clarifies how the Department will count the number of children receiving early childhood services by requiring all children present on the premises and under the age of twelve years to be counted when identifying the number of children for whom the licensee, registrant, or certificate holder may provide care. This bill does not change the current law that allows the Department to count the children of an operator or an employee to determine the number of children receiving care or services in an early childhood program.

3. Civil Penalties

Section 3 of this bill increases the civil penalty from fifty dollars to two hundred dollars per day for each day of operation during which an operator operates an early childhood program without a license. This

increase in penalty identified in subsection 7 of section 3 of this Act is effective through July 31, 2011. This change is being made in the hope that it will deter individuals from providing early childhood services to six or more children without a license. An individual usually does not have to be licensed to provide early childhood services if that individual cares for five or fewer children. A license is required if an individual is providing early childhood services to four or more children under the age of twenty-four months or six or more children which includes no more than three children under twenty-four months of age. The sunset clause is added to ensure the Department assesses the impact of the increased fine during the course of the 2009-2011 biennium. Section 14 also increases the fiscal sanctions resulting from noncompliance with a correction order from twenty-five dollars to an amount not to exceed one hundred dollars.

4. Prerequisites for Issuance of License

Section 4 of this bill limits an owner, operator, or applicant from obtaining a license to provide early childhood services if they had a previous license or self-declaration denied or revoked within the twelve months prior to the date of the current application or if they have had three or more licenses or self-declaration certificates denied or revoked. This same standard applies to self-declarations as set forth in section 7. Currently, the Department only considers denials or revocations within the past six months. A requirement is also being added for family child care owners or operators to receive training in cardiopulmonary resuscitation and first aid to ensure children's safety while in the owners' or operators' care.

The bill also allows the Department to consider an individual's child abuse and neglect history, criminal background history, prior early childhood

services history prior to approval, denial, or revocation of a license, self-declaration, or in-home provider as outlined in sections 4, 5, 7, 9, and 10.

5. Self-Declaration and In-Home Providers

The Department currently issues standard compliance certification documents that would be named self-declarations under this bill. The changes in this bill to sections 5 through 20 and 23 will ensure consistency among providers, regardless of their level of licensure, certification, or registration. The changes are in regards to approval, denial, revocation, injunctions, and criminal penalties based upon the health and safety of the children, including criminal background and child abuse and neglect investigations, prior early childhood services history, and number of children receiving services.

Section 7 adds a new provision to the statute that the Department may only approve a self-declaration a maximum of three times. After three years the self-declaration holder would either be required to become a licensed provider or he or she can continue to provide care to up to five children without a license or self-declaration.

The engrossed bill reflects two additional amendments that were adopted by the Senate beginning on page 10, line 28. The amendments allow for a provisional self-declaration document to be granted for up to six months while an applicant becomes certified in cardiopulmonary resuscitation and first aid. In addition, a self-declaration holder who is also an approved relative provider for the purpose of child care assistance is exempt from the three-year limitation if the self-declaration holder does not provide early childhood services to children other than approved relatives.

Section 12 of the bill amends the correction order provision to allow the Department to issue a correction order against a holder of a self-declaration or an in-home provider registrant. In addition, a self-declaration document or an in-home provider registration may be suspended during an investigation of a report of suspected child abuse or neglect in accordance with section 17.

6. Investigations

Section 9 establishes a mandatory fingerprint-based criminal history record investigation for applicants, staff members, and certain household members before an application is approved. The Department currently reviews the criminal history of applicants, employees, and certain household members by using the search tool provided by the North Dakota Supreme Court through its website. While the North Dakota Supreme Court website is a useful tool for the Department, it does not disclose offenses committed in other states. This provision will ensure that all criminal activity of an applicant, including any that occurred outside the jurisdiction of this state, will be reviewed before the Department approves an application. This bill also clarifies that the Department has a right to investigate and inspect an early childhood program, or a holder of a self-declaration or a registration document.

The proposed amendment to this bill would allow the Department to conduct fingerprint-based criminal history record investigations on current providers as well as applicants. This amendment will allow a provider or an applicant to provide early childhood services while the Department is waiting to receive the results of the background investigation. This amendment does not affect the fiscal note.

7. Fiscal Impact

The fiscal impact of Section 9 of this bill was included in the Executive Budget for the Department. The Executive Budget recommendation included funding for the Office of the Attorney General to include 5.5 FTE positions to process the fingerprint-based criminal history record investigations, $310,500 to cover the $17.25 FBI fees, and $145,454 in operating costs.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2162

Page 11, line 27, replace "Applicants" with "Providers holding and applicants"

Page 12, line 20, after the first "the" insert "provider or"

Page 13, line 2, replace the first "or" with an underscored comma, and after "denial" insert ", or revocation"

Page 13, after line 3, insert:

"9. The department may issue a provisional license, provisional self-declaration, or provisional registration document to an applicant prior to the department receiving the results of the background investigation. A provisional license, provisional self-declaration, or provisional registration document must be issued according to rules adopted by the department."

