2011 HOUSE HUMAN SERVICES

HB 1320

2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

HB 1320
January 24, 2011
13259

☐ Conference Committee

Committee Clerk Signature Vicky Crabtree

Explanation or reason for introduction of bill/resolution:

Allows nursing home patients to deduct property taxes from income for determination of medical assistance.

Minutes: *Attached testimony #1 and #2.*

Chairman Weisz: Called the hearing to order.

Rep. Larry Klemin: From district 47 in Bismarck testified in support of the bill. In 2009 session, I had introduced a bill similar to HB 1320 and subsequently withdrew that bill after it was pointed out to me that the rules of Centers of Medicare and Medicaid Services (CMS) would not permit what I was trying to do in the bill at that time. I have been informed that now that no longer be the case. So I put in HB 1320 again and what it does is allows a deduction from the gross amount of rent from rental property for the amount of the real estate taxes that you have to pay to the county for purposes of determining eligibility for medical assistance. I've handed out an example to show you how this works. (See attached handout #1.) (Rep. Klemin reads the handout.)

Chairman Weisz: I remember from last session you were trying to do that. No questions? Anyone else here in support of HB 1320?

Curtis Volesky: Director of Medicaid Eligibility for the DHS provided information on the bill. (See attached Testimony #2.)

Chairman Weisz: Both versions, you eliminate the deduction if there is a rental income considering the fact that in a lot of cases you might be potentially refusing that property to offset Medicaid when you want to ensure they are able to pay the property tax? Would that change the fiscal note (FN)?

Curtis Volesky: Medicaid requires the people try to rent property and in most situations most people are able to do that. Don't know if it would have a large fiscal impact since most of the property is rentable anyway.

Chairman Weisz: From your perspective, version 2 is simpler from the department's perspective to implement? But, obviously it has an increased FN.

Curtis Volesky: Yes.

Chairman Weisz: Anyone here in opposition? Seeing none, we will close the hearing on HB 1320.

2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

HB 1320
January 24, 2011
Job #13291

☐ Conference Committee

Committee Clerk Signature	Vicky Crabtree

Minutes:

Chairman Weisz: Opened the meeting on HB 1320. We have a couple of suggested amendments by the department. Is everybody clear on the amendments version 1 and 2?

Rep. Paur: No, I'm just not clear.

Chairman Weisz: The first version says that the deductions would only apply if you are getting nursing care services. Not under all Medicaid eligibility. It allows the deduction only if it is generating income. If you own say farm land and renting it out the property taxes would be deductible. Limited by the amount of taxes being paid by that individual. Limited to only ND property. The second version difference is only that it would count both the spouse and the recipient and would allow the deduction for all Medicaid eligibility instead of strictly for nursing homes. That has an additional cost of $17,000 to the state. It is easier for them to implement because they treat everything the same.

Rep. Paur: In the second if the property is not generating income, it still would be allowed a deduction.

Chairman Weisz: Not correct. Under either scenario they are saying if it is not renting it out you don't get the property tax deduction.

Rep. Paur: The property owned in Devils Lake that is under water, they still have to pay property taxes.

Chairman Weisz: If they applied for the inundated land they pay minimal taxes.

Rep. Hofstad: Almost nothing. Probably $35.

Chairman Weisz: It's something the legislature did 3 or 4 sessions ago.

Rep. Paur: With rental property trying to bypass this where I pay the taxes for someone in the nursing home and then pay the rent separate and it is a bloody hassle. Because, the county doesn't know what the tax are going to be. When I pay them I have to do an estimate, they reimburse back. So, even those who are taking advantage of that it's not a simple solution.

Chairman Weisz: Right.

Rep. Devlin: Another difference in version 2 is that it puts the out of state property back in there.

Chairman Weisz: Nothing says this committee can't do a version of both versions.

Rep. Louser: On amendment 2 if I understand right an individual can be considered for tax purposes in ND and LLC which would typically own property; and if we allow the spouse to be responsible, the spouse is not married to the LLC. The spouse is married to a person and LLC may be the one responsible for paying the taxes not the spouse.

Chairman Weisz: If it is a limited liability corporation that income or asset wouldn't even apply to that individual. Only as they may receive income from that corporation. That would be counted. Any income or expenses within that LLC wouldn't count for Medicaid including assets. Like Rep. Paur said, he can pay the rent and deduct the property tax and pay less rent which will lower the income to that individual; which means they have more deductions, more allowables, but it is a hassle.

