

**FISCAL NOTE**  
**Requested by Legislative Council**  
**04/11/2019**

Amendment to: HB 1384

- 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
<b>Revenues</b>						
<b>Expenditures</b>						
<b>Appropriations</b>						

- 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
<b>Counties</b>			
<b>Cities</b>			
<b>School Districts</b>			
<b>Townships</b>			

- 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 1384 with Senate Amendments will expand the existing income tax credit allowed for making a charitable contribution to a nonprofit private school in North Dakota.

- 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 expands the three existing income tax credits allowed for making charitable contributions to nonprofit private schools in North Dakota. The bill provides for a separate credit for each of three school categories—primary, secondary, and higher education. In each school category, the credit is equal to the smaller of (1) 50% of qualifying contributions, (2) 25% of the taxpayer’s tax liability, or (3) \$2,500.

This amended version of the bill expands the credits by increasing the limitation based on the taxpayer’s tax liability from 20% to 25% and allowing the credits to individuals for direct contributions to private schools. The Act sunsets after two tax years.

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 1384 with Senate Amendments is expected to reduce state general fund revenues in the 2019-21 biennium.

Businesses are allowed this tax credit under current law, with the most limiting factor the \$2,500 cap. That cap is not changed in this bill. The provisions of this bill that are most likely to result in a reduction of revenues are relative to the expansion of the tax credit to include individuals who make direct contributions to private nonprofit schools in the state, and those that allow the business contribution tax credit to offset 25% of the entity's tax liability.

Research provided to the tax department indicated that the current level of contributions made by individuals and businesses would result in a reduction of revenues of approximately \$5 million in the 2019-21 biennium. It is not

known how many additional contributions will be successfully solicited by private nonprofit schools as a result of the expansion of the tax credit allowed in this bill. The amended version of the bill provides limitations and prevents the tax credit in excess of 25% of any contributor's tax liability.

The fiscal impact cannot be determined.

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

**Name:** Kathryn Strombeck

**Agency:** Office of Tax Commissioner

**Telephone:** 701.328-3402

**Date Prepared:** 04/12/2019

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/12/2019**

Bill/Resolution No.: HB 1384

- 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
<b>Revenues</b>						
<b>Expenditures</b>						
<b>Appropriations</b>						

- 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
<b>Counties</b>			
<b>Cities</b>			
<b>School Districts</b>			
<b>Townships</b>			

- 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 1384 will change the income tax law governing the tax credit allowed for making a charitable contribution to a nonprofit private school in North Dakota.

- 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 expands three existing income tax credits allowed for making charitable contributions to nonprofit private schools in North Dakota. Current law provides for a separate credit for each of three school categories—primary, secondary, and higher education. The credits are available to all taxpayers, except individuals, for contributions made directly to the eligible schools. Individuals are allowed to claim the credits only if the credits are received from a partnership or other passthrough entity that makes a qualifying contribution. In each school category, the credit is equal to the smaller of (1) 50% of qualifying contributions, (2) 20% of the taxpayer’s tax liability, or (3) \$2,500.

This bill will expand the credits by removing the limitation based on the taxpayer’s tax liability and allowing the credits to individuals for direct contributions.

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 1384 is expected to reduce state general fund revenues in the 2019-21 biennium. The amount of the reduction cannot be determined.

Businesses are allowed this tax credit under current law, with the most limiting factor the \$2,500 cap. The cap is not changed in this bill. The provisions of this bill that are most likely to result in a reduction of revenues are relative to the expansion of the tax credit to include individuals who make direct contributions to private nonprofit schools 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.*
- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

**Name:** Kathryn Strombeck

**Agency:** Office of Tax Commissioner

**Telephone:** 701.328-3402

**Date Prepared:** 01/24/2019

**2019 HOUSE FINANCE AND TAXATION**

**HB 1384**

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1384  
1/29/2019  
31667

- Subcommittee  
 Conference Committee

Committee Clerk: Mary Brucker

### Explanation or reason for introduction of bill/resolution:

A bill relating to the individual income tax credit for charitable contributions.

### Minutes:

Attachment 1

**Chairman Headland:** Opened hearing on HB 1384.

**Representative Nathe:** Introduced bill. The current law allows a 50% tax credit for contributions to nonpublic schools in North Dakota. The maximum credit is \$2,500 so a gift of \$5,000 can become a North Dakota income tax credit up to \$2,500. The credit is then further limited to 20% of a taxpayer's North Dakota tax liability. If your tax liability is \$1,000 the \$5,000 gift has a further limit of the credit to \$200. The current law also limits these credits to business taxpayers filing as a c-corporation, as a s-corps, or partnerships. In section 1 it removes portions of lines 10 and 11 says this bill opens these tax credits to be utilized by individual taxpayers in addition to the business taxpayers who currently are allowed these credits. Lines 15-17 removes the 20% cap on the credits thus removing the secondary 20% limit on the credits. Section 1 also applies to contributions to higher education. Sections 2 and 3 have identical language, these sections apply to secondary education and primary education.

**Representative Kading:** I know you're not changing it in this bill but do you think this should just be in-state schools? In Fargo a number of people send their kids to Park Christian School which is on the Moorhead side of the river. Should schools like that be included in this credit?

**Representative Nathe:** My feeling is that it would just be in-state schools.

**Chairman Headland:** I believe if you're filing your tax in North Dakota and you have the donation it would be included. I just got confirmation from the tax department on that as well.

**Representative Steiner:** What is the impetus of this bill?

**Representative Nathe:** This bill would help generate more benefit to people who are donating to private colleges so they can write it off their taxes.

**Chairman Headland:** Is there further testimony in support of HB 1384?

**Rod Backman, representing the State Association of Non-Public Schools as well as the University of Mary and University of Jamestown:** Distributed written testimony, see attachment #1. Ended testimony at 9:23. Now I will discuss the fiscal note. Because there are two components to this bill, the first part of the bill is to include individuals besides businesses. The tax department doesn't know the fiscal note on that because we don't know how many individuals will take advantage of it. The second part of removing the 20% cap in the fiscal note was that they feel most of the businesses that are using it now are capped by the \$2,500 so there's not a huge impact by removing the 20% cap.

**Chairman Headland:** It makes sense because I assume they are there already. The big uncertainty is adding the individual credit.

**Rod Backman:** We'd like to see the 20% cap off because it's somewhat confusing to the CPAs and to the taxpayers. They don't want some donor coming along who gives \$5,000 and they then think they are getting a \$2,500 credit but the credit turns out to be way smaller. There's no carryover provision in this law so if you don't use it your first year then it's gone.

**Chairman Headland:** There's no way to know.

**Rod Backman:** No, but I have data that shows in 2017 the total credits were about \$385,000 so if you double that you're at about \$770,000 a biennium. If all were capped at 20% that would bring your fiscal note to \$3 million if everybody who gave was at the 20% cap. The maximum fiscal note would be \$3 million but it should be substantially smaller than that. Are you with me?

**Chairman Headland:** No.

**Rod Backman:** If the credit is \$770,000 and that was based on everybody being at the 20% cap that means if you took that cap off your fiscal note would be four times higher.

**Chairman Headland:** But it's limited to business and not to individuals.

**Rod Backman:** Correct. The two parts to this bill are very distinct and separate. I see three potential options for this bill; pass it as is by taking the 20% cap off and opening it up for individuals. Since that would be an unlimited fiscal note our second choice is taking the 20% cap off and including individuals but put a 20% on them so you have some time to see what the real fiscal impact would be. Our third choice would be to remove the cap. We feel this is the most important partly because of the complication and I think it will help some.

**Gerald Vetter, President of Light of Christ Catholic Schools:** I would like to encourage your support for HB 1384. We have found these tax credits and the changes since 2015 to be beneficial to our fundraising efforts to help subsidize the tuition paid by our parents. Many of the families face significant financial sacrifices to send their children to our schools. We spend a significant portion of our budget to assist all families who need financial assistance to some extent. These credits have helped them in doing that in helping us help them.

**Chairman Headland:** Why do you believe it's important to use our tax code to encourage donations to private institutions that are purely a choice by individuals to send their children there when they could have a free education provided by the public system?

**Gerald Vetter:** It is an individual choice but the private schools are very beneficial to our community and to the state. These are students who will one day go on to our universities and who will come back to the state.

**Chairman Headland:** We wouldn't argue any of that. There would be the same argument made for our public school system. Why do you feel the government should be there to encourage people to invest in your cause?

**Gerald Vetter:** Education is a great cause. Our school of 1,300 students is the 13<sup>th</sup> largest district. We have put forth significant infrastructural investments to those students that would otherwise have to be covered by the public school. It is a choice to come but the choice to attend varies; some may be religious, some may be a smaller setting, or whatever that might be but because of our infrastructural investments and because of the quality of our schools it is a direct benefit to cost savings through the public system.

**Chairman Headland:** That argument is out there. I imagine there are less teachers that have to be employed by the public system because of it but the infrastructure in place is needed to educate those that chose to go to a public system. It's a choice to send your children to a private school. You're asking the people that choose to send their children to the public system to help pay for that choice because it's tax dollars that belong to the taxpayers.

**Gerald Vetter:** But they are also dollars that belong to the individuals. Individuals have generous hearts and want to give. This would be a way to encourage them to....

**Chairman Headland:** But we have to have the government there to push them.

**Gerald Vetter:** To assist or to incentivize to some extent; a sense of empowerment.

**Vice Chairman Grueneich:** If this bill were to pass to include individuals, how many do you feel would benefit from this benefit?

**Gerald Vetter:** In 2018 we had 71 participants as it's currently structured. If the cap would change or the individual would be added it would be interesting to see of those who give if they would switch it to the individual versus that of going through their corporation, their LLC. I wouldn't have that answer. It may not always be the parents but could be the former alumni which would have an impact on that as well. The parents also pay the tuition so they are more likely to offer assistance sometimes after their students graduate.

**Representative Trottier:** How much is tuition?

**Gerald Vetter:** At our high school the cost to educate a student is \$7,000 and our tuition is \$5,340. Our elementary schools are \$3,540 and our St. Mary's middle school academy is

\$3,900. The additional cost through that and education would be done through fundraising and any subsidization we would receive from our parishes.

**Chairman Headland:** If we were to pass this bill as written is this going to satisfy the requests out there or are we going to be back next session to expand it?

**Gerald Vetter:** It wasn't asked the last session. We took time off and we wanted to study it. Whenever there is an advantage we would say that we need to look at that because education is always changing which means the funding mechanisms have to as well. I think this would be very satisfactory. It would take care of a great need we currently have.

