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2003 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2077

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2077

Senate Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 01/10/03

Tape Number	Side A	Side B	Meter #
Tape 1	x		Tape Failed
Tape 1		x	0-565
Committee Clerk Signature <i>Lisa Hicks</i>			

Minutes: Due to failure of tape, these minutes will not be complete.

Senator Karen Krebsbach, Chairman: We will open SB 2077. Senators Krebsbach, Dever, Brown, Wardner, and Nelson present. Senator Fairfield is not present.

Senator Krebsbach: We will begin testimony on SB 2077

Virginia Rivinius of the Central Personnel Division is here on behalf of Laurie Sterlotti

Hammeren (Testimony Attached)

Senator Fairfield joins committee.

Senator Krebsbach : Do we have any questions?

Senator Brown: Page 2 of your testimony says only 19 employees used their maximum leave, how many total employees are there?

V. Rivinius: There are 6087 total classified employees.

Senator Wardner : Go over the part of possible amendment

Page 2

Senate Government and Veterans Affairs Committee

Bill/Resolution Number SB 2077

Hearing Date 01/10/03

V. Rivinius: It pertains to eligibility of employees...state employee eligibility the employee has to work a minimum of 20 hours and on the federal level they must work 250 hours in the preceding year. ... We would like to draft an amendment to clarify that.

Senator Nelson: Of the six agencies, were they small or large agencies.

V. Rivinius: The agencies were the Department of Labor, Human Services, Governor's Office...

Senator Nelson: And the 6 that would not?

V. Rivinius: Retirement and Investment, State Hospital, utilization,...

Senator Krebsbach :

V. Rivinius: Employees other leave other than unpaid, agencies would decide on a case to case basis.

Senator Nelson : Kinder gentle...

V. Rivinius: Cutting back on perks to bring people into state...

Senator Krebsbach : Was it brought forth to uniform with federal law?

V. Rivinius: Yes

Senator Fairfield: several areas where agencies have distinguished between state and federal?

V. Rivinius:

Senator Fairfield: There were 19 employees who used the full amount, What was the amount that used family leave?

V. Rivinius: I don't believe it was asked in survey.

Senator Fairfield: I think this is not an avenue to proceed to promote bring in people to North Dakota.

V. Rivinius: I respect your opinion but...

Page 3

Senate Government and Veterans Affairs Committee

Bill/Resolution Number SB 2077

Hearing Date 01/10/03

Senator Wardner: What are some of the things that are problems with the administering from state to federal?

V. Rivinius: Eligibility and calculation of intermintancy of part time employees

Senator Wardner: Problem is the amendment we are looking at?

V. Rivinius: We believe it is very important to propose this amendment.

Senator Dever : Federal law applies to an agency with more than 50 employees..... Did other 6 agencies refuse or defer from 37.

V. Rivinius: We will get you that information.

Senator Krebsbach : How many agencies are there in the state?

V. Rivinius: Approximately 60

Senator Nelson: 20 hours and 250 hours...

V. Rivinius: I don't believe there is a requirement, (checking....), correction, there is a requirement of at least 20 hours and have been employed for at least 1 year.

Senator Nelson: Federal law requires less time but state law gives better benefits, which law do we currently follow?

Senator Krebsbach : Sate agencies give the most generous.

V. Rivinius: the 250 hours you are referring to, I believe does not have to be consecutive.

Senator Krebsbach : Just within a year.

Senator Krebsbach : Any further testimony?

Chris Runge from the NDPEA (Testimony attached)

Senator Krebsbach : any questions for Chris?

Senator Nelson: So you are in favor of Section 2 and 3 and not Section 1

Page 4

Senate Government and Veterans Affairs Committee

Bill/Resolution Number SB 2077

Hearing Date 01/10/03

C. Rung: We are in support of Section 1 except subsection 2 of section, we want to keep to 16 weeks and leave should be able to be taken intermittent.

Senator Krebsbach : Do you believe in the amendment she purposed?

C. Runge: I'd have to look at it.

Senator Krebsbach : Virginia, I do have a question, Do you have any idea what other states offer and where we compare to them?

V. Rivinius: I will get that information.

Senator Krebsbach : Any further questions..., SB 2077 closed.

Tape 1 Side B Meter # 0-525

Senator Krebsbach : We will open discussion on SB 2077.

Senator Brown: Shouldn't there have been a fiscal note on this?

Senator Nelson: It is unpaid leave, cost maybe medical insurance but, will have to pay that anyway.

Senator Brown: there has to be cost because of employees absence.

Senator Dever: then the question would be if they hire a temp to take their position?

Senator Brown: Prime example is losing a judge to the war now.