Rep. Holman: Is the fiscal note tied to the fact that people that don't know this are not using it? People are ignorant of the ability to do this and so the state is going to end up paying more?

Chairman Weisz: People aren't taking the advantage of the ability to do that and so if this just puts it in then they can automatically deduct it. They are saying those that don't know how will just qualify.

Rep. Kilichowski: Do we know how the states around us handle this?

Chairman Weisz: I have no idea because they are probably just looking at this too. The feds didn't allow this. Rep. Klemin introduced the bill last session and then we had conversations with the department and he had to have it withdrawn because CMS said you can't do it. We weren't able to do that in 2009. They have ruled now that it is acceptable. If we do either version, do we want it to apply to all property in state and out of state? Version 2 includes it in and we can take it out if we so desire.

Rep. Porter: In my looking at the bill, we have a lot of residence of the State of ND that may own property in SD and be in the Hettinger nursing home. Whether they should be penalized because of that or not, I don't think they should. I would tend to lean toward the version that just included all property as long as it is making (stops sentence). Even though it might be owned individually inside of a trust, we are allowing them to have a normal business deduction of the taxes in determining what we are going what we are going to call the income. It goes back to what their recipient liability is going to be on a Medicaid basis. I do see why we would penalize that individual that has a legitimate expense to income whether it be in state or out of state. The point of the whole fix is to bring it to a business look rather than an individual look.

Chairman Weisz: There is no question there that the income from that out of state property is going to count against them.

Rep. Porter: Absolutely, and someone has to pay those taxes or the income is not going to be there and that will put more of a responsibility back onto the state.

Chairman Weisz: If we adopt version 2 committee, it would add roughly on the general fund side if you have your fiscal note about $17,000 and some. You will look at roughly a $53,000 state fiscal effect. That also includes adding the spouse. It will be about $17,000 over and above the fiscal note you have.

Rep. Porter: It seems odd to me in today's world of rental agreements that everybody doesn't know how to do this. All we are doing is solidifying a practice that is out there. I would question there would be any or very minimal loss to the state because of this change.

Chairman Weisz: I would assume when you have 20 and 30 year old contracts and a single person in a home and no one is watching out after them; that there wouldn't be a fair amount that do get burned. The fiscal is set and is minimal and don't see a big issue.

Rep. Holman: I would agree with you. A lot of rental contracts are handshakes and continue on for years and sometimes move on to the next generation without people knowing what is going on. I visited with one of our operators that rents from about 15 different people and I do a three pager because I use to work real estate. He said I'm the only one that does that. Sometimes the rent doesn't change for years and years and years.

Rep. Paur: I don't believe when you are dealing with Medicaid payments for nursing homes that they are going to go by something on the back of a scratch pad. They are very specific on what those contracts have to say and what they have to have for payments. They have to be within a certain percentage of the norms for the area etc.

Chairman Weisz: That is true.

Rep. Devlin: I believe we would be further ahead to adopt version 1, but overstrike language after rental property that says, it is located in the state. They had to be receiving nursing home care services, (inaudible) accountable gross income the same on either one and responsible for paying real estate taxes. We would allow property in a different state to be counted. I think that might be a better approach.

Chairman Weisz: You don't want the couples to qualify?

Rep. Devlin: I could be persuaded, but when I talked to sponsor before I came down here that is something the department put in. He was just trying to get the individual responsible for the taxes to get that. I can go either way on that.

Rep. Porter: Going back to version 2 language. Even if the property is held in duo name, it still comes down to an individual's responsibility to pay the tax. I don't know if you have

to have that spouse language in there as much as you have to make sure that the income is set as a net as with the taxes deducted I think is the key.

Chairman Weisz: From my own perspective I don't have a problem with the individual because I think you are right, in most cases that is not a problem. I like the idea of allowing it regardless if you are receiving nursing care services so they are playing by one rule.

Rep. Devlin: The issue the sponsor brought up was having someone in nursing home care that weren't allowed that deduction.

Rep. Porter: I move version 1 as an amendment with the without the limitation to property located in the state.

Rep. Holman: Second.

Voice Vote: Motion Carried

Rep. Holman: I move a Do Pass as amended.

