

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2321

2007 SENATE POLITICAL SUBDIVISIONS

SB 2321

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2321

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: February 8, 2007

Recorder Job Number: 3205 & 3264 (Action 2/9/07)

Committee Clerk Signature

*Shirley Borg*

Minutes:

**Chairman Cook** called the Senate Political Subdivisions committee to order. All members (5) present.

**Chairman Cook** opened the hearing on SB 2321 relating to authorizing political subdivisions to request and exemption from coverage under the state merit system.

**Senator Mathern**, District 11, Fargo, ND, introduced SB 2321. (See attachment #1)

**Carrie Smith**, employed as Child Protection Social Worker, Cass County Social Services, testified in support of SB 2321. (See attachment #2A, 2B, & 2C)

**Larry Bernhardt**, Director of Stark County Social Services, Dickinson, ND, testified in support of SB 2321. (See attachment # 3)

**Terry Traynor**, Association of Counties, testified in support of SB 2321. This bill is an optional authority that counties can choose to take or not take and it is something that they have to weigh with their social service board on what their recruiting needs are, what their salary structure within the county outside of social services and how that all balances out. It is a good option for them to have.

**Ruby Kolpack**, Child, Child Care Licensed Specialist, Cass County Social Services, testified in support of SB 2321. (See attachment #4)

**Kathy Meier**, Cass County Social Services, testified in support of SB 2321.

**Lisa Johnson**, Social Worker, Cass County Social Services, testified in support of SB 2321.

(See attachment #5)

**Dean Matern**, Director of Human Resources for Human Services, testified in a neutral position. Our department has the delegated responsibility to insure that the counties comply with the merit system standards. The merit system is basically fixed principals of HR management that were dictated at the federal level. Using those guide lines HR systems are developed to comply with that.

No further testimony in favor, opposed or neutral.

**Chairman Cook** closed the hearing on SB 2321

Recorder # 3264 February 9, 2007

**Senator Warner** said he was very comfortable with this concept.

**Senator Warner** moved a Do Pass on SB 2321.

**Senator Anderson** seconded the motion.

Roll Call vote: Yes 5 No 0 Absent 0

Carrier: **Senator Warner**

**Chairman Cook** adjourned the committee.



**REPORT OF STANDING COMMITTEE (410)**  
February 9, 2007 1:08 p.m.

**Module No: SR-28-2743**  
**Carrier: Warner**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2321: Political Subdivisions Committee (Sen. Cook, Chairman) recommends DO PASS (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2321 was placed on the Eleventh order on the calendar.**

2007 HOUSE HUMAN SERVICES

SB 2321

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2321

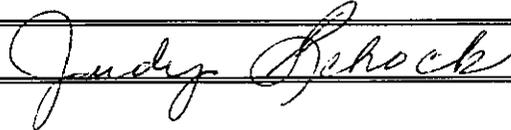
House Human Services Committee

Check here for Conference Committee

Hearing Date: March 7, 2007

Recorder Job Number: 4540

Committee Clerk Signature



Minutes:

**Chairman Price:** We will open the hearing on SB 2321.

**Representative Kari Conrad, District 3 Minot, ND:** This bill will simply allow counties to request an exemption from the merit system regarding Social Services. It also requires the department monitor them to be sure they are in compliance with the federal standards. It addresses a problem for county commissioners and counties. It causes moral problems among county employees. The counties basically have two personal systems now. One for the social services system and one for all the other county employees, and they can have different pay scales. The federal government requires when using federal social service dollars that you must have a merit system. Counties sometimes loose therapists to hospitals because they pay more.

**Representative Porter:** We have seen this bill before, and it has not changed much. It spells property tax increase. If the county does this it does mean more money. The money has to come from some place.

**Representative Conrad:** I don't think so because you are often talking one job and an adjustment of maybe 50-100 dollars a month. Often times it is federal dollars and the counties are putting in 25% of those dollars.

**Chairman Price:** In the second part, does the department continue to be responsible for auditing that system. Is that really fair?

**Representative Conrad:** That makes sense. When using federal dollars it doesn't always make sense. The federal government gives the money to the state and holds them accountable.

**Representative Price:** Every year we would have to audit every county to make sure they are still compliant.

**Representative Uglem:** Last time we heard this type of a bill, there was a lot concern about the few major cities paying higher wages than the rural counties. The rural counties would have more trouble keeping their employees. Do you for see that happening?

**Representative Conrad:** No, because the kind of work that we are talking about is very specialized often times. In the rural counties you often get general and not special in one area.

**Representative Kaldor:** I share Rep. Uglems concern. It seemed to me in last session when this was before us. My county director communicated with me, some of the rural counties that are sandwiched in between the larger more urban counties, wanted this because they were already at a competitive disadvantage. Without this relief they couldn't make adjustments.

**Representative Conrad:** In the Minot area we have people driving in from Mohall, which is the county seat. A general does everything, so they are already in a competitive situation.

**Senator Mathern** was not able to be here so I will pass out his testimony.

**Representative Alon Wieland District 13 W. Fargo:** This problem has been a problem for a long time. This is an optional piece of legislation; it is not required of counties. Those of you that know county commissioners know that their very conservative. We don't spend money easily. If someone perceives this as a tax increase they probably won't do it. I don't envision a lot of counties doing this. Several other counties have joined in the last two years to be able to

offer their Human Services staff a raise comparable to the rest of the counties receiving. It is a fairness issue. It is a tendency for people to wanting to move to the larger communities.