**Chairman Headland:** It would be a debate who has the advantage whether it be the child or the donator.

**Chairman Headland:** Is there further testimony in support? Is there any opposition? I have one more question. How would you feel about the committee adding homeschoolers?

**Rod Backman:** I'm not opposed to including home schoolers but I'm not sure how you'd do it. This is based on a tax structure donated to an entity that's already considered a 501c3.

**Chairman Headland:** It would have to be some kind of ...

**Rod Backman:** You made the point that the infrastructure is already there for the public system and that's correct. On the other hand, if 7,000 showed up for school at the public schools next year that nobody was expecting and the state had to pick up the foundation aid payment for them, all of a sudden the fiscal note would look pretty small. The data from the tax department with the 2015 changes shows that in 2017 for high schools there were only 16 c-corps that contributed while there were 240 pass throughs. Those 240 contributed \$151,000 to high schools and the 16 c-corps contributed \$39,000 to high schools.

**Chairman Headland:** Is there anything else? Does everybody understand how the bill is going to work? We'll close the hearing on HB 1384.

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1384  
2/4/2019  
32127

- Subcommittee  
 Conference Committee

Committee Clerk: Mary Brucker

### Explanation or reason for introduction of bill/resolution:

A bill relating to the individual income tax credit for charitable contributions.

### Minutes:

Attachment 1

**Chairman Headland:** Distributed information from the tax department, see attachment 1.

**Representative B. Koppelman:** Was there an amendment offered? I have notes here to make sure it was expanded to other types of entities because they struck out the pass through. Did we hear that those other chapters solved that so it was in the bill?

**Chairman Headland:** There wasn't an amendment.

**Representative B. Koppelman:** On 57-38-30 it includes individual estate and trust income so I'm guessing that's how the pass throughs are covered. I believe it is already in the bill.

**Chairman Headland:** There are three credits in this bill. I don't know that I'm supportive of expanding this. We've expanded it from what it originally was. I don't know that they will quit until they have their fully funded credit. I will probably resist the passage of this bill.

**Representative Steiner:** I thought he said the CPA said there was something that needed to be cleaned up in this bill. There's a 20% cap that's a double cap. They mean to give a \$2,500 credit but then you take 20% of that and it's only \$200. The double cap is confusing. In 2015 the law was put in place so did we mean to do that or was it two bills coming together?

**Chairman Headland:** I believe they would like us to because it expands the credit to a double cap and puts a limit on how useful the credit is.

**Representative Steiner:** If the gift is \$5,000 then credit on the tax is \$2,500 then 20% of that is \$200 so when they give \$5,000 it's really only \$200?

**Chairman Headland:** They didn't used to have anything.

**Representative Steiner:** So we gave them \$200 and they were hoping to get \$2,500?

**Chairman Headland:** Sure. In 2015 the double cap was put in there for a reason, to limit them to something a lot less than that.

**Representative B. Koppelman:** I'd like to see us do this. The change in here with the double cap really makes it so that only rich people are going to get a benefit that's worth anything here. It's 20% of your tax liability so if somebody had a really high tax liability and they gave \$10,000 they would get the full \$2,500. If we're going to have this credit in code, then I believe we should make it that the average North Dakotan can benefit from it and not try to make it rich people only. **MADE A MOTION FOR A DO PASS.**

**Representative Kading: SECONDED**

**Chairman Headland:** I'm going to resist the do pass motion. I think that individuals who choose to send their children to private schools should be willing to pay for it. This bill is an expansion.

**Representative Ertelt:** The individuals do choose to send their children to private schools and in doing so they are saving the state \$160 million per biennium. I think they are do some of this tax credit. I will be supporting this.

**ROLL CALL VOTE: 9 YES 5 NO 0 ABSENT  
MOTION CARRIED**

**Representative Ertelt will carry this bill.**

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. HB 1384**

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. Kading

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) 9 No 5

Absent 0

Floor Assignment Rep. Ertelt

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

**REPORT OF STANDING COMMITTEE**

**HB 1384: Finance and Taxation Committee (Rep. Headland, Chairman)** recommends **DO PASS** (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1384 was placed on the Eleventh order on the calendar.

**2019 SENATE FINANCE AND TAXATION**

**HB 1384**

# 2019 SENATE STANDING COMMITTEE MINUTES

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

HB 1384  
3/5/2019  
Job #33188

- Subcommittee  
 Conference Committee

Committee Clerk: Alicia Larsgaard

## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 57-38-01.7 of the North Dakota Century Code, relating to the individual income tax credit for charitable contributions; and to provide an effective date.

## Minutes:

Attachments: 1

**Chairman Cook:** Called the hearing to order on HB 1394.

**Representative Nathe, District 30, Bismarck:** Introduced the bill. The credit is limited to 20% of the tax payers ND tax liability. If your tax liability is \$1,000 the \$5,000 gift has a further limit of the credit to \$200. The current law also limits these credits to business tax payers while filing a C Corps. This bill does much to support and assist low income families whose children do attend non-public school. The K-12 schools are those that have saved ND tax payers in the amount of \$160 M of these kids going to a non-public school versus a public school. The bill makes two changes to the current law. In section 1, it removes portions of line 10-11. This bill opens these tax credits to be utilized by individual tax payers in addition to the business tax payers who are allowed these tax credits. Lines 15-17 remove the 20% cap on the credits and remove the secondary 20% limit on the credits. Section 1 also applies to contributions of higher education. Sections 2-3 have identical language. These sections apply to the secondary ed. and primary education. I will stand for any questions.

**Rod Backman, State Association of Non-Public Schools, University of Mary, and University of Jamestown:** Testified in favor of the bill. See attachment #1.

**Chairman Cook:** Someone paying for a private school education would not be able to take a credit because that is tuition they are paying for.

**Rod Backman:** Right, this credit is only for contributions to these non-profit entities. If someone is paying tuition, that does not qualify. This is just on people making donations to the entity.

**Mont Senior James Shea, President, University of Mary:** Testified in favor of the bill. The history of private education in this state is deep and reached back even further than our 1889

establishment as the state of ND. In 1883, the Presbyterian church founded Jamestown college which is now the University of Jamestown. In 1876, the first small group of benediction sisters from MN stepped off the train in the town that would become Bismarck. By the next day, they set up a school to educate poor immigrant children of every denomination. The kind of pioneering spirit that defines this state has come from people like these who are motivated by the blessing of education. The seeds they planted have grown and the education they brought has contributed to the prosperity of our state. Such educated has a crucial role in sustaining the values we stand for as North Dakotans. We are so proud of the school systems in ND. Because we are a state of neighbors, we share fundamental values. Strong public education is a badge of honor for us. Many of us have experienced both private and education and we have benefitted from both. We believe that from the time we were still Dakota Territory, private education has continuously brought tremendous benefits to the people of this place. We do not feel entitled to some sort of corresponding financial reimbursement from the public. It is an honor and joy to serve in this way. We make our contribution gladly and without conditions. As the beneficiaries of those first sisters, we are still guided by their same mission to form and educate leaders who support the growth and health of our state. Private education brings an added dimension to education. There is an emphasis on values and ethics while educating the whole person both academically and spiritually. Our success benefits the entire state. The University of Mary serves more than 3,800 students from every county in ND. Now, students are coming to us in enormous numbers from all over the nation. Many of these students fall in love with ND and remain here to bring their talents and abilities to enhanced the ND workforce in our communities. We ask for the opportunity for private citizens to personally invest in private education and amplify their generosity in supporting the citizens of ND. This tax credit encourages people to generously support education that will directly benefit the state and all its citizens to help keep our economy and communities robust and support the ND values that are precious to all of us. In essence, this bill gives freedom and encouragement to help us who labor in private education all across ND, to contributors. We encourage you to support this bill.

**Chairman Cook:** I think I once saw a study that every university in the state was, at one time, a privately church ran school.

**Chairman Cook:** Any further testimony? Any opposed? Hearing none, we will close the hearing on HB 1384.

# 2019 SENATE STANDING COMMITTEE MINUTES

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

HB 1384  
3/20/2019  
Job #34004

- Subcommittee  
 Conference Committee

Committee Clerk: Alicia Larsgaard

## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 57-38-01.7 of the North Dakota Century Code, relating to the individual income tax credit for charitable contributions; and to provide an effective date.

## Minutes:

Attachments: 2

**Chairman Cook:** Called the committee to order on HB 1384.

**Senator Dotzenrod:** This bill provides income tax credit for contributions to non-public private schools. After the hearing, I did some checking to see how our law has evolved. If you look at page 1 of the bill line 10-11, the idea of having the pass through, we put that in in 2015. Up until that time, it was just corporations.

Distributed attachment #1. When I saw this sheet, I was surprised there has not been a lot of returns. If you look at the individual income tax primary schools, in 2015 it started at 116. It has gone up a little bit. The total dollars have not been that great with the kinds of limits that have been in ND law.

If you look at the corporate, those returns are not very many. What we have had in law has been relatively mild. If we pass this bill as it, the contributions would go directly from the to the school. It would not go through the pass through. That seems to be a fairly significant change in the way we have done things in the past.

Most of the testimony in the hearing had to do with the 20%. I am not too concerned about that change. It limits, on line 16, of \$2,500. Taking that limitation does not change too much. I think we are getting close to the \$2,500. My concern is that we are overstriking on line 10 and the contributions can go directly from the individual to the school. I do think that is a fairly large change.

I have amendments that would take that overstrike off and leave that part of the bill as is. Distributed attachment #2.

**Chairman Cook:** Senator Dotzenrod, do you think these amendments basically eliminate the motive for the bill and why it was introduced? Why do you not just vote against the bill?

**Senator Dotzenrod:** I think most of the testimony we got I the hearing was about the 20%. If we pass the bill with a 20% limitation, it is a step forward for the people who would like to see contributions made to the private schools. I think that the primary concern I have is that we are now allowing contributions to go directly with no pass through entity. We do not have a fiscal note that tells us much. We are kind of guessing. I thought this was worth talking about.

**Chairman Cook:** I am looking back at the testimony. The second paragraph talks about expanding this for individuals who do not get it now. There are two paragraphs dealing with the 20% but there are only 2 because that is how long it takes to explain it.

**Senator Dotzenrod: Moved to adopt amendment 19.0914.01001.**

**Senator Unruh: Seconded.**

**Chairman Cook: Any Discussion?**

**Senator Dotzenrod:** The change we are embracing is more significant than it may appear. The question of how much public money that should go to public school has been with us for many sessions. If we had better understanding of what the fiscal effect would be, maybe it would make a difference. I think this will be a significant change.

**Senator Kannianen:** In testimony, it was said that this individual credit used to be available but then was taken away a few sessions ago. What kind of data did we have from decades past as far as how this was utilized or what the fiscal note would be? That would shed some light on what this would do.