Renumber accordingly

4-24-09 #1

PROPOSED AMENDMENT TO ENGROSSED SENATE BILL NO. 2162

That the Senate accede to the House amendments as printed on pages 1249 and 1250 of the Senate Journal and pages 1251 and 1252 of the House Journal and that Engrossed Senate Bill No. 2162 be further amended as follows:

Pg 10 Line 2.

Page 10, line 12, after "neglect" insert ". The department may issue a provisional in-home provider registration document in accordance with the rules of the department"

Page 11, line 8, insert:

11, line 19

"3. The department may issue a provisional self-declaration document in accordance with the rules of the department."

Renumber accordingly

4-27-09

#2

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2162

That the Senate accede to the House amendments as printed on pages 1249 and 1250 of the Senate Journal and pages 1251 and 1252 of the House Journal and that Engrossed Senate Bill No. 2162 be further amended as follows:

Page 2, line 3, replace "Providers holding and applicants" with "Applicants"

Page 2, line 5, after "for" insert "new"

Page 2, line 6, after "those" insert "applicants and" and after "for" insert "new" and after the second "of" insert "an applicant and"

Page 10, line 2, after "neglect" insert ". The department may issue a provisional in-home provider registration document in accordance with the rules of the department"

Page 11, line 19, insert:

"3. The department may issue a provisional self-declaration document in accordance with the rules of the department."

Page 12, line 8, remove "a provider holding or"

Page 12, line 9, after the second "as" insert "new"

Page 12, line 10, after "and" insert "new"

Page 12, line 21, remove "provider or"

Page 13, line 1, overstrike "the" and remove "provider or" and overstrike "applicant"

Page 13, after line 15, insert:

"9. Any individual who is providing early childhood services solely for the provider's own children, grandchildren, nieces, nephews, and cousins as a licensed provider, a nonlicensed holder of a self-declaration, or an in-home provider may not be required to submit to a criminal history record check authorized under section 2 of this Act."

Page 24, after line 5, insert:

"**SECTION 27. LEGISLTATIVE INTENT – FULL-TIME EQUIVALENT POSITIONS – BACKGROUND CHECKS.** It is the intent of the sixty-first legislative assembly that of the new full-time equivalent positions authorized for the attorney general's office to assist with conducting background checks pursuant to this bill, the attorney general may fill the positions only as necessary to meet workload demands for the biennium beginning July 1, 2009, and ending June 30, 2011."

Renumber accordingly

This amendment has been prepared at the request of Representative Robin Weisz for consideration by the conference committee on SB 2162. There is expected to be a fiscal impact for this amendment which is in the process of being determined by the Department.

4-29-09 ①

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2162

That the House recede from its amendments as printed on pages 1249 and 1250 of the Senate Journal and pages 1251 and 1252 of the House Journal and that Engrossed Senate Bill no. 2162 be amended as follows:

Page 1, line 1, after "enact" insert "a new section to chapter 50-06 and"

Page 1, line 2, after "to" insert "criminal history record checks and to"

Page 1, line 3, after "reenact" insert "subdivision g of subsection 2 of section 12-60-24 and"

Page 1, line 7, after "to" insert "criminal history record checks,"

Page 1, line 11, after the first semicolon, insert "to provide a statement of legislative intent;" and after the second semicolon, insert "to provide an appropriation;"

Page 1, after line 13, insert:

"**SECTION 1. AMENDMENT.** Subdivision g of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

g. The department of human services for ~~carecheck registrations under section 50-11.1-06.2~~ criminal history record checks authorized under section 2 of this Act.

SECTION 2. A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

Criminal history record checks. The department may require criminal history record checks as the department determines appropriate for:

1. Employees of the department upon hiring;

2. Providers licensed by the department under chapter 50-12, as well as for any employees of those providers; and

3. Applicants for early childhood services licensure, nonlicensed holders of a self-declaration, and in-home providers under chapter 50-11.1. The department also may require criminal history records checks for new staff members of those applicants and providers and for household members of an applicant and a provider if the provider is providing early childhood services within the provider's home and the household members residing within that home."

Page 2, line 9, replace "two" with "three"

Page 9, line 12, after "neglect" insert ". The department may issue a provisional in-home provider registration document in accordance with the rules of the department"

Page 10, remove lines 28 through 31

Page 11, remove lines 1 through 7

Page 11, line 8, replace "3." with "2."

Page 11, after line 9, insert:

"3. The department may issue a provisional self-declaration document in accordance with the rules of the department."

Page 11, line 27, replace "Applicants" with "Upon a determination by the department that a criminal history record check is appropriate, an applicant", replace the first "or" with an underscored comma, and after "self-declaration" insert an underscored comma

Page 11, line 28, after the second "as" insert "new"

Page 11, line 29, after "and" insert "new"

Page 12, line 20, overstrike "the applicant"

Page 13, line 2, replace the first "or" with an underscored comma and after "denial" insert ", or revocation"

Page 13, after line 3, insert:

"9. Any individual who is providing early childhood services solely for the provider's own children, grandchildren, nieces, nephews, and cousins as a licensed provider, a nonlicensed holder of a self-declaration, or an in-home provider may not be required to submit to a criminal history record check authorized under section 2 of this Act."

