

**2013 SENATE HUMAN SERVICES**

**SB 2159**

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee  
Red River Room, State Capitol

SB 2159

1/21/13

Recording Job Number: 17426

Conference Committee

Committee Clerk Signature:



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

Relating to the required residence of the minor before a final decree of adoption.

**Minutes:**

You may make reference to "attached testimony."

Vice Chairman Larsen opens hearing on SB 2159.

Senator Judy Lee introduces the Bill to the committee.

**Augie Pepple**, Administrator of the Baptist Home in Bismarck, testifies in support of SB 2159. See attached testimony #1.

(0:7:45) **Senator Anderson** asks Mr. Pepple to talk a little bit about what happens with financial arrangements in regards to his testimony about his daughter.

**Mr. Pepple** explains that papers were signed over that released her after the child was born. Chairman Lee follows by explaining how it would have been covered if it was a special needs child.

No further questions from the committee and no further testimony in favor or opposition.

**Chairman Lee** closes hearing on SB 2159 but then immediately re-opens the hearing to hear further testimony.

**Julie Hoffman**, Administrator of Adoption Services for the Department of Human Services, provides information regarding the SB 2159. See attached testimony #2.

(0:13:53) **Chairman Lee** asks Ms. Hoffman to respond to Senator Anderson's question regarding medical cost of the intended parents.

**Ms. Hoffman** explains that the medical costs of the child would likely be dependent on who has custody of the child.

(0:15:21) **Senator Dever** - If we pass this bill and that procedure takes place then do the parent's assume that obligation as an unintended consequence of the bill?

**Ms. Hoffman** explains that once the parent's legally adopt the child they assume financial responsibility. In a case like this, they would assume that responsibility after the death of the child. She is not sure if they would also assume the child's prior medical care costs. Ms. Hoffman proceeds to further explain an example from the department.

(017:08) **Chairman Lee** asks the committee and Ms. Hoffman if they would be more comfortable with the idea that the adoption would be complete but by specifying that the adoptive family would not be responsible for medical costs that were incurred prior to the finalization of the adoption. Would this clarification be necessary or appropriate?

Ms. Hoffman states that she would have to do some research but as far as she is aware they would not be responsible prior to finalization. Chairman Lee asks Ms. Hoffman to check into this with their legal advisor. Ms. Hoffman agrees to do so and also states that she will try to contact the family in this particular case to see if this was an issue for them, as well as a representative from Medicaid. (See attachment #3 - submitted after hearing)

(0:19:26) **Senator Larsen** asks for the currents costs of an adoption in North Dakota.

**Ms. Hoffman** states that it depends on type of adoption and explains the costs for adoptions of the following: Infant through a private licensed child placing agency and the infant if from ND: \$15,000 and upward, from a foreign country: \$20,000-40,000 and upward, and an identified adoption where agencies are involved but an agency doesn't become a custodian of the child: cost could be somewhat less.

Chairman Lee asks that adoptions in ND require that there be a professional agency involved. Ms. Hoffman states that, yes, there needs to be an assessment/adoption study of the family and an agency must be involved.

(0:21:11) **Senator Dever** feels that the issue of responsibility of payment is critical. Do children born through a surrogate go through adoption, too?

**Ms. Hoffman** explains that, in most cases, they would not be subject to an adoption study/petition unless the individuals who become the parents to that child have a spouse that wants to adopt. Chairman Lee offers further clarification and explains that if the surrogate mother is the egg donor, there is an adoption required because she is giving up her parental rights to the intended parents. If she is a gestational carrier, there is no adoption required because the intended parents are biologically the parents.

(0:23:18) **Senator Anderson** references the examples from both testimonies and asks if it is necessary to check with legal representatives to see if this is something that we need.

**Ms. Hoffman** explains that the cases cited are from different states (North Dakota and Denver) so there is a difference with how the court chose to proceed. She further clarifies the language from the ND Century Code 50-12 and states her concern.

No further questions from the committee and not further testimony.  
**Chairman Lee** closes hearing on SB 2159.