**Chairman Cook:** Before, the credit was on the long form. Very few people would take advantage of the long form. There was a higher tax rate on it but you got more deductions.

**A Voice Vote Was Taken**

**Motion Failed**

**Senator Kannianen: Moved a Do Pass on HB 1384.**

**Senator Unruh: Seconded.**

**Chairman Cook: Any Discussion?**

**A Roll Call Vote Was Taken: 5 yeas, 1 nay, 0 absent**

**Motion Carried**

**Senator Kannianen will carry the bill.**

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1384

Page 1, line 2, remove "individual"

Page 1, line 10, remove the overstrike over "~~in the case of contributions by a passthrough~~"

Page 1, line 11, remove the overstrike over "~~entity, under section~~"

Page 1, line 20, remove the overstrike over "~~in the case of contributions by a passthrough~~"

Page 1, line 21, remove the overstrike over "~~entity, under section~~"

Page 2, line 5, remove the overstrike over "~~in the case of contributions by a passthrough~~"

Page 2, line 6, remove the overstrike over "~~entity, under section~~"

Renumber accordingly



Date: 3-20-19  
 Roll Call Vote #: 2

**2019 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1384**

Senate 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 Kannianen Seconded By Unruh

Senators	Yes	No	Senators	Yes	No
Chairman Cook	✓		Senator Dotzenrod		✓
Vice Chairman Kannianen	✓				
Senator Meyer	✓				
Senator Patten	✓				
Senator Unruh	✓				

Total (Yes) 5 No 1

Absent 0

Floor Assignment Kannianen

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

**REPORT OF STANDING COMMITTEE**

**HB 1384: Finance and Taxation Committee (Sen. Cook, Chairman)** recommends **DO PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1384 was placed on the Fourteenth order on the calendar.

**2019 SENATE APPROPRIATIONS**

**HB 1384**

# 2019 SENATE STANDING COMMITTEE MINUTES

**Appropriations Committee**  
Harvest Room, State Capitol

HB 1384  
3/29/2019  
Job # 34362

- Subcommittee  
 Conference Committee

Committee Clerk: Rose Laning / Marne Johnson

## **Explanation or reason for introduction of bill/resolution:**

Relating to the individual income tax credit for charitable contributions.

## **Minutes:**

Testimony # 1 – 2.

Legislative Council: Adam Mathiak  
OMB: Becky Keller

**Chairman Holmberg** called the committee to order on HB 1384. Roll call was taken.

## **Representative Mike Nathe, District 30, Bismarck, ND**

Bill Sponsor

The discussion today will be on the fiscal impact. The current law allows a 50% tax credit for contributions to non-public schools in North Dakota. The maximum credit is \$2500, so a \$5000 gift can become, at North Dakota income tax rates, \$2500. The credit is the further limited to 20% of the tax payers North Dakota liability. Thus if your tax liability is \$1000, the \$5000 gift has a further limit of the credit to \$200. The current law also limits these credits to business taxpayers filing as C-corporations or S-corporations. The bill makes two changes to the current law. In section 1, it removes portions of lines 10 and 11, this bill opens these tax credits to be utilized by individual tax payers in addition to the business taxpayers who are currently allowed these tax credits. Lines 15, 16, and 17 remove the 20% cap on the credits, thus removing the secondary 20% limit on the credits. Section 1 applies to the contributions to higher education. Sections 2 and 3 have identical language. These sections apply to secondary education and primary education.

We have had a lot of debate, this has passed the House and the Senate and is a good bill. Private schools save the state taxpayers \$150-160 million by sending their children to private schools, saving the state the \$10,000 per student payment. This bill will help incentivize these schools to increase their enrollment. We have public schools that are bursting at the seams so there is plenty of capacity for the parents and children who want to attend private school.

**Chairman Holmberg:** This concept has been around a number of times. It has had people supporting and opposing.

**(4:25-11:10) Rod Backman, State Association of Non-Public Schools, University of Mary, & University of Jamestown**

Testimony of Rod Backman – Attached # 1.

In regards to the fiscal note estimates - \$70-100 million – we surveyed the schools to try to come up with what was their actual giving that would be subject to the credits in the past year, and doubled it to come up with the impact for a biennium. We have data from both private universities and 17 schools that represent 63% of the enrollment of non-public schools. We came up with a number of \$4.66 million. Proceeded through bullet point on attachment #1, page 3.

(11:12) **Chairman Holmberg:** Is it true though, if you are from out of state, if you have a tax liability, if you have royalty payments, you will pay this, even though you are out of state. Isn't that somewhat fudging?

**Rod Backman:** That's accurate, but that's a small percentage. If you think of the alumni from these schools, there's going to be somebody in there that has royalty payments, or somebody who still has farmland in North Dakota and would be filing a North Dakota income tax return, they would get the credit; but it would be a really small percentage.

**Senator Bekkedahl:** If I remember correctly, about 50% of the mineral ownership in the state of North Dakota is out of state residents? Is that possible?

**Rod Backman:** It may be possible, but I don't know the statistic.

(12:20) continued reading bullet points.

(14:10) We don't know where the large fiscal impact number came from, we have not seen anything official. We have been told that somebody was looking at websites and they were seeing large capital campaign numbers that caused them concern. We went back to one of the universities who recently announced a \$100 million campaign, but that campaign has been going on for a number of years, and there are pledges going forward. Here's what we came up with when we analyzed that \$100 million. A large amount was from out of state, for which there was no credit. There was a significant amount of donations that have been paid in prior years, so they wouldn't be subject to the credit. Donations from business do not qualify for this bill's credit, and donations to endowment funds do not qualify. After we backed all of that out, we were down to \$14 million in pledges from North Dakota donors who would qualify for the credit. We went through that donor list, the number of years those donors are spread over and allowed them the \$2500 credit per year, we found that \$13.3 million of that was over and above the \$5000. Now we're down to \$777,000 that's actually subject to the credit, or a maximum credit of \$388,000 that is on pledges over the next seven years.

I make this point. Somebody looked at a website and saw a \$100 million campaign, and thought at 50%, that could be \$50 million in tax impact. In reality it was \$388,000 on a \$100 million investment in North Dakota, and that assumes that everybody had enough tax liability to actually use the credit. We've gone over this data with the tax department. They looked at our data and it's logical, but we still can't do a fiscal note because we don't know how many new donors may show up. We agree with that, there's no way we know it. As I've gone through these bullets, we see a lot of reasons why this number may be on the high end.

**Chairman Holmberg:** One of the portions of the angst that legislators have when they are starting an expanding program, that if we don't have a number on paper that makes us comfortable, there is a big unknown.

(17:30) **Senator Mathern:** I note on the second page of your testimony that you state much of this support is going to assist low income families who are going to non-public schools. Let's look at that issue. I've been involved in administration and raising dollars for these schools. It appeared the best way to ascertain whether or not someone was low income was to have some sort of standard. A standard could be how many children on free and reduced lunch. Do you know how many children are on free and reduced lunch in private schools in North Dakota as percent of their student body?

**Rod Backman:** I don't know that number. It was different for every school. It was around 10% overall. I know it was less than the public schools. We think that's part of our illustration, if there were more dollars to help more low income families go, that percentage would be higher yet.

**Senator Mathern:** What I've learned in the process, is that even poor children or families who have low incomes, are reluctant to go even if you pay their total tuition, just because of all the other expenses associated with attending. I appreciate the attention to families with low incomes, but it has been my experience that the actual amount of children who show up is quite small. I was interested if you had that number.

**Rod Backman:** One of the schools I'm most familiar with, in excess of 25% of their total budget went to tuition assistance. They do put a significant amount of money into trying to help those families.

**Senator Bekkedahl:** I'm a graduate of Jamestown College. I'm trying to focus on the tax issue as well as the fiscal note. You understand some of the trepidation we have for something that's not determined in a process like this. Do you know how much the fiscal note is for the credit as it currently exists for businesses?

**Rod Backman:** It's \$771,000 for the biennium. We looked at tax data from the tax department. As to how much was at the university, secondary and primary levels, how much through C-corporations, or S-corporations, partnerships, it was \$385,000 a year, we doubled it to about \$770,000.

**Senator Bekkedahl:** That has stayed constant at that level? Do you have any history going back?

**Rod Backman:** It's only been around since 2015, so it's gradually increased, but there was not a big increase between 2016-2017.

**Senator Bekkedahl:** If you wanted to extend this to individuals, it looks to me that the largest part of any fiscal note increase is going to be related to removing the current 20% cap, would you agree?

**Rod Backman:** In the fiscal note from the tax department, they said that was nominal. At least in the current law where businesses are involved. They determined that most of those businesses were near that cap, or were getting the \$2500 and that the 20% cap really didn't apply. If you look at the original fiscal note, it's kind of in the narrative, and not very clear, but

in my discussion with the person who wrote the fiscal note, that was their opinion, that the 20% did not have much of an impact.

**Senator Bekkedahl:** This is one of those bill where I wish we could write like we have in current legislation for other areas, not only do these conditions apply for something that is undetermined, but we could have a maximum pay out or credit, which requires proration, which cannot happen. But having some kind of maximum cap would give this committee some ease.

**Senator Poolman:** Thank you for providing this information. Where would they come up with this big number, how could this possibly balloon. Is there anything in law that would prevent private schools from saying to parents, 'tuition is \$6000, but if you make a \$5000 donation, then your tuition would only be \$1000.' Is there something in current law that would prevent them from doing that? That's how I could see your numbers ballooning quickly, if that suddenly became something that every parent did.

**Rod Backman:** My response to that is that's tax fraud. It's really no different than what it is right now. If you took a deduction on your federal tax deduction, to go to the school and say why don't I give you a \$5000 contribution and then you give me a tuition waiver. That's tax fraud. If you're paying specifically for tuition, it has to be tuition. It's not a deduction. A similar situation could happen at a church. Let's say a church has a benevolent fund, and Jane Doe needs some help, I want to help Jane Doe, but instead of giving her money, or giving it to the fund, I go to the church and say, why don't you give me a deduction for this, then you can give it to Jane Doe, that's tax fraud.

**Senator Poolman:** So for the numbers you gave us, it would be very difficult, or unusual for the number of donors to suddenly balloon, just because this goes into effect?

**Rod Backman:** The only thing I can think of is somebody looking at the large capital campaigns and taking them by 50% and saying this is how big this could be. I don't have the data on where that number came from.

**Senator Wanzek:** Does the number you have here; would that include the current businesses? As I'm understanding, you came at this number by surveying how many contributions have been made, wouldn't some of those already be included in tax credits from businesses?

