

FISCAL NOTE

Requested by Legislative Council
01/14/2005

Bill/Resolution No.: HB 1365

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

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$130,908,566	\$0	(\$130,188,150)	\$0	(\$130,200,000)
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$130,908,566	\$0	\$0	(\$130,188,150)	\$0	\$0	(\$130,200,000)

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

HB 1365 amends NDCC 15.1-21-06 to allow for the voluntary participation of local school districts in programs administered within the No Child Left Behind Act (NCLBA), PL 107-110. HB 1365 places full discretion on the part of local school districts regarding the manner in which NCLBA funds may be expended and allows for the termination of participation in NCLBA programs without regard to financial penalty or other sanctions.

The language of HB 1365 requires no expenditure of state funds to administer its provisions.

The Department of Public Instruction interprets the language of HB 1365 to be in conflict with the general administration provisions of NCLBA, thereby placing the State's assurance of continued NCLBA funding in jeopardy. The office of the Attorney General has advised the Department of Public Instruction that once the state has elected to accept federal funds the state is subject to all federal laws and regulations that regulate those funds. To the extent that HB 1365 conflicts with the federal law and regulations, the federal law controls. Therefore, if a school district were to comply with HB 1365 and disregard the federal law, it potentially could place the state's assurance of continued NCLBA funding in jeopardy. In the course of submitting its annual NCLBA program application to the U.S. Department of Education, the State Superintendent is required to sign legal assurances that the state is administering the provisions of NCLBA according to federal law and regulations. Local school officials must similarly sign these legal assurances. Additionally, in the course of required annual reporting or scheduled program monitoring conducted by the U.S. Department of Education, the Department of Public Instruction must provide evidence that the provisions of NCLBA are being administered according to federal law and regulations. The U.S. Department of Education independently audits all evidence and issues monitoring findings accordingly.

HB 1365 places state law at odds with federal law. The violation of federal law results in the application of sanctions defined under federal regulation. Pursuant to Part 81 of the Education Department General Administrative Regulations (EDGAR) regarding the enforcement of the General Education Provisions Act (GEPA), a series of possible financial penalties or program sanctions may accompany any monitoring finding from the U.S. Department of Education. It is reasonable to anticipate that if the Department of Public Instruction were to administer the provisions of HB 1365 then a monitoring finding would inevitably ensue. If the Department of Public Instruction were to persist in its violations, then the

U.S. Department of Education would be permitted to withhold the affected state's program allocation or to demand repayment of the affected state's program allocation. Any penalties are dependent on the extent of the state's violation.

In the absence of any delimiting factors, the Department of Public Instruction must assume that the state's full NCLBA may be in jeopardy as a result of an extensive violation. The Department of Public Instruction estimates that this loss of NCLBA funding may conservatively amount to \$65,094,075 per year based on 2005-06 allocation estimates. This would equal approximately \$130,188,150 for the 2005-07 biennium. Comparable amounts would be at risk during the 2007-09 biennium. This premise forms the foundation of this fiscal note; any lesser violations may result in lower funding exposure.

As support for this fiscal note, the Department of Public Instruction will submit within its formal testimony a February 2004 letter from the Dr. Eugene Hickok, Acting Deputy Secretary for Elementary and Secondary Education within the U.S. Department of Education, to Dr. Steven Laing, Utah Superintendent of Public Instruction, regarding the possible funding implications of the state's nonparticipation in NCLBA programming. This letter presents the U.S Department of Education's foundational principles that articulate the interconnection between NCLBA funding and the concomitant impact on a state's allocation, default, or repayment.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The effect of HB 1365 would constitute a 2005-07 biennial loss of approximately \$130 million in federal funding for state and local educational programming. This impact would remain in effect into the 2007-09 biennium.

The programs that would incur a loss of funding include the following:

Title I Grants to Local Educational Agencies \$63,104,906
Reading First State Grants \$4,981,870
Even Start \$2,028,362
Migrant \$441,798
Comprehensive School Reform \$928,330
Improving Teacher Quality Grants \$27,790,418
Math and Science Partnerships \$1,776,672
Educational Technology \$4,780,040
21st Century Community Learning \$9,712,558
Innovative Programs \$1,970,112
State Assessments \$6,975,338
Rural, Low Income Schools \$115,206
Safe, Drug Free Schools \$4,270,060
Language Acquisition \$1,000,000
Education for Homeless \$312,480

Total \$130,188,150

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.*

There are no anticipated expenditures in the administration of HB 1365.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

There are no anticipated state appropriations required within HB 1365.

The Department is available to answer any questions regarding this fiscal note.

Name: Greg Gallagher

Phone Number: 328-1838

Agency: Public Instruction

Date Prepared: 01/19/2005