# 2013 SENATE STANDING COMMITTEE MINUTES

**Senate Human Services Committee**  
Red River Room, State Capitol

SB 2159  
1/28/13  
Recording Job Number: 17858

Conference Committee

Committee Clerk Signature:



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

Relating to the required residence of the minor before a final decree of adoption

**Minutes:**

You may make reference to "attached testimony."

Committee discussion on SB 2159:

**Julie Hoffman** sent email that they do not need an amendment along with the information the committee asked for. See attachment #3.

**Senator Anderson** moves Do Pass.

**Senator Larsen** seconds.

No further committee discussion.

Roll call vote: 5-0-0, Do Pass

**Senator Anderson** is the carrier.

Date: 1/28/13  
Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2159**

Senate Human Services Committee

Check here for Conference Committee

## Legislative Council Amendment Number

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment

Rerefer to Appropriations     Reconsider

Motion Made By Sen. Anderson Seconded By Sen. Larsen

Total (Yes) 5 No 0

Absent

Floor Assignment Sen. Anderson

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

**REPORT OF STANDING COMMITTEE**

**SB 2159: Human Services Committee (Sen. J. Lee, Chairman)** recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2159 was placed on the Eleventh order on the calendar.

**2013 HOUSE HUMAN SERVICES**

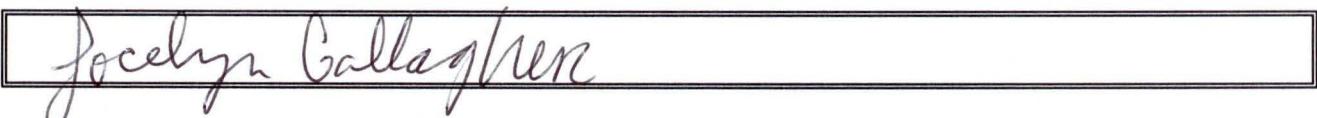
**SB 2159**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee  
Fort Union Room, State Capitol

SB 2159  
March 11, 2013  
Job19704

Conference Committee



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

Relating to the required residence of the minor before a final decree of adoption.

**Minutes:**

Testimony 1

**Chairman Weisz:** Clerk will read the title.

**Julie Hoffman: Administrator of Adoption Services for the DHS** testified in support of the bill. (Testimony 1)

3:28

**Rep. Laning:** Why do the families want to continue the adoption after the child has died?

**Julie Hoffman:** To have closure of the intended adoption.

**Sen. Judy Lee, District 13:** In response to Rep. Laning's question, our understanding about the family is they want to have the child's name on the grave stone. It's a unique situation and would come up very seldom. It would be someone who was in the process of the adoption of the child.

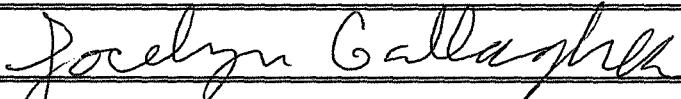
**Chairman Weisz:** Any questions from the committee? Anyone else in support or opposition of 2159? Seeing none, we will close the hearing on SB 2159.

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee  
Fort Union Room, State Capitol

SB 2159  
March 11, 2013  
Job 19731

Conference Committee



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

Relating to the required residence of the minor before a final decree of adoption.

**Minutes:**

**Chairman Weisz:** Opened the meeting on SB 2159. It's the one with the six month on the adoption.

**Rep. Laning:** Recommend a do pass on SB 2159.

**Chairman Weisz:** We have a motion, second by Rep. Hofstad. Discussion? Clerk will call the roll for a do pass on SB 2159. 12-1-0, do pass. Rep. Oversen will carry the bill.

Date: 3-11-13  
Roll Call Vote #: 2159

**2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. \_\_\_\_\_**

## House Human Services Committee

Check here for Conference Committee

## Legislative Council Amendment Number

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerrefer to Appropriations  Reconsider

Motion Made By Rep. Janney Seconded By Rep. Sofstad

Total (Yes) 12 No 1

Absent

Floor Assignment Pep Overson

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

**REPORT OF STANDING COMMITTEE**

**SB 2159: Human Services Committee (Rep. Weiss, Chairman)** recommends **DO PASS** (12 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2159 was placed on the Fourteenth order on the calendar.