**Rod Backman:** This was individual data. When we did the survey, we excluded what came from businesses. You do have a have a point in that some of those businesses have been giving through the business just because they could get the credit. There would be no reason for them to do that, they could give as individuals.

**Senator Wanzek:** I think I know enough about some of the tax rules. In my personal giving, we give a truck load of corn or soybeans in a contribution to the local parochial school. We already are involved in the pass-through entity of partnership entity with my brother and parents. We have a sub chapter S-corporation with another business. Typically, a lot of small businesses are structured that way, in a sense as an individual, I'm trying to provide some other reasons why I think this number could be high. We're already utilizing that by passing

it through to our individual level. We pay our taxes at an individual level, we don't pay it at the entity level.

**Senator Robinson:** After HB 1384 passed the Senate, there were a lot of questions. If we go down this road and make this expansion, should there be a requirement that the donors that fall into this new expansion and their donations be part of public record. What are your thoughts on that? Is that something that would be supportive if we go down this road, as a requirement from the legislature?

**Rod Backman:** That would be highly unusual, especially when looking at all the other credits that are in the tax code. When you file your tax code, that's confidential information. I know there are a couple of exceptions when you get into some of the economic development incentives. But for the most part, I think that would be highly unusual and I can't say how the schools would react.

**Senator Robinson:** The difference here would be the fact that we're looking at church and state. So often these programs start rather small and get huge.

**Rod Backman:** I don't know how many decades back contributions to churches have been deductible at the federal level, so I don't get the church and state separation.

**Chairman Holmberg:** You might be talking about movement and the discussions that have occurred regarding challenge grants at the higher education level. I always thought one of the sticking points was the kind of disclosure the campuses have to have on that. That might not be particularly welcomed by the private schools

**Senator Robinson:** That issue also came up. Our grandchildren go to a private school in Valley City. But I think the angst you hear around the table is just that, it's an expansion, we're going down another road, these things don't tend to get smaller over the years.

**Rod Backman:** When I started in the public accounting business doing tax returns in 1975, these credits were on the tax return.

**Senator Bekkedahl:** Current law allows the tax credit 50% and it has the 20% liability. Does this bill, while it relates to individuals remove the 20% cap that's currently on for business contributions as well?

**Rod Backman:** Yes, the 20% cap would be gone under this bill.

**Senator Bekkedahl:** We could see some revenue decline to the state due to that provision being removed as well? Would you agree?

**Rod backman:** These numbers were based on getting the full 50% credit, without the 20% limitation.

**Senator Bekkedahl:** But the bill deals with expanding to the individuals, but I want to make a point that the business side will see some expansion of a tax credit here as well.

**Rod Backman:** In the original fiscal note, and my discussion with Kathy Strombeck, she thought most of the businesses were getting the \$2500, and that the 20% would not have an impact.

**Senator Bekkedahl:** When programs like this roll out, typically the development office will start to contact alumni about here's a new opportunity. It may not be an immediate impact to the state budget, but that's where I see it building over time. That's part of it, understanding that, would there be any problem from your side about setting up some different provisions here that allow for a sunset or a review period or allowing us to come back and say this fiscal note is much larger, I'm just trying to make sure the expansion doesn't get so large that we aren't able to pull back and make that decision again.

**Rod Backman:** Rather than lose the bill, I think we'd be open to that.

**Senator Bekkedahl, Senator Hogue, and Senator Robinson will form the subcommittee.**

(34:50-40:30) **Morgan Forness, Superintendent, Central Cass Public School, Casselton, ND**

Testimony of Morgan Forness – Attached # 2.

**Senator Mathern:** I appreciate the history you noted regarding private schools, it has been one of social justice. How to bring in new children that the public system didn't educate. What is the present social justice mission of private schools?

**Morgan Forness:** I can't speak for all private schools, every one of them has unique goals. I can speak to the two that I had experience with. I would agree that social justice is a big part of it, challenging kids to impact their worlds. The focus I experienced at Oak Grove had a lot to do with missions and outreach for third world countries. There was a lot of support and programming that went into that. Taking students from our Christian Studies courses, travelling to Guatemala, Mexico, serving in orphanages things like that. At Shiloh, I can speak to the fact that there were numerous students from Guatemala that came when the civil war was raging there and were supported through that ministry program and the outreach to the Nigerians and others. It's through partnerships with faith organizations oftentimes in areas of the world that have crisis that private schools are sometimes beneficial. For 7 kids going to Oak Grove, we all received financial aid. We could not have attended without that. We worked in the kitchen, custodial duties for work study. At no time did we look at public schools as a competitor or less than. They are both great.

**(43:31) Polly Peterson, President, University of Jamestown**

No written testimony but testifying in support of HB 1384.

The university of Jamestown was the first university established in North Dakota. We were established in 1883. We closed in the early 1900s and reopened in 1909. We reopened mainly because of the support of our community and our alumni. We had a period in the 1980s we were about to close again, but through donations we survived, and it thrives today. We raise about 15-20% of our budget every year through fundraising, we fund about \$11 million a year in financial aid to students. About 38% of our students are Pell recipients. Without support from our alumni and from the community and from state of North Dakota, we

would not exist. We would not be able to help educate students who end up becoming contributors to the economy of North Dakota. We've graduated nearly 11,000 students in our history, about 38% of those reside in North Dakota, many of those are your nurses, bankers, farmers, they are economic driver of Jamestown. Without that, one would question whether we'd have a Hospital or a clinic. They represent just about all of their nurses. We've done many surveys at the Hospital, we represent about 35% of their entire employee base. So without the University of Jamestown and the University of Mary, the economic possibilities of our small communities would be drastically different. I ask that you think about that as you think about the fiscal note. This would help us. I don't think it will drastically change anyone who isn't already giving to donate \$5000. They don't give at \$5000 for their first gift. And statistically, the research will show that donors don't give because of tax law. They give because they love and support your mission. This is maybe an incentive to help. We might be able to talk about it and encourage somebody to give smaller amounts and hopefully at some point they are in a position where they can continue to increase their giving. I can assure you we won't have all 3800 of our North Dakota alumni giving \$5000 next year. If they do, I'll be back here next session thanking you, and asking you to join our staff.

**Senator Robinson:** When Senator Wanzek gives a truck load of corn, you need to encourage Senator Wanzek to get a bigger truck.

**Chairman Holmberg:** Closed the hearing on HB 1384.

# 2019 SENATE STANDING COMMITTEE MINUTES

## Appropriations Committee Harvest Room, State Capitol

HB 1384  
4/2/2019  
JOB # 34440

- Subcommittee  
 Conference Committee

Committee Clerk: Alice Delzer / Florence Mayer

### Explanation or reason for introduction of bill/resolution:

A subcommittee hearing Relating to the individual income tax credit for charitable contributions.

### Minutes:

No testimony presented

Adam Mathiak, Legislative Council  
Becky Deichert, OMB

**Chairman Bekkedahl:** Called the subcommittee to order on HB 1384. Senator Hogue and Senator Robinson were present.

Thank you everyone for attending. The testimony has been presented to the full committee and as you remember, we had many questions relative to the undetermined fiscal note from the tax department. The subcommittee has been charged to look at the bill during a subcommittee and discuss the fiscal note. I will open this up to committee members and ask if they have any comments to make.

**(1:17) Senator Hogue:** I thought we ran down that cap pretty well with Mr. Backman's description of the number of donors they have now. I do not see the potential for a big fiscal note. I am a little more comfortable with the bill. If we need to make further refinements, I think we can take a look at them. I do not think that \$70-\$80 million dollar fiscal note we heard about is a reasonable estimate at this point.

**Senator Robinson:** We have had some discussions since the hearing a week ago. I have not run a survey and I cannot speak for the Senate, but I think the shell shock on the fiscal note and angst about the unknown is still out there. I know there is concern about not kicking the bill back to the House. I think we can do something to satisfy some of those concerns. I do not know that we have the votes to get it through the Senate, without some adjustment to what we are looking at it. We could get in a situation where we do not have the votes and then we have nothing. I do not have an answer for what to do. But I think we will have a revision of some sort. I have not done a survey of the Senate, but that is the feeling I have been getting from both sides. It came up in our caucus and the question is, what are you going to do to provide some assurance.

**Senator Bekkedahl:** Tax department, Joe or Dan, do you have anything to add to this discussion?

**Joe Becker, ND Tax Department:** At this time no, unless you have questions.

**Senator Hogue:** I had a question that we did not have at the subcommittee. Is there a limitation to whether I can have an entity, claim it the credit there, then claim as an individual and then maybe have a spouse claim too. Assuming I am filing separately, could I increase that \$2,000 cap by having multiple taxpayers within my family asset the credit?

**Joe Becker:** The current state of the credit language is, for example a business partnership, the limitation is 50% of contribution, 20% of the tax liability or \$2,500. The 20% of the tax liability has no application, therefore the partnership would simply take 50% of the contribution, pass that amount on through and we would apply the \$2,500 ceiling at the owner level. You could have a sizeable number at the business level that gets passed out to its owners. Then each of the owners will consider the \$2,500 maximum. As far as other situations, because of the 20% limitation in current law, we have replied it per return. Whether you were a single filer or joint filer, we looked to the liability on that return to apply that limitation. The bill before us is removing the 20% limitation and therefore leaves open the possibility that we have to treat each spouse as a separate taxpayer and apply the limitation separately. It is something we have not had to deal with before. Going back many years to my starting days when the credit was available to individuals; the ceiling was much lower but there was a percentage limitation on the tax liability. We interpreted that to mean we had to apply it per return. That is one thing that is opening up and you need to be watchful of. Whether you want to limit that to a return or if you leave it as is, it would be per taxpayer.

Senator Hogue: I was thinking a large income husband and wife. the most typical example. they would not file separately. they would file jointly. and only take \$2500.

**Senator Hogue:** A large income husband and wife, which is the most typical example, they are not going to be incented to file separately because there is too much they would be giving up. They would still do the married filing jointly, but only take \$2,500.

**Joe Becker:** Yes. Federal law will drive that car because the tax rates at the state level are so low. Even with the credit, I am not sure you could overcome going on a separate federal return.

**Senator Bekkedahl:** That is one of the discussions we had. The present system, with very low tax rates in our state, the liability is not there for the majority of taxpayers to take the full \$2,500. Does this have a carry forward provision? (No.) So it is use it that year and nothing is carried forward? (Correct.) Can you go over the ramifications or the implications of removing the 20%? Could that be a large factor in making this fiscal note larger?

**Joe Becker:** I am not sure if that is a real detrimental factor. The potential is there, but we are still looking at what is the tax liability even on a joint return. Even if they both could contribute, they are still limited to their tax liability on the return. Removing the 20% certainly opens up the fiscal impact a little bit. To what extent, I do not know.