Rep. Louser: Second

VOTE: 13 y 0 n

DO PASS CARRIED

Bill Carrier: Rep. Holman

FISCAL NOTE

Requested by Legislative Council
01/27/2011

Amendment to: HB 1320

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				$44,603		$44,276
Expenditures			$35,317	$44,603	$35,644	$44,276
Appropriations			$35,317	$44,603	$35,644	$44,276

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 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 allows a deduction of real estate taxes paid on rental property from countable gross rental income, for individuals screened as requiring nursing care, and who are receiving nursing care services.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of the bill allows an individual to deduct real estate taxes paid on rental property by making such payments deductible from rental income claimed for medical assistance eligibility when screened as requiring nursing care services, and who is receiving nursing care services. It is estimated this change will increase nursing home cost by $79,920 in each of next two bienniums. The general fund portion for the 11-13 biennium is $35,317 and $35,644 for the 13-15 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.*

The revenue increase in each biennium is the additional federal funds the state will receive due to allowing a deduction from income for real estate tax paid on rental property located in the state.

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.*

It is estimated this change will increase nursing home cost by $79,920 in each of next two bienniums. The general fund portion for the 11-13 biennium is $35,317 and $35,644 for the 13-15 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 Department will need an appropriation increase of $79,920 of which $35,317 is general fund and $44,603 is

federal funds for the 2011-13 biennium.

The Department will need an appropriation increase of $79,920 of which $35,644 is general fund and $44,276 is federal funds for the 2013-15 biennium

Name:	Debra A. McDermott	**Agency:**	Dept. of Human Services
Phone Number:	328-3695	**Date Prepared:**	01/27/2011

FISCAL NOTE

Requested by Legislative Council
01/13/2011

Bill/Resolution No.: HB 1320

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				$44,603		$44,276
Expenditures			$35,317	$44,603	$35,644	$44,276
Appropriations			$35,317	$44,603	$35,644	$44,276

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 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 allows a deduction from income for real estate taxes paid on rental property that is located in the state of ND for individuals screened as requiring nursing home care.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of the bill allows an individual to pay real estate taxes on rental property by making such payments deductible from income claimed for medical assistance eligibility when screened as requiring nursing care services. It is estimated this change will increase nursing home cost by $79,920 in each of next two bienniums. The general fund portion for the 11-13 biennium is $35,317 and $35,644 for the 13-15 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.*

The revenue increase in each biennium is the additional federal funds the state will receive due to allowing a deduction from income for real estate tax paid on rental property located in the state.

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.*

It is estimated this change will increase nursing home cost by $79,920 in each of next two bienniums. The general fund portion for the 11-13 biennium is $35,317 and $35,644 for the 13-15 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 Department will need an appropriation increase of $79,920 of which $35,317 is general fund and $44,603 is

federal funds for the 2011-13 biennium.

The Department will need an appropriation increase of $79,920 of which $35,644 is general fund and $44,276 is federal funds for the 2013-15 biennium

Name:	Debra A. McDermott	**Agency:**	Dept. of Human Services
Phone Number:	328-3695	**Date Prepared:**	01/18/2011

Adopted by the Human Services Committee

VK
1/25/11

January 24, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1320

Page 1, line 6, after "**from**" insert "**rental**"

Page 1, line 9, after the first "services" insert ", and who is receiving nursing care services"

Page 1, line 9, after "from" insert "countable gross rental"

Page 1, line 10, replace "that is located in the state" with "if the individual is responsible for paying the real estate taxes for that property"

Renumber accordingly

Date: 1-24-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1320

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Porter Seconded By Rep. Holman

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ			REP. CONKLIN		
VICE-CHAIR PIETSCH			REP. HOLMAN		
REP. ANDERSON			REP. KILICHOWSKI		
REP. DAMSCHEN					
REP. DEVLIN					
REP. HOFSTAD					
REP. LOUSER					
REP. PAUR					
REP. PORTER					
REP. SCHMIDT					

Total (Yes) No

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent: motion on amend. version 1
Vote 13-0

Date: 1-24-11
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1320

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Holman Seconded By Rep. Louser

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ	✓		REP. CONKLIN	✓	
VICE-CHAIR PIETSCH	✓		REP. HOLMAN	✓	
REP. ANDERSON	✓		REP. KILICHOWSKI	✓	
REP. DAMSCHEN	✓				
REP. DEVLIN	✓				
REP. HOFSTAD	✓				
REP. LOUSER	✓				
REP. PAUR	✓				
REP. PORTER	✓				
REP. SCHMIDT	✓				

Total (Yes) 13 No 0

Absent

Floor Assignment Rep. Holman

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

REPORT OF STANDING COMMITTEE

HB 1320: 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). HB 1320 was placed on the Sixth order on the calendar.

