

FISCAL NOTE
Requested by Legislative Council
01/07/2019

Bill/Resolution No.: HB 1233

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$(309,000,000)			
Expenditures						
Appropriations						

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

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties			
Cities			
School Districts			
Townships			

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

HB 1233 expands the existing individual income tax credit for making contributions to a qualified North Dakota endowment fund to also allow the credit for contributions to any qualified North Dakota nonprofit organization.

- 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 will change North Dakota income tax law governing the existing endowment fund income tax credit allowed to individuals.

Current law provides an income tax credit to an individual who makes a charitable contribution to a North Dakota qualified endowment fund. A minimum amount of \$5,000 must be contributed for the contributions to that fund to qualify for the credit. The credit is equal to 40 percent of eligible contributions made to all funds during the tax year, up to a maximum credit of \$10,000 (or \$20,000, if married filing a joint return). If the credit exceeds the individual's tax in the contribution year, the excess credit may be carried over and used on subsequent tax years' returns for up to 3 years.

This bill will make two changes to the existing credit provisions: One, in addition to an endowment fund, the bill will allow an individual to claim the credit for making a contribution to a North Dakota qualified nonprofit organization that has been established in North Dakota for at least two years. Two, the bill will lower the minimum required contribution from \$5,000 to \$500 per qualified endowment fund or qualified nonprofit organization. These two changes will make this credit available to most individuals who currently make charitable contributions to endowment funds or nonprofit organizations in North Dakota and may provide an incentive for new donors.

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.*

If enacted, HB 1233 is expected to reduce state general fund revenues by an estimated amount between -\$284 million and -\$333 million for the 2019-21 biennium. The midpoint of this range is -\$309 million, as shown above in 1A. (This estimate is based on actual charitable contributions as reported to the IRS.)

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

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Agency: Office of Tax Commissioner

Telephone: 701.328.3402

Date Prepared: 01/15/2019

2019 HOUSE FINANCE AND TAXATION

HB 1233

2019 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1233
1/16/2019
30886

- Subcommittee
 Conference Committee

Committee Clerk: Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to an income tax credit for charitable contributions to a qualified endowment or a qualified nonprofit organization; and to provide an effective date.

Minutes:

Attachment 1-3

Chairman Headland: Opened hearing on HB 1233.

Representative Roers Jones: Introduced bill. Throughout the process we looked at removing the requirement to give to an endowment so the funds could be used by newer nonprofits for their operations. In our initial conversations with the tax commissioner's office we were told our fiscal note is undeterminable because it's not sure how many people would give. We were surprised to get a very large fiscal note so Mr. Kirby is going to propose some amendments to the bill.

Patrick Kirby, Resident of West Fargo, North Dakota: Distributed written testimony, see attachment #1. Ended testimony at 10:21.

Chairman Headland: You believe it's a proper function of government to use their strong arm to encourage a social behavior and how people choose to donate to nonprofits.

Patrick Kirby: I believe that any conversation in any entity of government or people of influence to talk about generosity, philanthropy, and giving to organizations that will benefit them locally is a great thing.

Chairman Headland: I can't disagree except I struggle with the obligation it may take away from the government's ability to take care of their citizens which we are responsible to do; take care of those who don't have the ability to take care of themselves. It's going to put the burden on the nonprofits. I understand what you're trying to do with this bill but to me there's a detriment to the side of what government's function really should be and it's moving it to a function of what I believe government shouldn't be doing and that's encouraging how people use their own money.

Representative Kading: Go Fund Me gets \$650 million a year relating to health needs for people, in addition many people donate to their churches, so how would those two charitable givings fall into this?

Patrick Kirby: Go Fund Me is usually in small amounts. For some of these larger gifts and opening up some of these tax credit pieces are to fund programs at a higher level than a normal \$20 gift or to pass the hat at church. This requires you to get a receipt and work with the nonprofit organization.

Representative Kading: Would you consider some of these larger donations a better thing for government to motivate people to do or do you think the smaller donations are just as good?

Patrick Kirby: Nobody donates a large amount right away; they start out small and build from there. If the government is in a position to endorse and encourage philanthropy, then I believe it is a wonderful thing to bring as many people together to help organizations who are providing services in the communities that government couldn't or shouldn't provide.

Chairman Headland: I saw your nice video on social media, it was nicely done. Further testimony in support?

Casie Hardin, resident of Hannaford, North Dakota: Distributed written testimony, see attachment #2. Ended testimony at 17:33.

Chairman Headland: Thank you for what you do at Alpha, you do great work. If we allow this to go through as written it will take away \$309 million from our ability to help those who need the help and what I believe is a function of government. It will put that in your hands which would make your job easier. Do you believe it's right to use the arm of government for this?