**Senator Bekkedahl:** Would it also affect the business deduction side that is capped at the 20% or \$2,500.

**Joe Becker:** The 20% of the tax liability would only affect an individual or a C corporation because they pay a tax. For our partnerships, S corporations and LLCs that are passing their income through to owners, the 20% of limitation does not apply there. They will take their 50% of the contribution. Whatever that number is, is split up among the owners. Then the limitations will come into play at the owner level.

**Senator Hogue:** How accurate do you think, if we pass this, in two years from now how accurate would a look back would be for you. If you were to say the actual fiscal impact of this was "fill in the blank". Based on the number of people that participated and amount of credit they took. Would that be a reasonably accurate number that we could look back and say yes, this is how much it cost us for the past biennium.

**Joe Becker:** Certainly, we will have some numbers from the tax returns. Some of the concern is being raise about the potential impact and the large capital campaigns around the state. While it may impact the upcoming biennium, the question is, over the long haul will that level out once the campaigns are done. When I was talking to our fiscal analyst I said I am not quite sure that even with a year's experience with returns, is that reflecting where the base will settle? We may see an upward spike, but that may level out.

**Senator Hogue:** Mr. Backman had testified at our appropriations committee hearing and I wanted to see if you agree with this. The possibility was raised that the school and the donor could somehow collude to say if you make this charitable contribution, we might be able to work your child's tuition down. He characterized that, as no that is tax fraud. Would you concur with that term for that potential transaction? The institution is saying give us this gift and we will reduce your tuition?

**Joe Becker:** I have no clue. When I use the term fraud, I cannot see that happening at all. The fact some may do that, I cannot see any expansive approach to it in that manner. That does get to be on questionable ground.

**Senator Bekkedahl:** One of the concerns I expressed in the hearing was, even though the limitations are in here the proponents said they would hold down the fiscal note to some degree. My concern is bring individuals in this court to play on. It will be a much larger number of potential donors. Even if they do not all hit the maximums, just by sheer numbers of people we could see a larger fiscal note. Do you have any concerns about that?

**Joe Becker:** I think that is what is driving the concern. Of the changes in the bill, that is the one. It is opening up the eligibility to many people. The historical numbers are not very helpful because they are based on some very limited conditions. Once you remove that one provision regarding pass-through and allow individuals to make direct contributions, which is where the concern lies. We have some major schools in the state. There are approximately 56 schools that fall into the primary school category. There are about 15 in the high schools and 5 in the colleges. There are many schools out there, hence some of the reason for the undetermined fiscal note. We just do not have the time to survey all those schools.

**Senator Robinson:** This question goes back to what I was asked in Caucus. Obviously, I am in the development and fundraising. When the challenge grant came into play, all of us institutions jumped on it and marketed the grant. It would be incumbent on these institutions to market this program. It is another attraction and that lends itself to see how much more of an impact we will see. That is the question. It is a big unknown. We will have growth the question is how much. It might not be the first year or two.

**(16:00) Senator Bekkedahl:** I guess Rod and the primary sponsor I wanted to hear from. Rod do you have any responses or answers to the change in the individuals of being eligible and the concern of the sheer numbers out there for expanding the fiscal note?

**Rod Backman:** We do not know for sure. I did do a little bit more statistically. I think I made the comment the other day that 60% of the current contributions were over the 5,000 cap. There probably is not a lot of potential at that maximum; it is more getting someone in the middle up to the 5,000. If 60% of the contributions were over the 5,000 cap already, what would happen to our estimated fiscal note if you doubled all those under 4,000? That would add 1.6 to our 4.66 number. I do not know if that sounds logical. If you take all those current givers that are below \$4,000 and double their numbers or amount of giving, you would add another 1.6 to it. I do not know if that is possible. The only other thing I would comment on is, going back to the benefit these entities provide the state in cost. The 4.66 estimate is 2% of the savings that are provided to the state of North Dakota. Even if you doubled that number, you would be at 4 cents on the dollar. I think that is one of our arguments. Its nominal compared to the amount of savings that these entities provide the state. If some out-of-state entity showed up tomorrow and said, they would educate 10% of the state's students and would do it for 4 cents on the dollar; what would the legislature say? It looks like a good deal. Also wanted to respond to the question asked of Joe Becker. If I understand it right, that \$2,500 limitation is at the individual level too. There should not be the ability to game it to say, well we are going to give it through our business and individually. The limitation is at the individual level.

**Representative Mike Nathe, District 30, Bismarck:** Here to answer questions.

**(19:34) Senator Bekkedahl:** Can you speak to the reason that the 20% of the taxpayer's total income tax under this chapter was removed in this legislation? What was the reasoning for removing that portion of the cap?

**Representative Nathe:** I think the previous speaker could speak to that better than I could. I do not know to be honest with you.

**Rod Backman:** Back in 2015, this credit was only available to C corporations. Over the last 20 years, changes were made at the federal level so that in North Dakota very few businesses operated as a C corporation. We asked that because of the change in the makeup of most North Dakota businesses, if partnerships and S corporations, the pass-through entities, could be included. When we were in front of the House tax committee, they raised the question as you have here on the individuals. They said, well we do not know how big this might get. So in addition to the \$2,500 cap, they said let's put a 20% tax liability cap on here, so we can get some history after 1-2 biennium and see what the fiscal note it. They said at the time, if it is not a huge fiscal note, you should come back and get the cap raise.

During last session, you might remember the serious fiscal issues going on. We did not even bother to ask them, but we did this time.

**Senator Bekkedahl:** Can you tell us what the impact was? Can you give a number for the 20% factor you want removed now?

**Rod Backman:** I cannot. The only thing, in talking to the fiscal analyst at the tax department, she told me that she did not think at the pass-through entity level that it had much of an impact. Most of those entities were limited by the \$2,500 rather than the 20%. The fiscal impact for the pass-through entities was nominal by removing the 20%.

**Senator Hogue:** In other tax credits where we are concerned about fiscal impact, like the housing finance tax credit, we say first come first serve. We set aside \$10 million for low-income housing and the Housing-financing agency awards those credits based on competitive things. After they are gone, they are gone. I realize there would be a lot more individual taxpayers. But, is it workable at all to say we will make so much available for this tax credit and when the institution tells us they have so much, and then they are done.

**Joe Becker:** We need to be somewhat cautious in how you apply an overall limitation. In the other programs with a statewide cap, like the Housing incentive fund, there it can be monitored. The Housing finance agency knows what is going on and they are issuing certificates so they can constantly monitor first in and first out. When it comes to this type of a credit, just opening it up and setting a state ceiling, I do not know how we could track that statewide. That would not be my approach.

**Senator Bekkedahl:** Understanding the questions and concerns you have heard from us, is there anything you could bring to the committee to help alleviate some of the concerns? Possibly amending the bill, which I know you do not want to do. Or addressing the bill in the future if the assembly has overall concerns about where it goes in the next 2 years.

**Representative Nathe:** If we pass this, the way it is and we come in and if we do not see the big spike until the second year. If we think it is too big or too open, it is my intent to address it at that time. It is a little bit of an unknown with the fiscal note all of a sudden popping up on us. If we run this program and say this thing is pretty darn big and we need to pull this back. I would be absolutely open to talk about this next session and reign it back in if we think it is detrimental to North Dakota. As Senator Robinson said, it might take a year or two before we see that. You are right about the challenge grant. That was my program. In the bill, we saw a spike in the giving, but it took a while for those schools to ramp things up. Then it did spike and it did drop off as Joe had said earlier. It is my full intent to change anything if we see things wrong going forward. Obviously, I would like to see this bill be left as is and pushed forward. I do understand the realities of the legislative process.

**(26:08) Senator Robinson:** We are all a little gun shy coming off last session, where we had no money. There were all kinds of programs we reduced and difficult decisions. We have been living with that. That is concerning. I hope that that is a spike downward that we will not have to see again, but you never know. We sit around this table and deliberate on

the right thing to do. That is where some of us are coming from. It is not that we do not support this cause.

**Representative Nathe:** I understand the realities of the chamber and the legislature. There was talk about a sunset. Again, I am more than willing and it would be my intent to address any of those concerns next session if we run across these things. I agree, it will take time before we really see it. I do not think we will see an immediate spike in a year. I think it will take some time before we see that. It buys us time, you can see how the program is doing and if it is blowing up bigger than we want due to our financial situation, we can dial that number down.

**Senator Bekkedahl:** We have a record over here of being more conservative than the other House you know. Is there any amendment relative to the concerns of Senator Robinson, you can see that would be not a killer to take to conference committee. I do not see one.

**Representative Nathe:** The policy, no. The fiscal note, in our chamber will be an issue. That is my main concern. We will come back at \$4.5 million or whatever. The policy part itself, no, because it already passed without the fiscal note and it passed strongly. With the House appropriations, a fiscal note would be a much tougher sell.

**Senator Bekkedahl:** Thank you all for attending. We will be in touch when we need to get further action on this. Closed the subcommittee on HB 1384.

# 2019 SENATE STANDING COMMITTEE MINUTES

## Appropriations Committee Harvest Room, State Capitol

HB 1384  
4/5/2019  
JOB # 34566

- Subcommittee  
 Conference Committee

Committee Clerk: Alice Delzer / Lynn Wolf

### Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 57-38-01.7 of the North Dakota Century Code, relating to the individual income tax credit for charitable contributions; and to provide an effective date.

### Minutes:

No testimony submitted

**Chairman Holmberg:** Opened the hearing on HB 1384. All committee members were present. Adam Mathiak, Legislative Council and Stephanie Gullickson, OMB were also present. The last bill we have for this week is 1384. The rest of the bills will be carried over until next week so we will not meet again later today.