Page 1, line 6, after "**from**" insert "**rental**"

Page 1, line 9, after the first "services" insert ", and who is receiving nursing care services"

Page 1, line 9, after "from" insert "countable gross rental"

Page 1, line 10, replace "that is located in the state" with "if the individual is responsible for paying the real estate taxes for that property"

Renumber accordingly

2011 HOUSE APPROPRIATIONS

HB 1320

2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee
Roughrider Room, State Capitol

HB 1320
2/8/11
14228

☐ Conference Committee

Committee Clerk Signature	Meredith Trachtt

Explanation or reason for introduction of bill/resolution:

A BILL relating to deductions from income for determining medical assistance eligibility.

Minutes:

You may make reference to "attached testimony."

Chairman Delzer: Opened discussion. The title was read.

Representative Robin Weisz, District 14: HB 1320 is a bill we visited last session, until we found out the feds did not allow it. There has been a change in the feds since that time, so here it is again. This allows a deduction for property tax, it disregards rental income, on property that you own. It is limited to if you're receiving nursing services, and it's limited to the individual receiving the services, their share of the tax. It doesn't count a spouse, e.g., if it was a 50-50 owned property. Under current law, if you had rental property you were incoming off of, your property tax could not be deducted against that. This bill says you can deduct it up to the amount of income you're receiving.

Chairman Delzer: Life estates would qualify? Because they are the owner of the property.

Representative Weisz: No they wouldn't. If they're the owner of the property and they're receiving the income, and they're paying the property tax, it doesn't affect...if they're paying income to the individual, it's only the income, because that individual is not responsible for the property tax if it's in the life estate.

Chairman Delzer: If they're responsible for the property tax....

Representative Weisz: Then they could deduct it from the income they are receiving. Generally, in a lot of life estates, it's the life estate rather than the individual paying the property tax.

Chairman Delzer: Further questions by the committee? It's pretty simple.

Representative Pollert: I move Do Pass on HB 1320.

Representative Skarphol: Second.

Chairman Delzer: We have a motion for a Do Pass and a second. Discussion?

Vice Chairman Kempenich: I wonder if this number is a little low, when you consider farmland.

Chairman Delzer: It surprised me how low it was, but most life estates take care of that property tax when they set them up, so I think it's a pretty small number that will fall into this. I think it's only proper they have the availability to pay their property tax. Further discussion? We'll call the roll for a Do Pass on HB 1320. Motion passes 21-0-0. Does someone wish to carry the bill? We can send it back to policy. Policy carrier is Holman.

Date: 2/8/11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1320

House Appropriations Committee

Legislative Council Amendment Number

Action Taken: [X] Do Pass [ ] Do Not Pass [ ] Amended [ ] Adopt Amendment

[ ] Rerefer to Appropriations [ ] Reconsider

Motion Made By Rep. Pollert Seconded By Rep. Skarphol

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X		Representative Nelson	X	
Vice Chairman Kempenich	X		Representative Wieland	X	
Representative Pollert	X				
Representative Skarphol	X				
Representative Thoreson	X		Representative Glassheim	X	
Representative Bellew	X		Representative Kaldor	X	
Representative Brandenburg	X		Representative Kroeber	X	
Representative Dahl	X		Representative Metcalf	X	
Representative Dosch	X		Representative Williams	X	
Representative Hawken	X				
Representative Klein	X				
Representative Kreidt	X				
Representative Martinson	X				
Representative Monson	X				

Total (Yes) 21 No 0

Absent 0

Floor Assignment Rep. Holman (HS)

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

REPORT OF STANDING COMMITTEE

HB 1320, as engrossed: Appropriations Committee (Rep. Delzer, Chairman) recommends **DO PASS** (21 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1320 was placed on the Eleventh order on the calendar.

2011 SENATE FINANCE AND TAXATION

HB 1320

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB 1320
3/9/2011
Job Number 15151

☐ Conference Committee

A. Rittmiller

Explanation or reason for introduction of bill/resolution:

Relating to deductions from income for determining medical assistance eligibility

Minutes: Written Testimony Attached

Chairman Cook opened the hearing on HB 1320.

Representative Klemin – (See attached testimony A in favor of HB 1320)

Chairman Cook asked for testimony opposed to HB 1320. No one came forward.