Senator Krebsbach: When she comes back with the amendment we will ask her then.

Senator Brown : How does it apply in private sector?

Senator Fairfield : I was able to take 6 weeks for maternity leave and then I returned for 12 weeks on a part time , but I don't think state employees have that luxury do they?

Senator Krebsbach : Another good question to ask.

Senator Dever : An agency doesn't have the authority to extend that do they?

Page 5

Senate Government and Veterans Affairs Committee

Bill/Resolution Number SB 2077

Hearing Date 01/10/03

Senator Nelson : I think you could do a combination of that, depending on sick leave and unpaid leave.

Senator Dever : Maybe we could make it hours instead of weeks, just like eligibility comes into play in hours.

Senator Krebsbach : Senator Nelson you brought up before the fact to of donated time and those extreme times that that is utilized.

Senator Brown: But, these rules do not apply to non classified at all?

Senator Nelson : For example with teaching we have to call someone else, but evidently the university systems have different rules. they are not covered by Central Personnel.

Senator Fairfield : There is not a huge amount of employees who abuse this are there?

Senator Brown: there is probably not a huge amounts that used it on an unpaid basis, most people really need that pay check. I think the addition of a seriously ill employee is a very important one. That is the part that I like. I just have know too many people throughout my life that because of cancer as the big one that are gone for a long period of time.

Senator Dever : If they have more that 4 months of sick leave accumulated they can use it can't they?

Senate Brown: Absolutely, and they would use it for that purpose.

Senator Nelson : We had a employee that was out for an entire year and we covered that entire year because he needed the health insurance and the money to over the cost of the cancer treatments.

Senator Dever : Could you stop my paycheck, I'll take my four months of leave and then I will take my sick leave?

La Costa Rickford
Operator's Signature

10/15/03
Date

Page 6

Senate Government and Veterans Affairs Committee

Bill/Resolution Number SB 2077

Hearing Date 01/10/03

Senator Fairfield : I wondered about that too. Can you use your vacation time first?

Senator Wardner: I would be interested if they can do what Senator Fairfield did and take half time and extend that leave then. What the flexibility is in these agencies?

Krebsbach : All of these concerns we have brought up are on record and the clerk will get a hold of Virginia or Laurie and when they come back with the amendment they can have some answers with them at that time.

Senator Krebsbach : that closes SB 2077 discussion for this time.

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Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2077

Senate Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 01/23/03

Tape Number	Side A	Side B	Meter #
Tape 3	x		5050 to end
Tape 3		x	0-1033
Committee Clerk Signature			

Minutes:

Senator Karen Krebsbach, Chairman re opens SB 2077. All senators present.

Virginia Rivinius of Central Personnel goes over attached testimony on behalf of Laurie

Sterioti Hammeren. (see attached)

Senator Nelson : Going back to you original testimony was it really that hard to keep track of the bookkeeping on those who used this time.

Rivinius: The bookkeeping part is not that hard but knowing when state law applies and when federal laws apply was the difficult part.

Senator Nelson : Since the state law is more generous than the federal why take it away from people.

Senator Fairfield : The length of leave, in this testimony it says for ease of administration, I would like her to give me another reason for this.

Page 2

Senate Government and Veterans Affairs Committee

Bill/Resolution Number SB 2077

Hearing Date 01/23/03

Senator Krebsbach : I can understand to try to coordinate because of the issue becoming controversial I think on the first page it expands it within 16 weeks would mean approx. 4 months so I think it is a more generous type of benefit.

Rivinius: this leave isn't ...(tape lost her voice)

Senator Dever : If we were to reconcile everything except the 16 weeks to 12 weeks...

Rivinius: We feel that it wouldn't be questioned if we have the state law match the federal law.

Senator Krebsbach : I feel we have the information we need that Virginia supplied to us and we will have to go over that at a later time.

Closed 2077

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2077

Senate Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 02/13/03

Tape Number	Side A	Side B	Meter #
Tape 1		x	611-3070
Committee Clerk Signature			

Minutes:

Senator Karen Krebsbach, Chairman reopens SB 2077. All senators present.

Senator Krebsbach : Chris Runge opposed 16 weeks going to 12 weeks but I think it was a trade off for their own personal medical leave. They are trying to streamline there program to meet the federal standards so they are more in sync.

Senator Nelson : Family leave is unpaid leave.

Senator Brown: I'll draw attention to the proposed amendments.

Senator Krebsbach : Lets have Central Personnel come down and explain this to us.

Virginia Rivinius, Central Personnel Division, explains proposed amendment.

Senator Nelson : Are they allowed any time now?

Rivinius: Under federal but not on state level.