Casie Hardin: I think that using any kind of body of influence is a great way to encourage donations of all sizes. I see that it may help relieve some of the things we see that comes from the budget when budgets are cut over and over or maybe just not expanded. I work at a place where they haven't had a raise in over three years so it's really hard to get people to do good and continue the kind of work we do which is extremely important. We need to put our budget towards things to help the people we serve. If we can relieve that we could expand and provide proper wages for the people that work for us through proper budgeting.

Chairman Headland: We are very appreciative of the work you do. We just may disagree on how we get there. Thank you for your testimony, we really appreciate it.

Reverend Carol Two Eagles: I head the Church of the Helping Hand, Inc. We are a nondenominational church; we worship by helping others. We are overwhelmed all the time. We survive mostly off the business I started because of the problem with donations. It's a lot of work to attract and keep donors when we are up to our eyeballs in work. We do a tremendous amount of work with people who are homeless and those who are trying to stay out of the prisons. They are told they don't qualify for government programs but they come to us and they don't have that problem. Government can take care of the people in a variety

of ways. A tax deduction for donors would be a means of promoting that assistance. The largest donation we've had in the last five years was \$2,200 but there are enough of them to keep going. We work seven days a week 16 hours a day. I get a paycheck of \$1 a month and I've done so since 1993. If I'm making what the people see as a substantial paycheck they don't believe in us or that we wouldn't be able to do anything for them resulting in losing them. When we lose them we see an increase in domestic violence and self-abuse. Support for this bill would be an excellent thing because it would help really small donors who want to do something but don't know how. They would see a way to help and they would not feel excluded.

Chairman Headland: Do you think most people are aware that there is already a deduction on the income tax forms for charitable giving?

Reverend Carol Two Eagles: They don't believe it. Reality is something you believe yourself. This would give us the opportunity to advertise this.

Chairman Headland: Further testimony in support? Is there any opposition? Seeing none we will close the hearing on HB 1233.

**Written testimony was provided by Diane Hochhalter, Valley City, North Dakota who was not present at the hearing. See attachment #3.

2019 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1233
1/23/2019
31323

- Subcommittee
 Conference Committee

Committee Clerk:

Explanation or reason for introduction of bill/resolution:

A bill relating to an income tax credit for charitable contributions to a qualified endowment or a qualified nonprofit organization; and to provide an effective date.

Minutes:

No attachments

Chairman Headland: We're open for discussion. I think everybody can see the lost revenue in the bill. I can't support it for that purpose.

Representative B. Koppelman: I don't think I can support this either with the fiscal note. For those that give with the only purpose of getting a tax deduction, some may not give as much. The intent of the federal tax was to make everyone's taxes easier so a lot of those deductions where you had to do to get to \$24,000 as a married couple now you don't have to work quite as hard to do that. I would hope that people still act in a generous way and give to their churches and charities they support. I don't think it's the government's job to error on the side of tugging at their conscience to make their decision. I don't think this bill is necessary. **MADE A MOTION FOR A DO NOT PASS.**

Representative Blum: Seconded

Chairman Headland: Discussion?

Representative Ertelt: The current law gives advantage to those who contribute more but many are not able to contribute at that level. The nonprofits do a lot of what government ought not to be doing. I am going to resist the do not pass.

Chairman Headland: This 40% credit was designed for large massive donations to endowments. Forty percent is a very generous credit. The size of the donation generally would merit that size of a credit expanding it into any charitable donation. I will be supporting the do not pass.

Representative Steiner: Would this include a large contribution such as \$50 million, would they get 40% if we pass this?

Chairman Headland: They get a 40% credit against their tax obligation to the state of North Dakota.

Representative B. Koppelman: On page 2 line 1 states the maximum credit claimed for charitable gifts made in a taxable year is \$10,000.

Chairman Headland: I thought she was asking me about the large donations to an endowment.

Representative B. Koppelman: That would be true of the endowment now and true if the bill passed out charitable.

Chairman Headland: Any other discussion?

**ROLL CALL VOTE: 11 YES 3 NO 0 ABSENT
MOTION CARRIED FOR A DO NOT PASS**

Representative Steiner will carry this bill.

Date: 1-23-19
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1233**

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Koppelman Seconded By Rep. Blum

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland	✓		Representative Eidson		✓
Vice Chairman Grueneich	✓		Representative Mitskog		✓
Representative Blum	✓				
Representative Dockter	✓				
Representative Ertelt		✓			
Representative Fisher	✓				
Representative Hatlestad	✓				
Representative Kading	✓				
Representative Koppelman	✓				
Representative Steiner	✓				
Representative Toman	✓				
Representative Trottier	✓				

Total (Yes) 11 No 3

Absent 0

Floor Assignment Rep. Steiner

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

REPORT OF STANDING COMMITTEE

HB 1233: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **DO NOT PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1233 was placed on the Eleventh order on the calendar.