Chairman Cook asked for neutral testimony for HB 1320.

Curtis Volesky, Department of Human Services – (See attached testimony B neutral on HB 1320)

Vice Chairman Miller – To what extent would that claim go?

Curtis Volesky, Department of Human Services – The extent of the claim is up to the amount of dollars that Medicaid paid out in benefits.

Chairman Cook closed the hearing on HB 1320.

Vice Chairman Miller – I'll move a Do Pass and rerefer to Appropriations on HB 1320.

Seconded by **Senator Triplett**.

Chairman Cook – Ask the clerk to take the roll. (5-0-2)

Carried by **Senator Burckhard**.

FISCAL NOTE

Requested by Legislative Council
01/27/2011

Amendment to: HB 1320

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				$44,603		$44,276
Expenditures			$35,317	$44,603	$35,644	$44,276
Appropriations			$35,317	$44,603	$35,644	$44,276

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 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 allows a deduction of real estate taxes paid on rental property from countable gross rental income, for individuals screened as requiring nursing care, and who are receiving nursing care services.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of the bill allows an individual to deduct real estate taxes paid on rental property by making such payments deductible from rental income claimed for medical assistance eligibility when screened as requiring nursing care services, and who is receiving nursing care services. It is estimated this change will increase nursing home cost by $79,920 in each of next two bienniums. The general fund portion for the 11-13 biennium is $35,317 and $35,644 for the 13-15 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.*

The revenue increase in each biennium is the additional federal funds the state will receive due to allowing a deduction from income for real estate tax paid on rental property located in the state.

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.*

It is estimated this change will increase nursing home cost by $79,920 in each of next two bienniums. The general fund portion for the 11-13 biennium is $35,317 and $35,644 for the 13-15 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 Department will need an appropriation increase of $79,920 of which $35,317 is general fund and $44,603 is

federal funds for the 2011-13 biennium.

The Department will need an appropriation increase of $79,920 of which $35,644 is general fund and $44,276 is federal funds for the 2013-15 biennium

Name:	Debra A. McDermott	Agency:	Dept. of Human Services
Phone Number:	328-3695	Date Prepared:	01/27/2011

Date: 3-9-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1320

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☒ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Miller Seconded By Senator Triplett

Senators	Yes	No	Senators	Yes	No
Dwight Cook – Chairman	X		Jim Dotzenrod		
Joe Miller – Vice Chairman	X		Connie Triplett	X	
Randy Burckhard	X				
David Hogue					
Dave Oehlke	X				

Total (Yes) 5 No 0

Absent 2

Floor Assignment Senator Burckhard

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

REPORT OF STANDING COMMITTEE

HB 1320, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (5 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed HB 1320 was rereferred to the **Appropriations Committee**.

2011 TESTIMONY

HB 1320

#1

HB 1320
Rep. Lawrence R. Klemin
House Human Services Committee
January 24, 2011

Jane, age 88, is the recipient of nursing home care in Burleigh County. Her assets include a life estate in 2 quarters of land in Foster County, which she has had for the past 30 years since her husband died. Her stepdaughter lives in another state and, as the remainderman, will automatically become the owner of the land when Jane dies. The land has been rented to a tenant for the past 30 years on a cash rent basis. Jane has always paid the real estate taxes out of the rental income. Jane also receives Social Security benefits. She has no other income or assets. A life estate for an 88 year old person has no value and is unmarketable, so the life estate can't be sold to pay for Jane's nursing home care. The remainderman is retired, does not get any of the income from the land, and has no money to pay the real estate taxes. If the taxes are not paid, the land will eventually revert to Foster County for nonpayment of taxes.

Land gross rent		$7,800/year
Real estate taxes		$1,650/year
Social Security	$900/month =	$10,800/year

Example 1:

Tenant pays gross cash rent to Jane. Result: **gross rent** is all counted as income that Jane must use for her recipient share of liability for nursing home care, leaving no money to pay the real estate taxes.

Example 2:

Jane revises cash rent contract so that tenant pays the real estate taxes and sends the **net rent** to Jane. Result: **net rent** is counted as her income for determining her recipient share of liability for nursing home care.

Question: Why should the result be different if Jane doesn't know that she can rent out the land on a **net rent** basis with the tenant paying the taxes?

HB 1320 solves this issue by providing that the real estate taxes may be deducted from the rental income so that it doesn't make any difference who pays the taxes. The land continues to be rented and the net proceeds are used to pay for part of Jane's nursing home care. If the land is lost to Foster County for nonpayment of taxes, then the amount that Burleigh County pays for Jane's nursing home care will be increased.