**Representative Weisz:** This bill is specific to Social workers. Are there any other areas this would be an issue? Why not the entire department put into a merit system?

**Representative Wieland:** I am not aware of any the other department involved in this kind of an issue.

**Representative Uglem:** Would this actually create two different pay scales for state employees doing the same job depending where they work?

**Representative Wieland:** I don't think you would classify them as two different pay scales. This would bring it in line with the pay scale of the county we are dealing with. They would not be tied to state payrolls. I don't think it does that. It takes away 2 systems and makes it one.

**Larry Bernhardt, Director of Stark County Social services in Dickinson:** See attached testimony.

**Chairman Price:** In the bill with the division and the director of human services. Who is the division?

**Mr. Bernhardt:** It is the division of personal with in these departments. The state monitors all we do in personal functions and county social services. They review all of our pay for every employee every month to be sure we are in compliance with the minimums and the maximums. We follow accurate hiring and firing procedures. We are used to being monitored. There would not be a fiscal cost. In my county our staff has to pay 25% of insurance. State employees do not, and yet we are on the same pay scale. I am in one of the bigger counties, and yes, I steal staff from smaller counties. It is not so much the pay as the nature of the work and the classification that are different.

**Chairman Price:** (Could not hear)

**Carrie Smith, employee of Child Protective Social Worker with Cass County Social**

**Services:** See attached testimony:

**Terry Traynor, Assistant Director of NDAC:** See attached testimony. We are supportive of giving of giving local governing boards the ability to manage their own affairs. This single issue has been the most persistent and the largest concern particularly every year after elections. I think we are spending a lot of property tax just to administering two different pay plans in every county. Obviously there are costs associated with managing a system that meets the merit system requirements. I can see where it would be beneficial for counties to have one pay plan.

**Representative Kaldor:** How many counties are operating as some of the counties are not funding the whole medical insurance?

**Mr. Traynor:** It would be about 50-50. Some counties do not provide any.

**Rep. Kaldor:** Has any one ever suggested that this might be a legal issue with the State pay plan and than having different benefit plan.

**Mr. Traynor:** Issue has been raised. My understanding is the merit system does not make that requirement.

**Jodi Buhr Executive Director of ND Public Employee Association:** We support the bill because of equity. We believe in fairness in equity. We believe the situation that these individuals are in is very inequitable. They are caught between two systems. We believe this will fix the problem.

**Marshall Flagg, with the Department of Human Resources of Human Services:** The county Social Service offices are required to be under a merit system by the federal government because of the funding. The state had a merit system that was operated through the central personal division, which are now in the resources management services. The merit

system was decentralized in 1995, and delegated the responsibility to operate the merit system to each merit system agency. The county social services positions that are under the states classification system which is part of the merit system. They are required to follow that particular portion of it. There are requirements in the administrative rules that there be some similarity in certain benefits. When the salaries move, the counties are able to move their salaries in accordance with that.

**Representative Kaldor:** If we pass this legislation, is it possible that in some counties where the state system is potentially superior to the county pay scale would some counties might have a tendency to not increase.

**Mr. Flag:** I don't think so, but it is possible in the proposal rules we did have a section in there stating the counties if they pulled out they couldn't pay any less. I am not sure if that would hold up or not.

**Laurie Steriotti Hammeren, director of HRMS:** I am not here for or against the bill. I think from my perspective the equity issues particularly in the large counties. I am sure that compounded because we went 0 and 0 for 2 years in the state system. I think if our range had changed and we are proposing it does change. There has never been the same benefit package across county lines. We have been concerned about that for some time. I don't think we are ever going to have nullified system entirely.

**Chairman Price:** Any more testimony on SB 2321. Hearing none we will close the hearing on SB 2321.

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2321

House Human Services Committee

Check here for Conference Committee

Hearing Date: March 14, 2007

Recorder Job Number: 5097

Committee Clerk Signature

*Judy Rehock*

Minutes:

**Rep. Price:** I did ask if there were some counties that voted no when they voted because I know that some counties did not support this process.

**Rep. Pietsch:** I talked to Mr. Richter in Ward County. He said that he didn't have a need for it right now. He had been in opposition but is no longer in opposition. He thought that the testimony was reflective of that. He did oppose it before but he is not now. He didn't think he would need it right now though. I did child abuse investigations once in my life.

**Rep. Schneider:** I move a do pass on SB 2321.

**Rep. Potter:** I second that.

**Rep. Ugem:** Am I right to assume that the counties right around the larger cities don't have to worry about losing their employees.

**Rep. Kaldor:** I'm not sure about that. I can't answer for Steele County but I know in one county where I have talked to the director, they actually have supported this two years ago. They needed to have some way to attract the people who do this work. I think some of them are contacted services. So I know our county, the closest one, was supportive of this. They didn't have any concerns. I have some concerns about that. It has to have some effect. They said it is what we need.

**Rep. Conrad:** I think the fact that it is optional, like for instance Ward County. I talked to the director after the hearing. He said he wouldn't use the option no. He would have it in the future. Right now he isn't going to use it. I think they are going to look at it very carefully. Because it might cost them more money and the boards aren't going to be very pleased. I think that is kind of a factor.