(0:00:44) **Senator Bekkedahl:** This is the bill for individual income tax contributions for charitable contributions. As you know, now we have business and corporate deductions allowed for tax credits for charitable contributions. There are limits in current statute that limit the amount that can be taken as a credit. The allowable credit currently may not – for any taxable year – may not exceed 20% of the taxpayer's total income tax under this chapter for the year or \$2,500 – whichever is less. In committee we took a lot of testimony. It is here because there is a concern about an unknown fiscal note or undeterminable fiscal note from the tax department. There was a committee going into the discussion, Senator Hogue was comfortable, Senator Robinson thought we may need amending to pass the Senate and I was undeterminable myself at that time. The tax department didn't bring any additional information, but they were at all the committee meetings we had. The bill currently as it sits in today's statute – or today's statute and in this bill would have no carry forward provision to the tax credit. As you know, tax credits are not something given out lightly in the state of ND. We protect those as much as we can. They are a much better benefit to the taxpayer than tax deductions. Tax deductions come off adjusted gross income and tax credits come to the liability which is the direct amount of the tax that is owed. This bill would change to the individuals as being eligible – which is a larger group of donors and brings forward a fiscal note concerned about how much it would be utilized. We found out in testimony there are 50 schools that are primary schools involved in the state that are private, 15 high schools and five colleges and universities. Sixty percent of the current contributions on the corporate or business side are over the \$5,000 cap that is allowed – the \$5,000 cap would be to the \$2,500 or 20% whichever is less. There were some numbers brought into the subcommittee about

potential – how much could be involved in this. The number was somewhere - potentially over \$1.6 million. If you took the number of donors currently under \$4,000 and doubled them, which was again – this is just an estimate brought in by the proponents of the bill – could be another \$1.6 million per year up to \$3.2, I believe for the biennium and they are here to dispute that if that is the case Mr. Chairman. I asked about the 20% cap removal and why that was considered insignificant on their part and they said that in discussions with the tax department it was reported to them that was not going to be the major factor in having this bill have any breaks or additional tendrils to it so it couldn't be over used to the extent that some people think it could. In 2015, the legislature added pass-through entities as an eligible C Corp so, if you have a C Corp or an S Corp and you are a pass-through, it goes to your personal tax liability. But that is when the 20% cap was added to evaluate the fiscal note performance. We discussed all those scenarios and ultimately the committee is without committee recommendation and so, what I would do is open it up first to the subcommittee members for any comments or corrections to what I have told the committee and we have a couple alternatives that we would put before the committee. One is to make a motion to pass it as is, we could see how that does. I have amendments prepared that were done by legislative council that do put a sunset onto the bill and it sunsets by tax years so that the 19 and 20 tax years are the only two years this would be eligible and that would require first conferencing with the House and then if it passed that way, next session there would have to be another bill to deal with that sunset provision that we put on there. The proponents have also brought forward an idea that maybe we want to sunset a provision the amount of dollars utilized – if it exceeded \$3 million per year, then that would act as a sunset also. I think as a committee, we prefer the sunset amendment that deals with bringing it back next session and being able to see the numbers that come out of the tax years. Unfortunately, the '19 tax year – because it is a new provision – generally how these things work – and Senator Robinson knows this in his business – is once it starts and gets up and running there is not as much utilization. The first year, the second year, once everyone is promoting it, you are going to see more utilization. I think, personally, that the higher years if the use continued would be years three to six or something in there because everybody would become more familiar. It is also a word of mouth conversation for people about – here this is out there so use it. So, with that Mr. Chairman, I would stand for any questions.

(6:08) **Senator Hogue:** No, Mr. Chairman, I am satisfied with the \$2,500 cap that is in this. I am more comfortable with the potential fiscal effects. I am comfortable with the bill as is. If folks want to sunset that, I guess we can have that discussion as well.

(6:40) **Senator Robinson:** First of all, we have a private school in our district and our grandkids and our boys went through that school and we are supportive. The concern we discussed is the unknown here and somewhat of a precedent that we are establishing to pass a bill out of Senate Appropriations with an unknown fiscal note. It might be minor, but programs like this for foundation officers – I am in that business – we market these programs. We want them to be successful. It is safe to say there will be growth – and probably significant growth. And, that is great, but we also have a responsibility to protect further erosion of our tax base. We have so many bills that chip away at that and chip away at that and we talked in subcommittee about another bill just yesterday that this year we are in a better situation than we were two years ago. Every one of these bills impact us and from time to time, we get caught in a very tough situation. That is a concern and the precedent, the unknown and I know we have been told – well, if it goes to the House it will be killed. Senator Bekkedahl has

talked to committees over there and they are willing to work further on this bill. I think we would like to see the bill approved, but there is concern that we should have some limit – some control – revisit it or what have you just to be safe. That is where the concern has come from. It is the unknown and we don't do that with other bills. We always have a fiscal note. I know the proponents mean well, and their suggesting that it is not that big of a bite, and yet, we have to take our directives from the tax department. Are we going to allow other bills to go through the committee without a fiscal note? That is where I am coming down. My people are calling me and saying please pass this and we all want to do something, but that is the genesis of our concerns and the committee will have to decide what direction to go. I know there is concern on the part of leadership about how far we go here and you also have a responsibility – everybody's coming to you asking for a little bit of money. We don't envy your position either.

(9:20) **Chairman Holmberg:** We really get a directive from the tax department. It was more a nondirective that they really don't know. We have dealt with this kind of issue in the near past when there was the big move – particularly in the House – to eliminate the defined benefit and go to defined contributions. The battle cry of some of those folks was the dollar amount be damned, we need to get this in place and then we will worry about it. I saw a little bit of this element.

(10:06) **Senator Bekkedahl:** I forgot to mention, too, that the prime sponsor of the bill was in the subcommittee meetings and did remark to the subcommittee that he would be bringing this back again next session if it passed even without any amendment to put some brakes on it if needed at the time, if we saw the fiscal notes were growing or expanding beyond the control that everybody would like to see here.

**Chairman Holmberg:** The track record though of coming back after a benefit has been given – is somewhat difficult to turn it back.

(10:54) **V. Chairman Wanzek:** I don't have the fear that this is going to run wild and run away. I am involved a fund drive – I am actually the chairman of the fund drive – for St. John's Academy in Jamestown – it is a parochial school and the one thing I noticed about those campaigns is 25% of our contributions came from one person. It is really difficult to generate the dollars with that 75%. You would never get anywhere on those fund drives if you depended on that. It is usually a few significant donors that make that project in the end go. They are going to be limited to \$5,000 tax credit. It doesn't matter that they gave a million dollars, they are only going to get 50% of what they contributed capped at \$2,500. On top of it, somebody like myself, we already run most of the time when we contributed, and we contributed in that campaign it was through our LLC our farm corporation that included my parents and my brother and our families. Again, I would argue that we already can take that, so you are not going to add me to the list, necessarily. I just don't see this running away to the extent that the fear is that is out there. I know you guys have heard me talk about this before – I am trying to direct some of my – the reason I contribute is not because I am going to get a tax break, it is for other reasons, but it does help incentivize it to a degree and I am getting some choice in directing some of my dollars to a certain cause. It is always kind of troubled me when we get into this challenge grants – you are using our tax money – those of us that go to a private school – using our money to compete for that private dollar out there that these other private schools have to work with. In a sense, they are tax dollars working

against them, I hate to even get into that, I support the challenge program, but in a sense, that is what is happening. This is just one request that provides me as a taxpayer to contribute or direct some of my money that I am paying to help the school that my kids or other parent's kids chose to go to including the universities. I just don't see the fear. I would like to, if it is okay with the committee, to run it up the flagpole and move a **Do Pass on HB 1384**.

(0.14.14) **Senator Robinson: Second.** I would like to see an amendment.

**Senator Mathern:** I wish we would have seen the amendments. I guess, it seems to me – there has been talk of amendments and I have had a lot of different versions of what the amendments would be. I would like to see the amendments.

**Senator Holmberg:** As part of the discussion on this, we certainly can have people talking about – if this is defeated, this is what I would present.

**Senator Bekkedahl:** I apologize for not having the amendment at your desk. I thought I explained the amendment which was limiting it to the taxable years '19 and '20, that is the amendment. I have it here if you would like a copy, so-

**Senator Robinson:** I just want to say that this legislature is on too fond of increasing any revenue, and yet, we have been pretty lenient on reducing revenue. I sat here like you did two years ago and it was depressing. Leaving this session with budget cuts in many agencies pushing 20%. We had one agency – I think it was 30 some percent. That cost us a lot and we are trying to reinstate some of that today. I would suggest that what happened two years ago is going to take us six or eight years to catch up. We see it in every budget we are dealing with and I sound like I am against these schools and I am not. We've got kids that go through those schools. If we are not willing to talk revenue in this legislature – we have a bill out there to eliminate income tax. We are being irresponsible. That is where I am coming from and I want to do something for these schools. We just have to be careful. It is always easy to vote for these things. That is an easy vote. I am with you. But, not too many people are willing to get behind a revenue bill. When we look at our checkbook, we have to look at expenses and income. If we don't balance those two out, we get into trouble. We were in trouble two years ago. That is where I am coming from. I don't want to sound like I am against these small private schools – they do a great job.

(16:45) **Senator Dever:** I can understand the conflict that Senator Robinson is feeling. He likes it, but he is concerned that he might be successful in his efforts to promote it which seems kind of interesting to me, but, I am disappointed that the tax department couldn't give us a number. If we were creating a tax deduction, they would give us a number. In other circumstances, when we were – we are now eliminating military retirement pay from tax deductions – we are eliminating social security and they are able to give us numbers for those. I am disappointed that they have not. If we put a sunset on it as could be suggested, we would talk about this next session. If we pass it as it is, and then we see where the numbers are, we could talk about it next session. Either way, we can do that. One of my concerns with the sunset would be when you go out and promote it and tell your donors that the deadline is December 31, 2020, and then it goes away, you are going to see more donations in 2020 than you might see going forward if the sunset was not in place. That is my concern. I will support the motion.

**Senator Sorvaag:** I am having a little problem. I don't see a problem with a sunset. I think Senator Dever makes a good argument, but I think what we need – we shouldn't be discussing – I keep hearing the House might kill it if we put the sunset or not. Or the prime sponsor might bring it back next session. I don't think either one of those should be part of our discussion. I have responsibility – do we think this was a good bill? What the other chamber does is the other chamber's business. What a legislator says they might do in two years should be totally irrelevant to our discussion today. I think the sunset is a fair option. I really do. I think our discussion should be solely is the sunset a fair that we should look at it again in two years because we know it is awfully hard to remove something even if it is bad. I would hope that we would – I am going to vote no on this and we would support the sunset and solely because I think it is the right thing to do and that should be the focus of our discussion.

(19:23) **Chairman Holmberg:** We have a motion and a second. Would you call the roll on the motion for a Do Pass on 1384?

**A Roll Call vote was taken. Yea: 9; Nay: 5; Absent: 0. This goes back to Finance and Tax. Senator Kannianen will carry the bill.**

The hearing was closed on HB 1384.

Date: 4-5-19

Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1384

Senate Appropriations 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 Wanzek Seconded By Robinson

Senators	Yes	No	Senators	Yes	No
Senator Holmberg			Senator Mathern		
Senator Krebsbach			Senator Grabinger		
Senator Wanzek			Senator Robinson		
Senator Erbele					
Senator Poolman					
Senator Bekkedahl					
Senator G. Lee					
Senator Dever					
Senator Sorvaag					
Senator Oehlke					
Senator Hogue					

Total (Yes) 9 No 5

Absent 0

Floor Assignment Kannianen F+T

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

**REPORT OF STANDING COMMITTEE**

**HB 1384: Appropriations Committee (Sen. Holmberg, Chairman)** recommends **DO PASS** (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1384 was placed on the Fourteenth order on the calendar.