2019 TESTIMONY

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Testimony

House Bill 1233 – Patrick Kirby, Resident of West Fargo, ND

House Finance and Taxation Committee

Representative Craig Headland, Chairman

Chairman Headland, and members of the House Finance and Taxation Committee, my name is Patrick Kirby of West Fargo, District 13 and I am here in support of House Bill 1233, which was introduced by Rep. Shannon Roers-Jones.

I am a small business owner that works with nonprofits from all over the state of North Dakota helping them with fundraising. I am not here to represent a specific nonprofit organization, and I am currently not on any boards of any nonprofits. I have taken 2 days off, at my own expense, to travel here to testify on behalf of HB1233 because I believe that this bill will significantly increase the ability of nonprofits to serve their communities and encourage more individuals to support and donate to organizations that make an incredible and positive impact across the state.

Before I begin my testimony, I wanted to clarify two changes to HB1233.

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The original markup of the bill you have in front of you, was initially suggested it would have little to no fiscal impact on the budget. When the note came back with a fiscal note that was excessive, we adjusted the aggregate amount of the charitable gifts that qualified for this tax credit, found on Page 1, line 20 and 24, to read “five thousand dollars or more, to be reduced by \$500 a year, beginning January 1, 2021, until the threshold of \$2500 is reached.” This new adjustment was concluded to have zero fiscal impact on the budget this biennium. However, we still maintain that the amount for the lower threshold of gifts will not have that significant of an impact on the budget, as it is undetermined how many individuals would itemize for this credit.

For the rest of the changes in this bill, the effective date would be for taxable years beginning after December 31, 2019.

Over the past 14 years, I have worked with nonprofit organizations of every size, scope and scale, from start-up nonprofits to organizations serving the communities for well over 100 years. Regardless of what type of service they provide, from animal foster care to helping individuals with developmental disabilities, from food pantries to churches and private schools, each nonprofit I have connected with has

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the same two critical needs: The need for more donors, and the need for more unrestricted funding.

And while regionally and nationally, we have seen a spike in the amount being donated to charity, the majority of these gifts are increasingly being given by high capacity donors. There is also a trend of seeing individual donors of modest means, not giving as much, or not giving at all.

Combined with the new federal tax law that increases the amount an individual or couple can automatically deduct, there is concern that we could see a significant reduction in individual giving as the need for tax benefits lessens.

We are extremely fortunate to have a legislature that in 2011, passed subsection 2 of section 57-38-01.21 of the North Dakota Century Code that created a 40% tax credit to individuals who invested \$5,000 or more to qualified endowments. I have worked with organizations who have greatly benefitted from this bill and community foundations who hail this benefit as one of the best and exciting ways for donors to help leave legacies and impacts for years to come. Individuals who also benefit from this tax credit are some of the most generous and giving people I

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have ever come across in my professional fundraising career. I can tell you without a doubt, that their giving increased when using this law.

However, with the burden of organization's funding needs increasingly being put on the shoulders of those with high financial capacity, I believe there is an opportunity to share the ability to fund programs and services in our communities with donors of ALL capacities.

I also see an opportunity to help nonprofits use these generous donations in a way that helps them immediately, rather than only in the future. If an organization does not have a qualified endowment, but a donor with high capacity wants to give, and receive the forty percent tax benefit, that organization must then create or find one and only draw the small percentage rather than the full gift. This bill would ensure that both the donor's intent of giving to charity, and donating to funds that are unrestricted – if, of course, that is his/her wish – could also benefit from this tax credit. This unrestricted gift could then be used for supplies, training, programs and services that the nonprofit needs most, and needs immediately.

The proposed changes on page 1, lines 19, 20, 22, 23 and 24 add qualified nonprofit organization (that has been incorporated or established in North Dakota),

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to the list of entities that a charitable gift can be made to, in order for that gift to qualify for the forty percent tax credit. This will allow all nonprofit organizations, not just those with qualified endowments, to use donations immediately for general funding or specific projects and services. It also allows all individual donors to determine, and have a choice, what organizations they would like to impact and receive the forty percent tax credit without being restricted to providing only to those with endowment funds. These proposed changes still maintain and encourage the option to give to qualified endowments of organizations that have the program available and for those donors who wish to give towards long term endowment funds. This bill also enables donors with smaller means that want to give to endowment funds, the ability to receive the forty percent tax credit like those with high capacity enjoy.