**Rep. Price:** This is just county social service employees.

**Rep. Conrad:** It goes back to the lender. He used the welfare money for political purposes. So then the federal government came in and the Chief Justice Christianson actually went in before the Department of Public Welfare. In order to convince the federal government not to do that. They passed this law so it wouldn't be used. It is very narrow in that because of that one particular situation.

**Rep. Price:** Is there any more discussion? If not we will take a roll call vote. The do pass motion on SB 2321 passes with a vote of 11-1-0. Is there a volunteer to carry the bill?

**Rep. Conrad:** I will.

Date: 3/14  
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House HUMAN SERVICES SB 2321 Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Also Pass

Motion Made By Rep. Schneider Seconded By Rep. Potter

Representatives	Yes	No	Representatives	Yes	No
Clara Sue Price - Chairman	✓		Kari L Conrad	✓	
Vonnie Pietsch - Vice Chairman	✓		Lee Kaldor	✓	
Chuck Damschen	✓		Louise Potter	✓	
Patrick R. Hatlestad	✓		Jasper Schneider	✓	
Curt Hofstad	✓				
Todd Porter		✓			
Gerry Uglem	✓				
Robin Weisz	✓				

Total (Yes) 4 "Click here to type Yes Vote" No 1 "Click here to type No Vote"

Absent 0

Floor Assignment Rep. Conrad

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

**REPORT OF STANDING COMMITTEE**

**SB 2321: Human Services Committee (Rep. Price, Chairman) recommends DO PASS**  
(11 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2321 was placed on the  
Fourteenth order on the calendar.

2007 TESTIMONY

SB 2321

**SB2321**  
**Political Subdivisions Committee**  
**February 8, 2007**

*Same to House*

Chairman Cook and Members of the Senate Political Subdivisions Committee,

My name is Tim Mathern. I am the Senator from District 11 in Fargo and introduced SB2321.

Passage of the bill permits political subdivisions to request and be permitted to withdraw from the state merit care system provided they meet federal merit standards. The bill further requires the state to establish oversight procedures to assure compliance with federal standards for personnel.

The problem this bill attempts to address is the situation where we have county employees who are not under the state merit system that receive higher salaries than other county employees who are under the state merit system. These two sets of employees may do comparable or the same type of work.

This situation is most often a problem in Cass County and other larger populated counties.

I think this is an unfair situation for employees and a problem for good personnel management for county government. Passing this bill provides local subdivisions a manner to correct the problem.

Others are here to add more testimony. I ask for your Do Pass recommendation on SB2321. Thank you for your attention.

Testimony SB2321

February 8, 2007

Mr. Chairman and members of the committee, my name is Carrie Smith and I have been employed as a Child Protection Social Worker with Cass County Social Services for approximately 14 years. Previously, I was employed in Richland County and by the Cass County Sheriff's Department. I am here today in support of Senate Bill 2321.

Social Service employees are required by the North Dakota Century Code to follow the Human Resource Management Service administrative rules of the state merit system. This is a mandate for agencies receiving federal funding.

In researching the federal merit system, there are six requirements. Recruitment and hiring; equitable and adequate compensation; to provide training; retaining employees based on performance; assuring fair treatment; as well as compliance with federal employment laws.

In previous research on the issue of how a number of other states that are state supervised and county administered, social service systems were able to assure merit system compliance. What was found in all of these situations is that state laws ensure that federal standards are being met. In some states like North Carolina, the state fully manages the merit system. In such states as California and Minnesota, there are state systems that counties can voluntarily opt out, if a county can ensure compliance with federal standards. This legislation would be permissive based on county commission action.

If this legislation were to pass, local entities would establish detailed administrative rules regarding procedures for establishing a local merit system that would be submitted to the state for approval. It is anticipated that these administrative rules would mirror the current state merit system's administrative rules that are currently in place.

As some of you may know, I pursued sponsors for this bill on my own as a private citizen. I wanted legislators to know that "line staff" in social service agencies are in favor of this legislation. In larger counties, there are internal inequities between social service employees and county employees. For example, in Cass County there is approximately 70%, or 87 out of 128 social service employees whose pay has been frozen because of the state salary cap. These positions are across the board from management staff, social workers, daycare licensing staff, secretaries, as well as clerks and an attorney. Other employees who have similar job duties within the county system are paid at a higher rate of pay, because they are subject to county pay scales.

I believe that recent legislation providing the 4% pay increases in 2007 and 2008 are necessary as well as appreciated. However, this pay increase does not address the ongoing internal inequities within local systems. For example, if social service employees of Cass County receive a 4% pay increase in 2007, this is not equitable due to our counterparts (other county workers) receiving a 2.1% market adjustment increase, as well as a 3.5% cost of living increase, or a 5.7% increase. As social service employees, a majority of the time we are required to

pay a portion of our health care premiums. As we all know, health care costs continue to rise, which results in social service employees seeing an increase in their health care premiums every January 1, while their paycheck remains the same. This is very depressing, as well as frustrating, to see your paycheck decrease every year.

I know that there has been some past discussion to allow social services to substitute county pay administration plans, sick and annual leave, and funeral leave in lieu of current state plans. The Attorney General's Office previously advised that under state law Human Resource Management Services does not have the authority to exempt counties from the administrative rules.