**2019 CONFERENCE COMMITTEE**

**HB 1384**

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1384  
4/17/2019  
34809

- Subcommittee  
 Conference Committee

Committee Clerk: Mary Brucker

### Explanation or reason for introduction of bill/resolution:

A bill relating to the individual income tax credit for charitable contributions.

### Minutes:

No attachments

**Madam Chair Steiner:** Opened conference committee on HB 1384. Would someone from the Senate please explain what you did with our House bill?

**Senator Kannianen:** It received a 5-1 Do Pass out of our committee then it passed on the floor with 29 votes. It was rereferred to Appropriations and received a Do Pass recommendation of 9-5 with no amendments but then certain individuals convinced the majority leader to introduce an amendment to carve it down a little bit because they were worried with the unknowns. I'm in an interesting spot because I opposed the amendment on the floor but it passed with a 25-22 vote. The amended bill passed. I supported the bill as it came over. Depending on what motions people want to entertain that's where we are.

**Madam Chair Steiner:** Do any of the other senators have anything to add?

**Senator Cook:** No.

**Senator Dotzenrod:** No.

**Madam Chair Steiner:** Are there any concerns with the bill in the state that it's at? We had tremendous support for this bill. I think rather than draw this out and jeopardize the bill as you get farther into the session we discussed that we would take what the Senate has taken as action rather than do several conference committees. This is a concept both sides wanted to move forward.

**Representative Dockter:** Made a motion for the House to Accede to the Senate Amendments.

**Senator Cook:** Seconded.

**Madam Chair Steiner:** Is there further discussion?

House Finance and Taxation Committee  
HB 1384  
April 17, 2019  
Page 2

**Roll call vote:**

**6 Yes 0 No 0 Absent**

**Motion carried.**

Date: 4-17-19  
 Roll Call Vote #: 1

**2019 HOUSE CONFERENCE COMMITTEE  
 ROLL CALL VOTES**

BILL/RESOLUTION NO. HB 1384 as (re) engrossed

**House Finance and Taxation Committee**

- Action Taken  **HOUSE accede to Senate Amendments**  
 **HOUSE accede to Senate Amendments and further amend**  
 **SENATE recede from Senate amendments**  
 **SENATE recede from Senate amendments and amend as follows**  
 **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. Dockter      Seconded by: Senator Cook

Representatives				Senators			
	<u>4-17</u>	Yes	No		<u>4-17</u>	Yes	No
Chair. Steiner	X	X		Sen. Kannianen	X	X	
Rep. Dockter	X	X		Sen. Cook	X	X	
Rep. Headland	X	X		Sen. Dotzenrod	X	X	
Total Rep. Vote				Total Senate Vote			

Vote Count      Yes: 6      No: 0      Absent: 0

House Carrier Rep. Steiner      Senate Carrier Senator Kannianen

LC Number \_\_\_\_\_ of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

**REPORT OF CONFERENCE COMMITTEE**

**HB 1384:** Your conference committee (Sens. Kannianen, Cook, Dotzenrod and Reps. Steiner, Dockter, Headland) recommends that the **HOUSE ACCEDE** to the Senate amendments as printed on HJ page 1734 and place HB 1384 on the Seventh order.

HB 1384 was placed on the Seventh order of business on the calendar.

**2019 TESTIMONY**

**HB 1384**

#1  
HB 1384  
1-29-19

House Finance and Taxation committee

January 29, 2019 p. 1

HB 1384

Chairman Headland and members of the committee, my name is Rod Backman here today representing the State Association of Non-Public Schools as well as the University of Mary and the University of Jamestown.

Current law allows this tax credit for businesses but not for individual taxpayers. HB 1384 expands the current tax credit to include individual taxpayers.

Current law allows a tax credit of 50% of a contribution up to a maximum credit of \$2500, but further limits the credit to 20% of the taxpayer's tax liability. The second part of this bill removes the current 20% cap but maintains the \$2500 cap. Currently of the 24 tax credits in statute only one other credit limits the credit to a percent of the taxpayer's liability. We are asking to be treated similarly to most other tax credits by removing the 20% cap.

The current law with the 20% cap adds confusion to taxpayers, development staff of the schools, and tax preparers. I was personally approached by a Bismarck CPA, who knew that I represent non-public education as to why we have this separate cap. While I have worked closely with the development staff to help them explain how the credit works it does add a layer of complication to the credits.

The history on these tax credits go back a long time (in excess of 40 years). At one time individuals were allowed but were excluded a few sessions ago when North Dakota went back to just one individual tax form. The business credit was expanded in 2015 to include partnerships and S corporations to come into line with current business structures.

This credit has been beneficial to the non-public schools in attracting contributions to help cover their cost of education and we want to thank you for your support in the expansion of the credit in 2015.

#1  
HB 1384  
1-29-19  
p. 2

**Much of this support is going to assist low income families whose children attend the non-public schools in North Dakota but cannot afford the tuition. Our latest estimate is that North Dakota's non-public K-12 schools provide nearly \$4 million per year in tuition assistance and scholarships based on need. This number does not include scholarships at the university level.**

**The non-public K-12 schools in North Dakota save taxpayers of North Dakota in excess of \$160 million dollars\* per biennium. The private universities in North Dakota provide similar savings of approximately \$90 million dollars per biennium.**

**We feel the fiscal note impacts are quite nominal as compared to the benefits provided by non-public education and request your support of this bill.**

**Mr. Chairman, I am happy to take any questions you may have, and I do have some alternative options for your consideration.**

**Thank you.**

**Rod Backman**

**\*NDDPI School Finance Facts (Fall 2017) Non-Public enrollment of 6,539 students X average cost of education per pupil \$12,237.**

#1  
 HB 1384  
 2-4-19  
 p. 1

**North Dakota Income Tax Credit for Contributions to Private Nonprofit Schools**  
 [N.D.C.C. § 57-38-01.7]

**Comments on the data shown in this document**

- The figures in this document were derived from tax returns filed with the Office of State Tax Commissioner. They show the number of returns on which the credit(s) were claimed and the total credits claimed on those returns.
- Credit data is not readily available from returns filed by estates and trusts because credit data is not separately reported on Form 38; however, credits that are passed through to beneficiaries may be reflected in the data shown below.

**Individual Income Tax Returns**

Individuals are limited to claiming credits received from estates, trusts, partnerships, S corporations, and limited liability companies. For each school category, an individual is allowed to claim the lesser of (1) the total credits received from passthrough entities that are based on contributions within the category, (2) twenty percent of the individual's total income tax, or (3) \$2,500.

**Primary Schools (Grades K through 8)**

Tax year	Number of returns	Total credits claimed
2015	116	\$ 30,848
2016	202	94,874
2017	232	<u>126,213</u>
Total credits		\$ <u>251,935</u>

C  
 ↓  
 11,592  
total 2017  
 137,805

**High Schools (Grades 9 through 12)**

Tax year	Number of returns	Total credits claimed
2015	123	\$ 41,873
2016	173	110,389
2017	240	<u>151,386</u>
Total credits		\$ <u>303,648</u>

39,120  
 190,506

**Colleges**

Tax year	Number of returns	Total credits claimed
2015	63	\$ 12,562
2016	147	25,490
2017	88	<u>32,499</u>
Total credits		\$ <u>70,551</u>

25,126  
 57,625  
 385,936  
 X 2

\$ 771,872 Bl.

#1  
HB 1384  
2-4-19  
p. 2

### C Corporation Income Tax Returns

These figures include credits based on direct contributions by C corporations and credits received from passthrough entities. For each school category, a C corporation is allowed to claim the lesser of (1) the total credits based on contributions made within the category, (2) twenty percent of the corporation's total income tax, or (3) \$2,500.

For 2015, the "NR" notation for primary schools means the data is not reportable because there are less than five returns. The 2017 data is incomplete data; it does not include all fiscal year returns with an extension.

#### Primary Schools (Grades K through 8)

Tax year	Number of returns	Total credits claimed
2015	NR	\$ NR
2016	6	17,745
2017	6	<u>11,592</u>
Total credits (reportable)		\$ <u>29,337</u>

#### High Schools (Grades 9 through 12)

Tax year	Number of returns	Total credits claimed
2015	10	\$ 20,592
2016	13	32,874
2017	16	<u>39,120</u>
Total credits		\$ <u>92,586</u>

#### Colleges

Tax year	Number of returns	Total credits claimed
2015	10	\$ 19,441
2016	10	19,348
2017	10	<u>25,126</u>
Total credits		\$ <u>63,915</u>

Senate Finance and Taxation committee

March 5, 2019

HB 1384

Chairman Cook and members of the committee, my name is Rod Backman here today representing the State Association of Non-Public Schools as well as the University of Mary and the University of Jamestown.

Current law allows this tax credit for businesses but not for individual taxpayers. HB 1384 expands the current tax credit to include individual taxpayers.

Current law allows a tax credit of 50% of a contribution up to a maximum credit of \$2500, but further limits the credit to 20% of the taxpayer's tax liability. The second part of this bill removes the current 20% cap but maintains the \$2500 cap. Currently of the 24 tax credits in statute only one other credit limits the credit to a percent of the taxpayer's liability. We are asking to be treated similarly to most other tax credits by removing the 20% cap.

The current law with the 20% cap adds confusion to taxpayers, development staff of the schools, and tax preparers. I was personally approached by a Bismarck CPA, who knew that I represent non-public education as to why we have this separate cap. While I have worked closely with the development staff to help them explain how the credit works it does add a layer of complication to the credits.

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This credit has been beneficial to the non-public schools in attracting contributions to help cover their cost of education and we want to thank you for your support in the expansion of the credit in 2015.