Page 19, line 11, replace "7" with "9"

Page 23, after line 27, insert:

"SECTION 28. LEGISLATIVE INTENT – FULL-TIME EQUIVALENT POSTIONS – BACKGROUND CHECKS. It is the intent of the sixty-first legislative assembly that of the new 2.0 full-time equivalent positions authorized for the attorney general's office to assist with conducting background checks pursuant to the bill, the attorney general may fill the positions only as necessary to meet workload demands for the biennium beginning July 1, 2009, and ending June 30, 2011."

"SECTION 29. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $238,406, or so much of the sum as may be necessary, and $120,750 in special funds, to the attorney general's office, for the purpose of conducting background checks pursuant to this bill, for the biennium beginning July 1, 2009, and ending June 30, 2011."

Page 23, line 29, replace "3" with "5"

Renumber accordingly

4-29-09 (2)
Porter

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2162

That the House recede from its amendments as printed on pages 1249 and 1250 of the Senate Journal and pages 1251 and 1252 of the House Journal and that Engrossed Senate Bill no. 2162 be amended as follows:

Page 1, line 1, after "enact" insert "a new section to chapter 50-06 and"

Page 1, line 2, after "to" insert "criminal history record checks and to"

Page 1, line 3, after "reenact" insert "subdivision g of subsection 2 of section 12-60-24 and"

Page 1, line 7, after "to" insert "criminal history record checks,"

Page 1, line 11, after the first semicolon, insert "to provide a statement of legislative intent;" and after the second semicolon, insert "to provide an appropriation;"

Page 1, after line 13, insert:

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g. The department of human services for ~~carecheck registrations under section 50-11.1-06.2~~ criminal history record checks authorized under section 2 of this Act.

SECTION 2. A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

Criminal history record checks. The department may require criminal history record checks as the department determines appropriate for:

1. Employees of the department upon hiring;

2. Providers licensed by the department under chapter 50-12, as well as for any employees of those providers; and

3. Applicants for early childhood services licensure, nonlicensed holders of a self-declaration, and in-home providers under chapter 50-11.1. The department also may require criminal history records checks for new staff members of those applicants and providers of an applicant and a provider if the provider is providing early childhood services within the provider's home."

Page 2, line 9, replace "two" with "three"

Page 9, line 12, after "neglect" insert ". The department may issue a provisional in-home provider registration document in accordance with the rules of the department"

Page 10, remove lines 28 through 31

Page 11, remove lines 1 through 7

Page 11, line 8, replace "3." with "2."

Page 11, after line 9, insert:

"3. The department may issue a provisional self-declaration document in accordance with the rules of the department."

Page 11, line 27, replace "Applicants" with "Upon a determination by the department that a criminal history record check is appropriate, an applicant", replace the first "or" with an underscored comma, and after "self-declaration" insert an underscored comma

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Page 11, line 29, after "and" insert "new"

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"9. Any individual who is providing early childhood services solely for the provider's own children, grandchildren, nieces, nephews, and cousins as a licensed provider, a nonlicensed holder of a self-declaration, or an in-home provider may not be required to submit to a criminal history record check authorized under section 2 of this Act."

Page 19, line 11, replace "7" with "9"

Page 23, after line 27, insert:

"SECTION 28. LEGISLATIVE INTENT – FULL-TIME EQUIVALENT POSTIONS – BACKGROUND CHECKS. It is the intent of the sixty-first legislative assembly that of the new 2.0 full-time equivalent positions authorized for the attorney general's office to assist with conducting background checks pursuant to the bill, the attorney general may fill the positions only as necessary to meet workload demands for the biennium beginning July 1, 2009, and ending June 30, 2011."

"SECTION 29. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $210,856 or so much of the sum as may be necessary, and $82,904 in special funds, to the attorney general's office, for the purpose of conducting background checks pursuant to this bill, for the biennium beginning July 1, 2009, and ending June 30, 2011."

Page 23, line 29, replace "3" with "5"

Renumber accordingly

4/29/2009 3:51 PM

Judy Volk

SUMMARY OF OAG APPROPRIATION NEEDED FOR SENATE BILL NO. 2162
AS AMENDED BY CONFERENCE COMMITTEE- APRIL 29, 2009

	OAG IMPACT	
	2009 -11	2011 -13
SALARIES & WAGES	96,222	107,309
OPERATING EXPENSES	114,634	104,987
TOTAL OAG COSTS	210,856	212,296
GENERAL FUND	127,953	129,393
SPECIAL FUNDS	82,904	82,904
TOTAL	210,856	212,296
OAG FTE'S	1	1
FBI fingerprint check cost	82,904	82,904
ESTIMATED RECORD CHECKS **	4,806	4,806

**EXCLUDES RELATIVE PROVIDERS AND HOUSEHOLD MEMBERS