Again, I am asking for your support of this bill to allow local county commissioners to pay salaries and benefits based upon local circumstances, while protecting the important aspects of the federal mandates of a merit system.

I would like to thank the chairman and committee members for their time and interest. I would also like to thank our prime sponsor, Senator Mathern, as well as our other sponsors.

I am available to answer any questions you may have.

Carrie Smith, Licensed Social Worker

Cass County Social Services

**CHAPTER 4-07-34.1  
LOCAL COUNTY SOCIAL SERVICE MERIT SYSTEMS**

Section	
4-07-34.1-01	Scope of Chapter
4-07-34.1-02	Procedures for Establishing a Local County Social Service Merit System.
4-07-34.1-03	Plan Approval
4-07-34.1-04	Merit Principles Requirements
4-07-34.1-05	Oversight and Audit Procedures
4-07-34.1-06	Non-compliance
4-07-34.1-07	Opt-back-in Procedures

**4-07-34.1-01. Scope of chapter.** This chapter applies to county social service agencies that have opted not to be covered by the North Dakota merit system, but are required to comply with the federal standards for a merit system of personnel administration.

**History:** Effective \_\_\_\_\_  
**General Authority:** NDCC 54-44.3-12  
**Law Implemented:** NDCC 54-44.3-12

**4-07-34.1-02. Procedures for establishing a local county social service agency merit system.** A county social service board or group of county boards with the concurrence of the county commissions that opts to establish a local merit system for the social service agencies shall develop a plan that includes policies and procedures that comply with the merit principles listed in section 4-07-34.1-04 and submit it to North Dakota human resource management services and the North Dakota department of human services for approval prior to implementation.

**History:** Effective \_\_\_\_\_  
**General Authority:** NDCC 54-44.3-12  
**Law Implemented:** NDCC 54-44.3-12

**4-07-34.1-03. Plan approval.** North Dakota human resource management services shall establish an effective date authorizing a local county social service board or group of county boards merit system after approval of the county plan.

**History:** Effective \_\_\_\_\_  
**General Authority:** NDCC 54-44.3-12  
**Law Implemented:** NDCC 54-44.3-12

**4-07-34.1-04. Merit principle requirements.** The following are the minimum merit system requirements that a county social service board or group of county boards must address in its plan to establish a local merit system.

1. Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.
  - a. A standard application form for employment
  - b. An application review and ranking process, applicant notification, and procedure for appeals of disqualification
  - c. Referral of applicants to interviewer based on applicant ranking
  - d. Compliance with North Dakota Century Code chapter 37-19.1, Veterans' Preferences
  - e. Job announcements for internal and external recruitment
  - f. Position changes including promotions, demotions, transfers, and reinstatements
2. Providing equitable and adequate compensation.
  - a. A classification plan including class descriptions with minimum qualifications
  - b. Individual job descriptions
  - c. A salary administration plan with minimum salary range rates that are not less than the North Dakota state merit system compensation plan
  - d. Identified working hours
  - e. Leave policies including holidays; annual, sick, military, funeral, jury and witness; workers compensation; and family medical leave
3. Training employees, as needed, to assure high quality performance.
4. Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.
  - a. A cause employment standard must be used
  - b. A performance management program including a minimum of an annual performance review
  - c. A probationary period
  - d. A corrective and disciplinary process including use of progressive discipline
  - e. Defined separations including pre-action process, dismissal, reduction-in-force, and expiration of appointment, including a formal appeal mechanism
5. Assuring fair treatment of applicants and employees in all aspects of human resource administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or disability and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the Federal equal employment opportunity and nondiscrimination laws.
  - a. Policies including Americans with Disabilities Act, Fair Labor Standards Act, Age Discrimination in Employment
  - b. Compliance with federal and state equal employment opportunity and nondiscrimination laws including Title VI and Title VII of the Civil Rights Act of 1964 as amended, the North Dakota Human Rights Act, and the Public Employee Relations Act of 1985 as amended
  - c. Grievance policy and procedure
  - d. Appeals process to a neutral third party
  - e. Records management including personnel files, records retention, open records, and compliance with the Health Information Portability and Protection Act

6. Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office, and compliance with the federal "Hatch Act"

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 14-02.4, 54-44.3-12

**Law Implemented:** NDCC 14-02.4, 54-44.3-12

**4-07-34.1-05. Oversight and audit procedures.** North Dakota human resource management services and the North Dakota department of human services human resource division shall jointly conduct periodic audits or oversight reviews of local county merit system policies, procedures, and practices to ensure compliance with the local county merit system plan and federal merit system principles.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 14-02.4, 54-44.3-12

**Law Implemented:** NDCC 14-02.4, 54-44.3-12

**4-07-34.1-06. Non-compliance.**

1. When a local county merit system is found to be out of compliance, the audit team shall recommend corrective action.
2. The local county social service board or group of county boards shall submit a corrective action plan within sixty days of receipt of the audit findings.
3. The local county social service board or group of boards, North Dakota human resource management services, and the North Dakota department of human services shall negotiate a corrective action agreement within sixty days of receipt of the corrective action plan.
4. Upon approval of the corrective action plan, the local county social service board or group of boards shall have an additional sixty days to implement the plan.
5. A follow-up audit shall be conducted within six months of the implementation date of the corrective action plan.
6. When a local county merit system is found to be out of compliance with the local county merit system plan and federal merit system principles after a follow-up audit, the county board or group of county boards shall be required to be placed under the jurisdiction of the North Dakota merit system. All programs and policies, including salaries, must be adjusted to be in compliance with the North Dakota merit system. Any federal penalties that result from the non-compliance shall be the responsibility of the county board or group of county boards.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 54-44.3-12