**2013 TESTIMONY**

**SB 2159**

Testimony  
Senate Bill 2159  
Senate Human Services Committee  
Monday, January 21, 2013

Good morning Chairperson Lee and members of the Senate Human Services Committee. My name is Augie Pepple, Administrator of the Baptist Home in Bismarck. I'm here to provide testimony in support of Senate Bill 2159.

My comments today will address a different age group that I normally work with and for. Today I'm speaking as a father of four (4) adopted sons and as a grandfather of one (1) adopted granddaughter. The grandson that we lost is the reason for the requested amendment. This is more information here than what you need to know, but a story is remembered better than facts and figures.

In April of 2010 our oldest daughter, her husband and their three (3) children were waiting for the birth of a baby that they were planning to adopt. On April 16<sup>th</sup> Braylon was born. Because of complications during the birthing process, Braylon was air lifted to Denver.

After several days of tests, it was confirmed that Braylon did have severe brain damage and that he would never see, hear or speak. He did not have the basic ability to take nourishment and would never utter a sound. They were told to take him home, love him and basically await his death.

During the short 10 days that Braylon lived, he touched many lives. Braylon was always held except when he was being bathed or was being changed. Family members and friends held Braylon in 3-4 hour shifts around the clock. I saw some things in our family that I had never seen before.. For example, our two (2) youngest sons (not married at the time) are both "macho" firemen and EMTs that sometimes looked at their nieces and nephews as "pests." Braylon brought out something in them that I had never seen before that has changed their lives. When Braylon passed away there were 400-450 people that attended his funeral.

Family and friends supported our daughter and her family's desire to complete the adoption process by legally changing Braylon's name. This was done to assure full and complete closure. During the hearing, the judge did not know how to rule.

He had never encountered a situation in which a child had passed away before meeting the six (6) month requirement of living in the adoptive home before an adoption could be finalized. The judge had to suspend the hearing so that he could study the statutes before making a decision. During the second hearing, the judge stated that he could not find anything in the statutes that would permit him to grant the adoption nor was there anything that would prohibit him from completing the adoption. This was very disappointing to us.

As a result of the state statute not addressing this unique situation, my oldest grandson and I agreed to attempt to have the statutes changed in Wyoming and North Dakota. We do not want other families to face this challenge if similar circumstances such as Braylon's would occur again. The passage of SB 2158 is also part of our healing process.

This completes my testimony. I would be happy to answer any questions that you may have. Thank you for the opportunity to present this information and would appreciate your support in amending Section 14-15-12 of the North Dakota Century Code with the SB 2159.

**Testimony**  
**Senate Bill 2159 – Department of Human Services**  
**Senate Human Services**  
**Senator Lee, Chairman**  
**January 21, 2013**

Chairman Lee, members of the Senate Human Services Committee, I am Julie Hoffman, Administrator of Adoption Services for the Department of Human Services. I am here today to provide you information regarding Senate Bill 2159.

SB 2159 would allow a prospective adoptive family to finalize an adoption of a child placed into their home for adoption, where the child dies prior to the finalization hearing, and if the court finds that a proper and legitimate reason exists for granting the final decree.

Interestingly, a case with similar circumstances did happen in North Dakota in 2004. A child was born with serious and life threatening congenital infirmities in the fall of 2003 to birth parents who eventually decided to terminate their parental rights. The child was placed into the custody of DHS and subsequently formally placed for adoption with a family identified by the child placing agency. Although the child was "placed" with the family for the purposes of adoption, the child was never able to actually be present in their home as the child's condition required hospitalization. A petition to adopt was filed, asking the court to issue an interlocutory decree of adoption (upon the date when the six month residency requirement had been fulfilled) and that gave the adoptive family specific authority to authorize the child's medical treatment. That petition was granted, but before the interlocutory period was fulfilled, the child died. The family then petitioned the court to issue the final decree

pursuant to the interlocutory decree, despite the fact that the child had died. The court issued a final decree in the matter in August of 2004.