The proposed changes on page 1, lines 20 and 24 (as explained at the top of this testimony) reduce the amount of the charitable gift to be qualified for the forty percent tax credit by \$500 every year, beginning January 1, 2021, until it reaches a \$2,500 threshold. This will encourage more individuals, not just those with high capacity abilities, to donate even more to nonprofits. It also encourages organizations to increase engagement with their donors, volunteers, members and communities to ask them to give more generously and take advantage of this tax

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benefit. Donors of any capacity would be moved to stretch their gifts further than they have in the past. Organizations would be moved to develop deeper relationships and have more critical conversations with more donors by adding this additional fundraising talking point to their solicitation repertoire.

The proposed changes on page 1, lines 16 through 18 requires that a nonprofit entity, by which a donor can receive the forty percent tax credit, must be incorporated or established in North Dakota for no less than two years. This will ensure that organizations receiving gifts that qualify for this tax credit are well established in the community.

The proposed changes on page 2, line 7 (as we addressed earlier) would make this act effective for taxable years beginning after December 31, 2019.

House Bill 1233 will benefit the individual donor of North Dakota, by encouraging an increase in generosity by giving everyone the same 40% tax credit benefit for gifts to every nonprofits that high capacity donors currently enjoy. Additionally, organizations can use those gifts in an unrestricted fashion to further their missions, programs and services to the communities they serve.

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I believe this bill will help sustain the continued growth in donations to nonprofits despite the decrease in households itemizing federal deductions going forward and ensure that the growth of philanthropy be shared by the many, rather than just the few.

All gifts, big or small, are valuable regardless of household income. House Bill 1233 better aligns a public giving policy with North Dakota values, and encourages the philanthropic activity of all its citizens.

This concludes my testimony, and I would be happy to answer any questions you might have!

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Testimony

House Bill 1233 – Casie Hardin, Resident of Hannaford, ND

House Finance and Taxation Committee

Representative Craig Headland, Chairman

Chairman Headland, and members of the House Finance and Taxation Committee, my name is Casie Hardin of Hannaford, ND and I am here in support of House Bill 1233.

I am currently employed at Alpha Opportunities in Jamestown ND, an organization who serves individuals with developmental disabilities, as their Community Outreach Coordinator, and I am responsible for their fundraising. I am also on the board of the Endowment Fund Committee for the town of Hannaford. Both of the organizations I work with would benefit from House Bill 1233.

As a member of the Hannaford Endowment Fund Committee, I know there are opportunities to add funds from local residents of moderate means if given the opportunity to benefit from the forty percent tax credit as proposed in this bill. Individuals who may not consider giving to our organization current because of other commitments to local charities, would find themselves in a better financial

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position to add our endowment fund if given an extra incentive to donate. Our Endowment fund would benefit from the additional opportunities to talk with potential donors about ways to give to our organization.

HB1233's proposed change of allowing donors to choose organizations that do not have a charitable endowment and still receive the forty percent credit would also help Alpha Opportunities. Last year, a generous donor pledged a gift of \$5,000 to our organization as a challenge match. However, he also wanted to have that gift to benefit from the current 40% tax credit by having it put in a qualified endowment. At the time, Alpha Opportunities did not have one.

And though we have gone through the process to honor the donors wish, the full gift could have provided those we serve with programs that would have enhanced their lives such as:

- Memberships to fitness center, to have places to exercise and encourage integration of individuals with disabilities to the community.
- Hiring trained artists and musicians, and providing art and musical supplies to help teach life skills through musical and artistic experiences

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This proposed bill will also help us engage more donors connected to our organization by giving an additional benefit to help fund immediate needs. Our donor base does not currently have an extensive list of high capacity donors, but if smaller gifts received a 40% tax credit, I believe they would stretch their gift to their maximum ability to help our nonprofit.

I hope you consider House Bill 1233, and that concludes my testimony and would be happy to answer any questions.

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Testimony

House Bill 1233 – Diane Hochhalter, Valley City, ND

House Finance and Taxation Committee

Representative Craig Headland, Chairman

Dear Finance and Taxation Committee,

I am writing to show support for House Bill 1233 that will come before you for consideration. As an individual from District 24, a rural district, I believe this bill would greatly benefit Non-For-Profit organizations in my area. I currently sit on the Sheyenne Valley Community Foundation board which helps Nonprofit organizations in three counties. By lowering the mandatory amount of giving from \$5000 and widening the recipients from just qualified endowments to all nonprofits, individuals gift giving would be far more reaching and the impact would be significant. Please consider approving Bill 1233 to increase the reach that our much needed Nonprofits provide.

Sincerely,
Diane J Hochhalter, Valley City, ND