Senator Nelson : Why in original bill did we lower family leave from 16 weeks to 12 weeks.

Rivinius: It makes it easier to balance the state and federal requirements.

Page 2

Senate Government and Veterans Affairs Committee

Bill/Resolution Number SB 2077

Hearing Date 02/13/03

Senator Krebsbach : At the same time you broadened the coverage?

Rivinius: Yes, now it allows for employees to be able to use it for their own medical problems.

Senator Nelson : You'd take sick leave first and then family leave?

Rivinius: the federal law allows for 2 situations, an agency can require that the family medical leave run concurrently with ...for example the employee has 4 weeks of accrued sick leave or vacation some agencies can require that employees require the sick leave first or the accrued annual also. Some agencies have in their policy that first the employee uses any accrued leave and then...Family leave is unpaid.

Senator Dever : If employee has reached 12 weeks does agency have leeway to give them more leave?

Rivinius: Yes

Senator Brown moves for adoption of amendments

Senator Dever 2nd

6 Yes 0 No

Senator Brown moves a Do pass as amended

Senator Dever 2nd

Senator Nelson : I have a problem with lines 1-10 on Page 2

Senator Krebsbach : I hear your concern and I think the broadening takes precedence

Senator Dever : What should be entitlement and what should be flexibility but I feel that the employer and employee should be able to work this out with each other, I feel it is appropriate.

4 Yes 2 No 0 Absent

Closed SB 2077

FISCAL NOTE
Requested by Legislative Council
02/18/2003

Amendment to: SB 2077

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.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
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.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

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

No fiscal impact. However, changing family medical leave to 12 weeks could result in a slight savings because agencies would not be paying for up to 16 weeks of health insurance.

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.

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, 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.

Name:	Laurie Sterlotti Hammeren	Agency:	OMB-Central Personnel
Phone Number:	328-4735	Date Prepared:	02/19/2003

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10/15/03
Date

Date: 2/13/03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2077

Senate Government and Veteran Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38230.0101 Title.0200

Action Taken amendment

Motion Made By Brown Seconded By Dever

Senators	Yes	No	Senators	Yes	No
Senator Karen Krebsbach, Chr.	✓		Senator April Fairfield	✓	
Senator Dick Dever, Vice Chr.	✓		Senator Carolyn Nelson	✓	
Senator Richard Brown	✓				
Senator Rich Wardner	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Date: 2/13/03
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2077

Senate Government and Veteran Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38230-0101 Title 0200

Action Taken Do Pass as amended

Motion Made By Brown Seconded By Dever

Senators	Yes	No	Senators	Yes	No
Senator Karen Krebsbach, Chr.	✓		Senator April Fairfield		✓
Senator Dick Dever, Vice Chr.	✓		Senator Carolyn Nelson		✓
Senator Richard Brown	✓				
Senator Rich Wardner	✓				

Total (Yes) 4 No 2

Absent 0

Floor Assignment Brown

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

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10/15/03
Date

REPORT OF STANDING COMMITTEE (410)
February 14, 2003 12:01 p.m.

Module No: SR-29-2734
Carrier: Brown
Insert LC: 38230.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2077: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2077 was placed
on the Sixth order on the calendar.

Page 1, line 1, after "reenact" insert "subsection 2 of section 54-52.4-01 and"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Subsection 2 of section 54-52.4-01 of the North
Dakota Century Code is amended and reenacted as follows:

2. "Employee" means an individual employed in this state by an employer,
~~whose employment is not limited in duration, who is employed for an~~
~~average of at least twenty hours per week, and who has been employed~~
~~by the same employer for at least one year has been employed by the~~
employer for at least twelve months, and who has worked at least one
thousand two hundred fifty hours for the employer over the previous twelve
months."

Page 2, line 7, after "necessary" insert ". If an employee normally works a part-time schedule
or variable hours, the amount of leave to which an employee is entitled must be
determined on a pro rata or proportional basis by comparing the new schedule with the
employee's normal schedule"

Renumber accordingly

2003 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2077

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10/15/03

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2077

House Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 3-06-03

Tape Number	Side A	Side B	Meter #
1	x		6.9-15.6
Committee Clerk Signature <i>Joey Rende</i>			

Minutes: Chairman Klein: opened the hearing on SB 2077. All committee members were present.

Laurie Sterlotti Hammeren, SPHR, Director, Central Personnel Division: appeared in favor of SB 2077 and provided written a statement (**SEE ATTACHED TESTIMONY**).

Chairman Klein: the bottom line is your following federal law which is 12 weeks, and the state law is 16 weeks.

Representative Haas: does this give them more flexibility to use that 12 weeks any time within that first year after the birth of a child.