3/5 HB 1384 #1 pg.2

**Much of this support is going to assist low income families whose children attend the non-public schools in North Dakota but cannot afford the tuition. Our latest estimate is that North Dakota's non-public K-12 schools provide nearly \$4 million per year in tuition assistance and scholarships based on need. This number does not include scholarships at the university level.**

**The non-public K-12 schools in North Dakota save taxpayers of North Dakota in excess of \$160 million dollars\* per biennium. The private universities in North Dakota provide similar savings of approximately \$90 million dollars per biennium.**

**We feel the fiscal note impacts are quite nominal as compared to the benefits provided by non-public education and request your support of this bill.**

**Mr. Chairman, I am happy to take any questions you may have.**

**Thank you.**

**Rod Backman**

**\*NDDPI School Finance Facts (Fall 2017) Non-Public enrollment of 6,539 students X average cost of education per pupil \$12,237.**

3/20 NB 1384 # 1 pg. 1

## North Dakota Income Tax Credit for Contributions to Private Nonprofit Schools

[N.D.C.C. § 57-38-01.7]

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#### Primary Schools (Grades K through 8)

Tax year	Number of returns	Total credits claimed
2015	116	\$ 30,848 <sup>612</sup>
2016	202	94,874
2017	232	<u>126,213</u> <sup>544</sup>
Total credits		\$ <u>251,935</u>

#### High Schools (Grades 9 through 12)

Tax year	Number of returns	Total credits claimed
2015	123	\$ 41,873 <sup>412</sup>
2016	173	110,389
2017	240	<u>151,386</u> <sup>621</sup>
Total credits		\$ <u>303,648</u>

#### Colleges

Tax year	Number of returns	Total credits claimed
2015	63	\$ 12,562 <sup>212</sup>
2016	147	25,490
2017	88	<u>32,499</u> <sup>3209</sup>
Total credits		\$ <u>70,551</u>

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### C Corporation Income Tax Returns

These figures include credits based on direct contributions by C corporations and credits received from passthrough entities. For each school category, a C corporation is allowed to claim the lesser of (1) the total credits based on contributions made within the category, (2) twenty percent of the corporation's total income tax, or (3) \$2,500.

For 2015, the "NR" notation for primary schools means the data is not reportable because there are less than five returns. The 2017 data is incomplete data; it does not include all fiscal year returns with an extension.

#### Primary Schools (Grades K through 8)

Tax year	Number of returns	Total credits claimed
2015	NR	\$ NR <i>Are</i>
2016	6	17,745
2017	6	<u>11,592</u> <i>1,932</i>
Total credits (reportable)		\$ <u>29,337</u>

#### High Schools (Grades 9 through 12)

Tax year	Number of returns	Total credits claimed
2015	10	\$ 20,592 <i>Are</i>
2016	13	32,874
2017	16	<u>39,120</u> <i>2,415</i>
Total credits		\$ <u>92,586</u>

#### Colleges

Tax year	Number of returns	Total credits claimed
2015	10	\$ 19,441 <i>Are</i>
2016	10	19,348
2017	10	<u>25,126</u> <i>2,513</i>
Total credits		\$ <u>63,915</u>

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Prepared by the Legislative Council staff for  
Senator Dotzenrod

March 6, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1384

Page 1, line 2, remove "individual"

Page 1, line 10, remove the overstrike over "~~in the case of contributions by a passthrough~~"

Page 1, line 11, remove the overstrike over "~~entity, under section~~"

Page 1, line 20, remove the overstrike over "~~in the case of contributions by a passthrough~~"

Page 1, line 21, remove the overstrike over "~~entity, under section~~"

Page 2, line 5, remove the overstrike over "~~in the case of contributions by a passthrough~~"

Page 2, line 6, remove the overstrike over "~~entity, under section~~"

Renumber accordingly

Senate Appropriations Committee

March 29, 2019

pg 1

HB 1384

Chairman Holmberg and members of the committee, my name is Rod Backman here today representing the State Association of Non-Public Schools as well as the University of Mary and the University of Jamestown.

Current law allows this tax credit for businesses but not for individual taxpayers. HB 1384 expands the current tax credit to include individual taxpayers.

Current law allows a tax credit of 50% of a contribution up to a maximum credit of \$2500, but further limits the credit to 20% of the taxpayer's tax liability. The second part of this bill removes the current 20% cap but maintains the \$2500 cap. Currently of the 24 tax credits in statute only one other credit limits the credit to a percent of the taxpayer's liability. We are asking to be treated similarly to most other tax credits by removing the 20% cap.

The current law with the 20% cap adds confusion to taxpayers, development staff of the schools, and tax preparers. I was personally approached by a Bismarck CPA, who knew that I represent non-public education as to why we have this separate cap. While I have worked closely with the development staff to help them explain how the credit works it does add a layer of complication to the credits.

The history on these tax credits go back a long time (in excess of 40 years). At one time individuals were allowed the credit but were excluded a few sessions ago when North Dakota went back to just one individual tax form. The business credit was expanded in 2015 to include partnerships and S corporations to come into line with current business structures.

This credit has been beneficial to the non-public schools in attracting contributions to help cover their cost of education and we want to thank you for your support in the expansion of the credit in 2015.

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Pg 2

Much of this support is going to assist low income families whose children attend the non-public schools in North Dakota but cannot afford the tuition. Our latest estimate is that North Dakota's non-public K-12 schools provide nearly \$4 million per year in tuition assistance and scholarships based on need. This number does not include scholarships at the university level.

The non-public K-12 schools in North Dakota save taxpayers of North Dakota in excess of \$160 million dollars\* per biennium. The private universities in North Dakota provide similar savings of approximately \$90 million dollars per biennium.

We feel the fiscal note impacts are quite nominal as compared to the benefits provided by non-public education and request your support of this bill.

Mr. Chairman, I am happy to take any questions you may have.

Thank you.

Rod Backman

\*NDDPI School Finance Facts (Fall 2017) Non-Public enrollment of 6,539 students X average cost of education per pupil \$12,237.

**Estimated HB 1384 Tax Credits**

**\$4.66 million (per biennium)**

**This number is a maximum estimate because:**

- The above number assumes each donor has enough tax liability to use the maximum credit. This will not be the case. Also note that the impact of this credit is limited by the lack of a carryforward provision.
- This amount includes major capital campaign contributions from the past year—an exceptional time. It will be hard to maintain this level of giving once the campaigns are completed.
- It is hard for charities to dramatically expand their donor base as those who are connected to the charity are likely already giving.
- With the average ND tax liability at \$678, most people below that level will not be financially able to donate.
- Changes in federal tax law will reduce the number of givers because 80% of taxpayers will no longer be itemizing deductions. This incentive will help neutralize the effect of the changes in federal tax law and help these private schools preserve their donor bases.
- Capital campaign gifts at the university level are 40% from out of state donors. There is no credit for these donations.
- Most capital campaign contributions are over 5 years, thus no large impact in one year.
- Large in-state contributions are capped at \$2500 per year. Even a \$1 million-dollar ND gift would only generate \$2500 in tax credit. In 2018 60% of contributions exceeded the \$5,000 cap.
- At the maximum credit of \$2500, a rumored fiscal impact of \$78 million per biennium would require 15,600 North Dakota donors per year. We have only 286 North Dakota donors in the survey data.
- \$4.66 million impact (again, based on gross numbers) is 1.9% of the \$250 million biennial tax savings these schools provide to North Dakota.  
(Put another way, \$4.66 million represents 2 cents on the dollar)

**Economic Impact University level:**

- The two largest private universities in North Dakota have a combined staff of 849 (not counting student employees) and a combined annual payroll of \$39 million. Their combined total annual economic impact exceeds \$273 million.

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pg 1

Senate Appropriations Committee  
Public Hearing - March 29, 2019 (8:30am)  
North Dakota State Capital – Bismarck, ND  
MEMBERS OF THE SENATE APPROPRIATIONS COMMITTEE:

My name is Morgan Forness and I currently serve as the Superintendent at Central Cass Public School in Casselton, ND. I previously worked in private schools at (Shiloh Christian) in Bismarck and (Oak Grove Lutheran) in Fargo. I have always been a believer in collaboration and public/private partnerships to best meet the needs of schools and community. I am appearing here today representing “myself” in support of HB 1384, related to individual income tax credit for charitable contributions.

As I have experienced the value of education in both public and private schools... as a student, staff member and parent, throughout my lifetime, I think we need to move away from the notion that they are in conflict with each other, always fighting for resources. Rather, I see both public and private educational institutions as valuable resources in meeting the many needs of students within our State. However, I fully recognize that they may have varying missions and that should be celebrated and supported for many reasons.

Both public and private schools commit equally to positively impacting the educational journey and providing amazing opportunities for our students. Thus, it is important to recognize that both have an equally important role in the diversity and “academic excellence” we pride ourselves with. HB 1384 is a step in the right direction, in that that a tax credit is allowed for individual giving towards nonprofit, private institutions by people who also pay taxes for public schools. In essence, it levels the playing field for those who desire to give towards their passions and/or interests.

While I am not an IRS expert, I do recognize that the government has devised several types of tax credits to help the poor, boost education, and to stimulate certain sectors of the economy. In essence, tax credits are a type of government “incentive program” to reward people for making good decisions, being philanthropic, or investing in noble causes, that positively make a difference.

One thing I often hear is that private schools are only for the rich. I am here to tell you that is not at all the case. All schools, public or private have wealthy patrons, poor families, and everyone else in between.

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I attended public school in West Fargo and received a great education. In high school my parents sacrificed to send me and my seven siblings to Oak Grove for high school. Not because they were upset with the public school... but rather because they valued the mission of Oak Grove and what it provided for us, not so much academically, but from a faith perspective. Both my parents graduated from Oak Grove in the 1940's and the church we belonged to was one of the founding congregations when it was an all-girls school in the early 1900's. At that time, it was one of the few places that provided a high school education for girls from rural farm families.

My own children have also attended both public and private schools and benefitted greatly from both. However, different school environments met the different needs of my girls, thus I appreciated the opportunity to choose what was best for them.

In the past five years, I have had two students from Nigeria join my family who were dirt poor, fatherless, had no opportunity for a HS education, and were caught up in the midst of the terrorist activity ravaging the county. They attended private school on scholarships provided by generous donors that had created endowments for students from 3<sup>rd</sup> world countries. Bartholomew graduated with honors from Shiloh and is currently attending NDSU on a football scholarship and Joseph will graduate this spring from Oak Grove. He hopes to attend Concordia to major in Computer Science. Both of these students attended private school due to the fact that tax dollars cannot be used to educate international students. It is only through the contributions of generous donors that these types of programs and scholarships exist. Not only does it change the lives of these young men, it also enriches our lives as we experience different cultures, share experiences, learn from each other and ultimately make a difference in our place in the world.

As someone who has spent almost 30 years in education and also been a part of three major capital building projects at both private and public schools, I have seen first-hand the difference it makes when public and private work together. When people invest in their community... be it a referendum and/or a donation to a non-profit, it makes a difference and as such the investment is impactful and should receive some sort benefit in return.

North Dakota is growing demographically and becoming more diverse economically. Educational Institutions need support both from the government and from individual benefactors. This legislation encourages investment in community and it benefits us all. Both public and private schools have the same goal of educating top quality kids. We already work together by sharing resources, desire to serve the common good, and provide investments to its local economy. This should be supported and applauded.

I would be happy to answer any questions you may have.