**Law Implemented:** NDCC 54-44.3-12

**4-07-34.1-07. Opt back in procedures.** A county board or group of county boards that opted out of the North Dakota merit system may opt back in the North Dakota merit system with the concurrence of North Dakota human resource management services and the North Dakota department of human services. All programs and policies, including salaries, must be adjusted to be in compliance with the North Dakota merit system.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 14-02.4, 54-44.3-12

**Law Implemented:** NDCC 14-02.4, 54-44.3-12

**CHAPTER 4-07-02  
SALARY ADMINISTRATION PROCEDURES**

Section	
4-07-02-01	Definitions
4-07-02-02	Scope of Chapter
4-07-02-03	Purpose of Chapter
4-07-02-04	Relationship to Available Funds
4-07-02-05	Salaries Must be Within the Assigned Salary Range
4-07-02-06	Exceptions
4-07-02-07	General Salary Increase
4-07-02-08	Hiring Rate
4-07-02-09	Documents Needed for Hiring Rate Above the First Quartile
4-07-02-10	Probationary Increase
4-07-02-11	Responsibility Level or Workload Increase
4-07-02-12	Reclassification Adjustment
4-07-02-13	Promotional Increase
4-07-02-14	Performance Increase
4-07-02-15	Equity Increase
4-07-02-16	Temporary Increase
4-07-02-17	Adjustment Following Assignment to a Lower Pay Grade

**4-07-02-01. Definitions.** The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 54-44.3, except:

1. "Class" means a group of positions, regardless of location, which are alike enough in duties and responsibilities to be called by the same descriptive title, to be given the same pay range under similar conditions, and to require substantially the same qualifications.
2. "Classification plan" means the listing of all the classes that have been established, the specification for those classes, and the process and procedures developed to maintain the plan.
3. "Equity increase" means a salary increase provided to a classified employee to mitigate either a serious internal agency inequity or a documented, proven, external inequity.
4. "General salary increase" means a salary increase provided to classified employees by specific legislative appropriation.
5. "Hiring rate" means the salary level assigned to an employee upon initial employment with an agency.
6. "Pay grade" means the number assigned to a classification which corresponds with one specific range of pay rates.
7. "Performance increase" means a salary increase provided to a classified employee in recognition of documented performance which

is consistently superior or which consistently exceeds performance standards.

8. Probationary increase" means a salary increase provided to a classified employee upon the successful completion of their applicable probationary period.
9. "Promotional increase" means a salary increase provided to a classified employee when the employee is assigned to a position in a different class which has a higher pay grade than the employee's previous position, and the assignment is not a result of a reclassification of the employee's position.
10. "Reclassification adjustment" means a salary change applied to a classified employee when the employee's position is reallocated to a different classification which has a different pay grade.
11. "Responsibility level or workload increase" means a salary increase provided to a classified employee when either of the following conditions are met:
  - a. The level of duties and responsibilities assigned to the employee is permanently changed, is documented, and is independent of any change in classification.
  - b. A substantial, documented, increase in workload is assigned to a position.
12. "Salary range" means the range of pay rates, from minimum to maximum that are assigned to a pay grade, and which are often divided into quartiles for reference.
13. "Temporary increase" means a salary increase provided to a classified employee when the employee is assigned temporarily to perform a higher level of responsibilities on an acting or interim basis.

**History:** Effective March 1, 1991.

**General Authority:** NDCC 54-44.3-12(1)

**Law Implemented:** NDCC 54-44.3-01, 54-44.3-12(1), 54-44.3-12(7)

**4-07-02-02. Scope of chapter.** This chapter applies to all agencies, departments, institutions, and boards and commissions which employ individuals in positions classified by the central personnel division, except those agencies headed by an elected official, and except those institutions in the university system.

Elected officials and institutions in the university system may, at their option, agree to the application of chapter 4-07-02 to their specific agency.

**History:** Effective March 1, 1991; amended effective November 1, 1996.

**General Authority:** NDCC 54-44.3-12(1)

**Law Implemented:** NDCC 54-44.3-01, 54-44.3-12(1), 54-44.3-12(7)

**4-07-02-03. Purpose of chapter.** The purpose of this chapter is to ensure that the salaries of classified employees are paid in a manner consistent with the state's classification plan, its compensation plan, and its salary administration policy.

**History:** Effective March 1, 1991.

**General Authority:** NDCC 54-44.3-12(1)

**Law Implemented:** NDCC 54-44.3-01, 54-44.3-12(1), 54-44.3-12(7)

**4-07-02-04. Relationship to available funds.** All salary actions under this chapter are subject to the availability of appropriated funds. No person may take a salary action under this chapter if it were to cause an agency to exceed its budget authorization.