The Department does not oppose the proposed change to NDCC 50-12 and further appreciates that the change allows the court to grant such a petition only after the child has been placed for adoption pursuant to this section. This will prevent an individual from adopting a deceased child where prior to the death there was not an intention to adopt.

Thank you for your time today. I would be happy to answer any questions the committee may have at this time.

Julie Hoffman

January 23, 2013

RE: SB No. 2159

Senator Lee:

You asked the Department to find out information regarding who would be responsible for a child's medical costs if the child was placed in an adoptive home, died, and was later adopted. The answer depends on the specific facts involving the adoption of a child born in the United States. The following paragraphs identify the circumstances under which the birth mother, Medicaid, a private adoption agency, or the adoptive parents' may have responsibility for payment of the child's medical costs.

#### Identified Adoptions

The mother's health insurance, if any, would cover the costs of the birth of the child. If the mother is receiving Medicaid, Medicaid would cover the costs of the birth of the child after the mother's health insurance, if any, paid its share. If Medicaid paid for any costs of the birth, the child could continue to receive Medicaid for up to twelve months. The child may be eligible to receive Medicaid beyond twelve months. A Medicaid recipient may have a recipient liability based on his or her income.

At the time of the termination of parental rights, the child is still eligible for Medicaid as a single unit through the continuously eligible period. In accordance with N.D.C.C § 26.1-36-07, the adoptive parents' health insurance would be responsible to cover the child upon the child being placed in adoptive parents' home. If the child is eligible for Medicaid, Medicaid would be the payer of last resort after the adoptive parent's health insurance. Identified adoptive parents may be responsible for the cost of the birth of the child and any additional costs based on any agreement they have with the biological parent, adoption agency, or hospital. Most adoptions are not identified adoptions.

#### Non-Identified Adoptions

In non-identified adoptions, the mother's health insurance, if any, would cover the costs of the birth of the child. If the mother is receiving Medicaid, Medicaid would cover the costs of the birth of the child after the mother's health insurance, if any paid its share. If Medicaid paid for any costs of the birth, the child could continue to receive Medicaid for up to 12 months. A Medicaid recipient may have a recipient liability based on his or her income.

At the time of the termination of parental rights, the child is still eligible for Medicaid as a single unit. Typically, a child who is in foster care is placed in the Department's custody at the time of the termination of parental rights and later placed for adoption. If the child

is placed in the Department's custody, the child will be on Medicaid until the adoption is finalized. A child who has been in foster care and is being adopted will likely qualify for adoption assistance (a federal and/or state funded program, and therefore be eligible for Medicaid post adoption, up to age 18 and in certain specific circumstances, to age 21. Adoption Assistance is a form of monetary assistance to families adopting children from foster care who have special needs. This assistance can take the form of a monthly payment, Medicaid as a backup to a family's private health insurance, or reimbursement of nonrecurring expenses related to adoption. At the time the child is placed for adoption, the adoptive parents' health insurance, if any, would be responsible to cover the child in accordance with N.D.C.C. § 26.1-36-07 with Medicaid being the payer of last resort.

If the child is placed in the custody of a private adoption agency, the child most likely will be eligible for Medicaid until an adoption in finalized. We are aware that some private adoption agencies have adoptive parents sign an agreement setting forth that the adoptive parents assume responsibility for the child's medical care and the cost of the care, unless arrangements have been made with the adoption agency to cover or subsidize the medical expenses. If arrangements have been made for the adoption agency to cover or subsidize the medical expenses, it is assumed that the agency would first apply for Medicaid for the child. In addition, N.D.C.C. § 26.1-36-07 requires the adoptive parents' private health insurance to cover the child upon the child being placed in the adoptive parents' home. If the child is eligible for Medicaid, Medicaid would be the payer of last resort after the adoptive parents' health insurance. If for some reason the child is not eligible for Medicaid (i.e., if nobody applied for Medicaid coverage for the child), an adoptive parent could be responsible for the cost of medical care for the child based on a contractual agreement between the adoption agency, adoptive parent, and the health care provider.

**NDLA, S HMS - Herrick, Kari**

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**From:** Lee, Judy E.  
**Sent:** Friday, January 25, 2013 10:35 AM  
**To:** NDLA, S HMS - Herrick, Kari; NDLA, Intern 02 - Myles, Bethany  
**Subject:** FW: SB 2159

Please make a copy of this message for our books.