It is my understanding that Centers for Medicare & Medicaid Services (CMS) will allow the deduction of real estate taxes from the **gross rent** for rental property if permitted by state law and if the state receives an exemption from CMS.

#2

Testimony
House Bill 1320 – Department of Human Services
House Human Services Committee
Representative Weisz, Chairman
January 24, 2011

Chairman Weisz, members of the Human Services Committee, I am Curtis Volesky, Director of Medicaid Eligibility for the Department of Human Services. I am here to provide information on House Bill 1320.

In determining eligibility for Medicaid, current policy counts the gross amount of income received from rental property and does not provide a deduction for property taxes. Some Medicaid recipients have modified their rental agreements so the renter pays the property taxes, but others, primarily those unfamiliar with how income is treated by Medicaid, either pay the taxes out of their remaining assets or find a family member willing to cover the annual tax expense.

House Bill 1320 proposes to allow a property tax deduction for rental property owned by applicants and recipients who are receiving nursing care services. The bill would:

- Allow the tax deduction for individuals screened as needing nursing care, whether or not they are receiving those services.
- Allow the tax deduction regardless of whether the property is generating income.
- Require that income be treated differently as an individual transitions into or out of nursing care, or for a spouse who is receiving nursing care as opposed to the spouse who is not.
- Allow the Medicaid recipient to receive a deduction for the full amount of the taxes paid versus the portion of the taxes the individual is responsible for paying.

- Allow the deduction on property located in North Dakota, but would prohibit the deduction for property located out-of-state that is owned by a North Dakota resident applying for Medicaid, including property located along a border and located in two states.

To clarify the intent regarding the above items, I am also presenting two alternatives for amending the bill.

Version 1: This amendment (attached as "Version 1"):

a. Preserves the deduction only for individuals in receipt of nursing care services;
b. Allows the deduction only if the property is generating income; and
c. Ensures the deduction is granted to the extent of the taxes paid by the individual.

It continues to limit the deduction to property located in the state.

The bill as amended by Version 1 would read:

"Real estate taxes on rental property as deduction from <u>rental</u> income.

For purposes of determining the treatment of income and the application of income to the cost of care for medical assistance eligibility for an individual screened as requiring nursing care services<u>, and who is receiving nursing care services</u>, the department of human services shall allow as a deduction from <u>countable gross rental</u> income the real estate taxes for rental property that is located in the state <u>if the individual is responsible for paying the real estate taxes for that property</u>."

Version 2: This amendment (attached as "Version 2"):

a. Makes the same changes as Version 1; but also
b. Treats the income the same for a couple or when someone transitions in or out of nursing care (it allows the deduction regardless of the receipt of nursing care services); and
c. Allows the deduction regardless of where the property is located.

The "Pros" of this amendment are that the provision would be easier for individuals to understand, and administration of the provision would be simplified and less error prone. A "Con" is that it will increase the fiscal impact by $39,752 total funds, with $17,567 of that amount as the state share for the biennium.

The bill as amended by Version 2 would read:

"Real estate taxes on rental property as deduction from <u>rental</u> income.

For purposes of determining the treatment of income and the application of income to the cost of care for medical assistance eligibility ~~for an individual screened as requiring nursing care services~~, the department of human services shall allow as a deduction from <u>countable gross rental</u> income the real estate taxes for rental property ~~that is located in the state~~ <u>if the individual or the individual's spouse is responsible for paying the real estate taxes for that property</u>."

This concludes my testimony. I'll be happy to respond to any questions you may have.

VERSION 1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1320

Page 1, line 6, after "**from**" insert "**rental**"

Page 1, line 9, after the first "services", insert, ", and who is receiving nursing care services,", and after "from" insert "countable gross rental"

Page 1, line 10, after "state" insert "if the individual is responsible for paying the real estate taxes for that property"

Renumber accordingly

VERSION 2

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1320

Page 1, line 6, after "**from**" insert "**rental**"

Page 1, line 8, remove "for an individual screened as requiring nursing care"

Page 1, line 9, remove the first "services" and after "from" insert "countable gross rental"

Page 1, line 10, replace "that is located in the state" with "if the individual or the individual's spouse is responsible for paying the real estate taxes for that property"

Renumber accordingly

A

House Bill 1320
Testimony of Rep. Lawrence R. Klemin
Senate Finance and Taxation Committee
March 9, 2011

Mr. Chairman and members of the committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am here to testify in support of HB 1320.