**History:** Effective March 1, 1991.

**General Authority:** NDCC 54-44.3-12(1)

**Law Implemented:** NDCC 54-44.3-01, 54-44.3-12(1), 54-44.3-12(7), 54-44.3-12.1, 54-44.3-15

**4-07-02-05. Salaries must be within the assigned salary range.** The central personnel division shall assign a pay grade and a salary range to each approved class in the classification plan. Unless otherwise provided by the central personnel division, the salary level of a classified employee must be within the assigned salary range.

**History:** Effective March 1, 1991.

**General Authority:** NDCC 54-44.3-12(1)

**Law Implemented:** NDCC 54-44.3-01, 54-44.3-12(1), 54-44.3-12(7), 54-44.3-15

ⓧ **4-07-02-06. Exceptions.** Exceptions to the requirements of chapter 4-07-02 normally require prior written approval from the director of the central personnel division. In emergency situations exceptions may be provided verbally. Appointing authorities shall describe their justification for the exception and the impact that denying the exception would have on the agency. Written documentation in justification of the exception must be provided by the appointing authority at the earliest practical time following a verbal approval.

**History:** Effective March 1, 1991.

**General Authority:** NDCC 54-44.3-12(1)

**Law Implemented:** NDCC 54-44.3-12(1), 54-44.3-12(7)

**4-07-02-07. General salary increase.** A general salary increase must be provided in accordance with any specific guidelines or requirements as appropriated by the legislative assembly.

**History:** Effective March 1, 1991.

**General Authority:** NDCC 54-44.3-12(1)

**Law Implemented:** NDCC 54-44.3-01, 54-44.3-12(7)

**4-07-02-08. Hiring rate.** The hiring rate for newly hired employees must be within the first quartile of the salary range, except that an appointing authority may assign a hiring rate up to the midpoint of the salary range if either of the following requirements are met:

1. The employee's job-related qualifications exceed the established minimum qualifications.
2. The agency is unable to recruit qualified candidates who would accept a salary within the first quartile of the salary range.

**History:** Effective March 1, 1991.

**General Authority:** NDCC 54-44.3-12(1)

**Law Implemented:** NDCC 54-44.3-01, 54-44.3-12(7)

**4-07-02-09. Documents needed for hiring rate above the first quartile.** If an appointing authority offers a hiring rate above the first quartile of the salary range, documentation must be maintained on the factors used to determine that rate and on the consideration given to existing salary relationships within an agency.

**History:** Effective March 1, 1991.

**General Authority:** NDCC 54-44.3-12(1)

**Law Implemented:** NDCC 54-44.3-01, 54-44.3-12(7)

**4-07-02-10. Probationary increase.** An appointing authority may grant an increase of up to five percent, or up to fifty dollars if the hiring rate was less than one thousand dollars, upon an employee's successful completion of a probationary period. The size of the increase may vary depending on factors that include: performance, internal equity, and budget appropriations.

**History:** Effective March 1, 1991.

**General Authority:** NDCC 54-44.3-12(1)

**Law Implemented:** NDCC 54-44.3-01, 54-44.3-12(7)

**4-07-02-11. Responsibility level or workload increase.** An appointing authority may grant a responsibility level or workload salary increase if all of the following requirements are met:

1. The increase does not exceed ten percent per biennium for an employee.

2. Consideration is given to the effect granting the increase would have on internal equity.
3. The change in workload or responsibility is documented and on file.

**History:** Effective March 1, 1991.

**General Authority:** NDCC 54-44.3-12(1)

**Law Implemented:** NDCC 54-44.3-01, 54-44.3-12(7)

**4-07-02-12. Reclassification adjustment.** An appointing authority may make an adjustment to a salary as a result of a reclassification according to the following:

1. If the pay grade is higher following a reclassification action, then an increase up to five percent above the minimum of the new salary range may be provided. The salary must be at least equivalent to the minimum of the new salary range.
2. If the pay grade is lower following a reclassification action, then either of the following apply:
  - a. The employee's salary may remain the same if it is within the lower salary range.
  - b. The employee's salary may be reduced to within the lower range to equitably relate to the salaries of other employees in the same or related classes.
3. If the employee's salary is above the maximum of the salary range for the new job grade, then either of the following apply:
  - a. The salary of the employee may remain above the new maximum when the reclassification is a result of a program change, a reorganization, or is a result of a management need not associated with the employee's performance. The salary may remain above the maximum as long as the employee remains in the classification. No further increases in salary may be granted the employee as long as the salary remains above the maximum.
  - b. The salary must be reduced at least to the maximum of the new range if the lower classification results from the removal of duties and responsibilities from the employee as a result of substandard performance or for disciplinary reasons.
4. If the pay grade is not changed, no salary adjustment shall be made.

**History:** Effective March 1, 1991.

**General Authority:** NDCC 54-44.3-12(1)

**Law Implemented:** NDCC 54-44.3-01, 54-44.3-07, 54-44.3-12(7)

**4-07-02-13. Promotional increase.** An appointing authority may grant a salary increase when an employee is promoted, if all of the following requirements are met:

1. The employee must be paid at least the minimum of the new salary range.
2. Consideration must be given to the internal salary relationships that would exist in the agency if the increase were to be given.
3. The magnitude of the change in jobs is considered.