Senator Judy Lee  
1822 Brentwood Court  
West Fargo, ND 58078  
home phone: 701-282-6512  
e-mail: [jlee@nd.gov](mailto:jlee@nd.gov)

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**From:** Hoffman, Julie M.  
**Sent:** Friday, January 25, 2013 8:56 AM  
**To:** Lee, Judy E.  
**Cc:** Alm, Jonathan E.; Hoesel, JoAnne D.  
**Subject:** RE: SB 2159

Senator Lee,

would not recommend any amendments.

The current structure generally provides that the birth parent is responsible for medical costs of the child prior to termination of parental rights, and in most cases is accessing Medicaid. After TPR, the Department most likely will become the custodian of a child who has serious disabilities (because that child was in foster care) or the child will qualify for adoption subsidy (and in both cases then Medicaid would be involved in paying for medical costs). If an adoptive parent has private health insurance, it would become the primary payer for medical costs, with Medicaid as a secondary source of payment for any child who qualifies. That is a benefit to the child and to the Department for those children who are eligible for Medicaid.

Let me know if there's any other information you need.

*Julie Hoffman*  
Adoptions Administrator  
Children and Family Services, NDDHS  
phone: 701-328-4805  
Fax: 701-328-3538

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**From:** Lee, Judy E.  
**Sent:** Wednesday, January 23, 2013 8:33 PM  
**To:** Hoffman, Julie M.  
**Subject:** Re: SB 2159

#3

Do you recommend any amendments?

Judy Lee  
1822 Brentwood Court  
West Fargo, ND 58078  
Phone: 701-282-6512  
e-mail: [jlee@nd.gov](mailto:jlee@nd.gov)

On Jan 23, 2013, at 11:59 AM, "Hoffman, Julie M." <[jmhoffman@nd.gov](mailto:jmhoffman@nd.gov)> wrote:

Senator Lee,

Attached are the clarifications you requested for SB 2159. If there is anything else I can provide for your committee, please feel free to contact me. I will be in Fargo for meetings now through Thursday, but will be in my office on Friday.

*Julie Hoffman*  
Adoptions Administrator  
Children and Family Services, NDDHS  
phone: 701-328-4805  
Fax: 701-328-3538

~.~.~.~.~.~.~.~. Confidentiality Statement: This transmission is intended only for the use of the individual to whom it is addressed and may contain information that is made confidential by law. If you are not the intended recipient, you are hereby notified any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please respond immediately to the sender and then destroy the original transmission as well as any electronic or printed copies. Thank you.

<Senator Lee Clarifications to SB 2159.docx>

#1

**Testimony**  
**Senate Bill 2159 – Department of Human Services**  
**House Human Services**  
**Representative Weisz, Chairman**  
**March 11, 2013**

Chairman Weisz, members of the Senate Human Services Committee, I am Julie Hoffman, Administrator of Adoption Services for the Department of Human Services. I am here today to provide you information regarding Senate Bill 2159.

Senate Bill 2159 would allow a prospective adoptive family to finalize an adoption of a child placed into their home for adoption, where the child dies prior to the finalization hearing, and if the court finds that a proper and legitimate reason exists for granting the final decree.

Interestingly, a case with similar circumstances did happen in North Dakota in 2004. A child was born with serious and life threatening congenital infirmities in the fall of 2003 to birth parents who eventually decided to terminate their parental rights. The child was placed into the custody of DHS and subsequently formally placed for adoption with a family identified by the child placing agency. Although the child was placed with the family for the purposes of adoption, the child was never able to actually be present in their home as the child's condition required hospitalization. A petition to adopt was filed, asking the court to issue an interlocutory decree of adoption (upon the date when the six month residency requirement had been fulfilled) and that gave the adoptive family specific authority to authorize the child's medical treatment. That petition was granted, but before the interlocutory period was fulfilled, the child died. The family then petitioned the court to issue the final decree

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Thank you for your time today. I would be happy to answer any questions the committee may have at this time.