HB 1320 allows the real estate taxes on rental property to be deducted from rental income for the purpose of determining eligibility for nursing home care under Medicaid. This is not allowed under current law and can result in inequities. It is my understanding that the Centers for Medicare & Medicaid Services (CMS) will allow the deduction of real estate taxes from the **gross rent** for rental property <u>if permitted by state law</u> and if the state receives an exemption from CMS.

The following is an illustration of how this works:

Jane, age 88, is the recipient of nursing home care in Burleigh County. Her assets include a life estate in 2 quarters of land in Foster County, which she has had for the past 30 years since her husband died. Her stepdaughter lives in another state and, as the remainderman, will automatically become the owner of the land when Jane dies. The land has been rented to a tenant for the past 30 years on a cash rent basis. Jane has always paid the real estate taxes out of the rental income. Jane also receives Social Security benefits. She has no other income or assets. A life estate for an 88 year old person has no value and is unmarketable, so the life estate can't be sold to pay for Jane's nursing home care. The remainderman is retired, does not get any of the income from the land, and has no money to pay the real estate taxes. If the taxes are not paid, the land will eventually revert to Foster County for nonpayment of taxes.

Assume :	Land gross rent		$7,800/year
	Real estate taxes		$1,650/year
	Social Security	$900/month =	$10,800/year

Example 1:

Tenant has been paying **gross rent** to Jane for many years under a cash rent contract and Jane pays the land taxes. Tenant continues to pay **gross rent** to Jane after Jane enters the nursing home. Jane has to pay for part of the cost of her nursing home care, to the extent she has the income or assets to do it, and Medicaid pays the rest. This is known as Jane's "recipient share of liability". Result: **gross rent** is all counted as income that Jane must use for her recipient share of liability for nursing home care, leaving no money to pay the real estate taxes. Either someone else who doesn't receive the income will have to pay the taxes or the land will be lost for nonpayment of taxes.

Example 2:

Jane revises the cash rent contract so that the tenant pays the real estate taxes and sends the **net rent** to Jane. Result: **net rent** is counted as her income for determining her recipient share of liability for nursing home care. The taxes are paid out of the rental income before the **net rent** is sent to Jane. The taxes are paid and Jane continues to receive the net rent to use for paying part of the cost of her nursing home care.

Question: Under Example 1, Jane doesn't know that she can rent out the land on a **net rent** basis with the tenant paying the taxes. Why should the result be different depending on who pays the land taxes?

HB 1320 solves this problem by providing that the real estate taxes may be deducted from the **gross rental** income for the purpose of determining eligibility for Medicaid so that it doesn't make any difference who pays the taxes. The land continues to be rented and the net proceeds are used to pay for part of Jane's nursing home care. If the land is lost to Foster County for nonpayment of taxes, then there will be no rental income at all and the amount that Burleigh County pays for Jane's nursing home care will be increased.

I understand that this new procedure is acceptable to CMS and that North Dakota will be granted an exemption if this bill passes in the Legislature.

I urge support of HB 1320. Thank you.

B

Testimony
Engrossed House Bill 1320 – Department of Human Services
Senate Finance and Taxation Committee
Senator Cook, Chairman
March 9, 2011

Chairman Cook, members of the Finance and Taxation Committee, I am Curtis Volesky, Director of Medicaid Eligibility for the Department of Human Services. I am here to provide information on Engrossed House Bill 1320.

In determining eligibility for Medicaid, current policy counts the gross amount of income received from rental property and does not provide a deduction for property taxes. Some Medicaid recipients have modified their rental agreements so the renter pays the property taxes, but others, primarily those unfamiliar with how income is treated by Medicaid, either pay the taxes out of their remaining assets or find a family member willing to cover the annual tax expense.

The engrossed bill will:

- Allow the tax deduction only for individuals receiving nursing care services, and will require that income be treated differently as an individual transitions into or out of nursing care, or for a spouse who is receiving nursing care as opposed to the spouse who is not.

- Allow the tax deduction from the rental income that is generated from the property, and not allow a deduction if the property is not being rented.

- Allow the deduction to the extent the individual is responsible for paying the taxes.

- Allow the deduction regardless of where the property is located.

This concludes my testimony. I'll be happy to respond to any questions you may have.