**History:** Effective March 1, 1991.

**General Authority:** NDCC 54-44.3-12(1)

**Law Implemented:** NDCC 54-44.3-01, 54-44.3-12(7)

**4-07-02-14. Performance increase.** An appointing authority may grant an increase for performance if all of the following requirements are met:

1. A proper performance appraisal process is used by the agency pursuant to chapter 4-07-10.
2. The increase does not exceed five percent in any twelve-month period for an employee.
3. Consideration is given to internal salary equity of other agency employees.

**History:** Effective March 1, 1991; amended effective November 1, 1996.

**General Authority:** NDCC 54-44.3-12(1)

**Law Implemented:** NDCC 54-44.3-01, 54-44.3-12(7)

**4-07-02-15. Equity increase.** An appointing authority may grant an equity increase if all of the following requirements are met:

1. The increase must not exceed ten percent in a biennium.
2. At the time the increase is granted, documentation must be submitted to the central personnel division that includes all of the following:
  - a. A definition of the inequity.
  - b. An explanation of what created the inequity.
  - c. A statement that an additional inequity will not result.
  - d. A statement of what nonmonetary alternatives were considered.
  - e. The relevant available market data in cases of external equity.

3. The agency must consider the overall relationship of state employees' salaries to market salaries and avoid creating internal inequities.

**History:** Effective March 1, 1991.

**General Authority:** NDCC 54-44.3-12(1)

**Law Implemented:** NDCC 54-44.3-01, 54-44.3-12(7)

**4-07-02-16. Temporary increase.** An appointing authority may grant a temporary increase if all of the following requirements are met:

1. An increase may not be given for a temporary situation of less than thirty days.
2. An employee may not continue to receive a temporary increase for more than thirty days after the special circumstances ceased to exist.
3. Consideration is given to the magnitude of the change in responsibility level.

**History:** Effective March 1, 1991.

**General Authority:** NDCC 54-44.3-12(1)

**Law Implemented:** NDCC 54-44.3-01, 54-44.3-12(7)

**4-07-02-17. Adjustment following assignment to a lower pay grade.** When an employee is assigned to a position at a lower pay grade, and the employee's salary is above the maximum of the new grade, then either of the following may result:

1. The salary may remain above the new maximum when the assignment results from a program change, reorganization, or other management need not associated with the employee's performance. No further increases may be granted as long as the salary remains above the maximum.
2. The salary may be reduced to at least the maximum of the new range if the assignment resulted from substandard performance or other disciplinary reasons.

**History:** Effective March 1, 1991.

**General Authority:** NDCC 54-44.3-12(1)

**Law Implemented:** NDCC 54-44.3-01, 54-44.3-12(7)

Testimony SB 2321  
February 8, 2007

*Same to  
House*

Chairman Cook and members of the Senate Political Subdivisions Committee, my name is Larry Bernhardt. I am the Director of Stark County Social Services in Dickinson and am here today on behalf of Stark County.

Senate Bill 2321 is simple and straightforward – it “permits” Counties to request exemption from the state merit system, after they have put in place a merit system which complies with all federal and state requirements for their County. I believe that State Law requires that all Federal Requirements be met. Those Federal requirements being:

- 1.) Recruitment / hiring
- 2.) Equitable and adequate compensation
- 3.) Provide training
- 4.) Retaining employees based on performance
- 5.) Assuring fair treatment – compliance with all federal employment laws
- 6.) Protection from coercion from partisan political purposes

When looking at other states, which are also state supervised / county administered, you will find a mix of how Merit Systems are established. In some of the larger states, the counties maintain fully independent merit systems. In some states, like North Carolina and North Dakota, the state fully manages the merit system. And in several states, including California and Minnesota, there are state systems that counties can voluntarily opt out of if a county can assure compliance with federal standards. This bill would allow Counties in North Dakota that same option.

This “option” is needed for some counties in North Dakota who are having a difficult time attracting and keeping staff because they can’t keep up with the market for salaries for some of the professional positions because of the limits in the current Merit System. This is true in the eastern part of the state, the central part of the state, and even in the west where we have the oil industry that is driving salaries up and employee hiring pools down.

Thank you for your consideration of this bill and we do hope you will give it a "do pass" and allow this option for counties to continue to do the good work they do for the people of North Dakota.

If you have any questions, I would be happy to try to answer them.

Senate Political Subdivision Committee  
Dwight Cook, Chairman  
SB2321  
Testimony of Ruby Kolpack  
Feb. 8, 2007

Chairman Cook, members of the committee:

My name is Ruby Kolpack and I am here to testify on behalf of Senate Bill 2321. I am a lifelong North Dakota resident and have been employed by Cass County Social Services as a child care licensing specialist since Oct. 2, 1989, which is 17½ years. As a child care licensing specialist for Cass County, I take great pride in knowing that I help provide a safe environment for children in child care.

I am appearing today as a private citizen. I have taken annual leave and am paying for my own transportation to Bismarck because this issue is very important to me and my co-workers.

A part of my job that is very frustrating to me is that my salary has been capped since January of 1996. That's 11 years out of 17½ that I have been with the county. I feel that I have been an asset as an employee to Cass County. I am a hard worker and very loyal to this agency. I get excellent reviews and I am active in my community by sitting on several boards such as YMCA, United Way and YWCA.

This bill is an issue of equity and fairness. I am employed by the Cass County Commission and it has decided to pay me based on the local circumstances and cost of living. But the Commission cannot do that because the Human Resource Management System won't allow the local county entities to go above the state maximum salary cap.

Imagine my disappointment when I received my January 2007 paycheck and it was less than my December of 2006 paycheck due to rising health care costs. This has occurred in the past and will continue to occur in the future as long as the state personnel system dictates my salary and the county dictates my health insurance premiums.

I urge you to pass this bill. By giving the counties the option to opt out of the state personnel system, it will allow the counties to raise salary caps to address these inequities. The federal requirements of a merit system do not require caps and the positive aspects of the original legislation, which was to protect employees, will remain in place.

Thank you for your time and attention and I am willing to answer any questions.

Testimony SB 2321  
February 8, 2007

Good morning committee members; my name is Lisa Johnson. I have been a life-long resident of North Dakota, and a social worker with Cass County Social Services for twelve years.

Cass County has recognized for some time that significant inequities exist between county social services employees and other county department employees as a result of the current state personnel system. The gap in salary and benefits is widening each year due to the number of social service employees whose salaries are capped under the current system. My salary has been capped for five years.

It is difficult to maintain enthusiasm for what is a very challenging responsibility with few extrinsic rewards. As a foster care case manager, I believe it is critical to the children we serve to promote and maintain long term employees. Consistency of staff does promote stability for foster children, and more quickly moves them through the system to a more permanent living situation. I fear colleagues who feel underappreciated and under-compensated will look to leave their positions. We cannot expect employees to remain in positions where they lose income each year.

A Do Pass recommendation does not harm smaller North Dakota counties. It allows counties to make choices at the local level as to whether they remain in the existing personnel system or create their own system in accordance with federal merit system requirements. The key component in this bill is the flexibility to decide this matter on the local level.

I ask for your support on this bill. Thank you for your time. I am willing to answer any questions.

Testimony SB 2321

March 7, 2007

Madam Chair and members of the committee, my name is Carrie Smith and I have been employed as a Child Protection Social Worker with Cass County Social Services for approximately 14 years. Previously, I was employed in Richland County Social Services and prior to that I was employed by the Cass County Sheriff's Department. I am here today in support of Senate Bill 2321.

Social Services employees are required by the North Dakota Century Code to follow the Human Resource Management Service administrative rules of the state merit system. This is a mandate for agencies receiving federal funding.

If this legislation were to pass, local entities would be able to establish detailed administrative rules regarding procedures for establishing a local merit system that would be submitted to the state for approval. It is anticipated that these administrative rules would mirror the current state merit system's administrative rules that are currently in place.

As some of you may know, I pursued sponsors for this bill on my own as a private citizen. I wanted legislators to know that "line staff" in social service agencies are in favor of this legislation. In larger counties there are internal inequities between social service employees and county employees. For example, in Cass County there is approximately 70%, or 87 of 128 social service employees whose pay has been frozen because of the state salary cap. These positions are across the board from management staff, social workers, daycare licensing staff, secretaries, as well as clerks and an attorney. Other employees who have similar job duties within the county system are paid at a

higher rate of pay because they are subject to county pay scales.

I believe that recent legislation providing the 4% pay increases in 2007 and 2008 are necessary as well as appreciated. However, this pay increase does not address the ongoing internal inequities within local systems. For example, if social service employees of Cass County receive a 4% pay increase in 2007, this is not equitable due to our counterparts (other county workers) receiving a 2.1% market adjustment increase, as well as a 3.5% cost of living increase, or a 5.7% increase. As social service employees, a majority of the time we are required to a portion of our health care premiums. As social service staff we do not have the benefit of a fully funded health care plan. As we all know, health care costs continue to rise, which results in social service employees seeing an increase in their health care premiums every January, while their paycheck remains the same. This is very depressing, as well as frustrating, to see your paycheck decrease from year to year. In speaking with several other county social service representatives I heard no opposition to this legislation. I believe that Director Keith Berger, Grand Forks County Social Services has sent by e-mail a letter in support of this legislation to several of the committee members.

This legislation would be permissive and allow for county entities the option of opting out of the state merit system. This bill previously was heard before the senate political subdivisions committee with a unanimous do pass vote as well as receiving a unanimous senate vote.

I would like to thank the committee members for their time and interest. I would also like to thank the sponsors of this bill.

Carrie Smith, Licensed Social Worker

**Testimony To The  
HOUSE HUMAN SERVICES COMMITTEE**

**Prepared March 7, 2007 by the  
North Dakota Association of Counties  
Terry Traynor, Assistant Director**

**CONCERNING SENATE BILL NO. 2321**

Chairman Price and members of the Committee, I am here on behalf of the North Dakota Association of Counties to express our support for Senate Bill 2321.

Other testifiers here today have provided the logic and mechanics behind this proposed change, and I won't repeat that information. I simply want to assure the committee that commissioners and other county officials from across the State have voted to support this legislation.

While the situation that has prompted this bill is somewhat limited right now to several of the larger counties, we see this as an optional authority that could possibly become important to groups of counties in the future. As counties move toward more cooperative efforts, particularly in the area of human services, the need for flexible tools to manage those cooperative efforts are critical.

County officials statewide urge a Do Pass recommendation on Senate Bill 2321.