Laurie Sterlotti Hammeren: yes it does.

Representative Klemin: If we didn't have this state law, we would have to follow the federal, is that correct? And what we are attempting to do in the state law is make it consistent with federal law?

Laurie Hammeren: that is correct.

Page 2

House Government and Veterans Affairs Committee

Bill/Resolution Number SB 2077

Hearing Date 3-06-03

No further testimony.

Representative Grande: made a **DO PASS** motion on SB 2077.

Representative Haas: **SECOND** the DO PASS motion on SB 2077.

VOTE: 11-YES 3-NO 0-ABSENT.

Motion carried.

Representative Haas: will carry the bill to the floor.

Meeting adjourned.

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10/15/03
Date

Date: 3-06-03

Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTE
SENATE BILL/RESOLUTION NO. SB 2077

House GOVERNMENT AND VETERANS AFFAIRS Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

Motion Made By Rep. Grande Seconded By Rep. Haas

Representatives	Yes	No	Representatives	Yes	No
Chairman M.M. Klein	X		B. Amerman		X
Vice Chairman B.B. Grande	X		L. Potter		X
W.R. Devlin	X		C. Williams	X	
C.B. Haas	X		L. Winrich		X
J. Kasper	X				
L.R. Klemin	X				
L. Meier	X				
M. Sitte	X				
W.W. Tieman	X				
R.H. Wikenheiser	X				

Total (Yes) 11 No 3

Absent - 0 -

Floor Assignment Rep. Potter Haas

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

REPORT OF STANDING COMMITTEE (410)
March 6, 2003 2:16 p.m.

Module No: HR-40-4145
Carrier: Haas
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
SB 2077, as engrossed: Government and Veterans Affairs Committee (Rep. M. Klein,
Chairman) recommends DO PASS (11 YEAS, 3 NAYS, 0 ABSENT AND NOT
VOTING). Engrossed SB 2077 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-40-4145

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Operator Costa Rickford Date 10/15/03
Signature

2003 TESTIMONY

SB 2077

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Date

10/15/03

**TESTIMONY BEFORE THE GOVERNMENT AND VETERANS AFFAIRS
COMMITTEE REGARDING STATE EMPLOYEE FAMILY LEAVE
SB 2077**

**JANUARY 10, 2003
CENTRAL PERSONNEL DIVISION
LAURIE STERIOTI HAMMEREN, SPHR, DIRECTOR**

Chairman Krebsbach and members of the Government and Veterans Affairs Committee, I am Laurie Sterioti Hammeren, Director of the Central Personnel Division. I am here to discuss Senate Bill 2077 relating to state employee family leave. We are proposing changes to the state law to be consistent with the federal Family and Medical Leave Act in an effort to simplify administration of both laws for agencies.

State employee family leave (NDCC 54-52.4), established in 1989, preceded the federal Family and Medical Leave Act that was established in 1993. Because these two laws have different requirements, state agencies are now required to apply the most generous provision of both laws; and thus, agencies are forced to toggle between the state and federal requirements.

Senate Bill 2077 proposes changes to two parts of the state family leave law to make it consistent with the federal law and provide easier administration and interpretation. Those changes would:

- 1) allow leave without pay for state employees' own serious health condition;
and
- 2) allow state employees a maximum of 12 weeks of leave without pay, rather than 16 weeks.

*Same
testimony
to
House*

Let me further explain the proposed changes. The state law provides for unpaid family leave of absence for an employee to care for the employee's child by birth; to care for a child placed with the employee through adoption or foster care; and to care for the employee's child, spouse, or parent if the child, spouse, or parent has a serious health condition. The federal law provides the same, and in addition, provides leave for the employee's own serious health condition that makes the employee unable to perform the functions of the employee's job. We believe the law should include a provision for the employee's own serious health condition, like the federal law does.

Furthermore, federal law provides for 12 weeks of uncompensated leave, whereas the existing state law provides for 16 weeks. Concerned about the impact this change in statute might have on employees, Central Personnel Division surveyed state agencies to determine how many employees used 16 weeks of uncompensated leave; and if so, the reasons. Of the 37 agencies responding to the survey, agencies reported only 19 employees used the maximum 16 weeks allowed.

Agencies were also asked if they would likely give an employee an additional leave of absence without pay if the employee needed additional leave after having exhausted the 12 weeks provided under the federal law. Of the 37 agencies responding to the survey, 31 agencies said they would consider giving the employee more leave without pay if necessary. Clearly, agencies would evaluate requests for leave beyond 12 weeks on a case-by-case basis based on business need and individual circumstance. This leads us to believe that 12 weeks of leave without pay would be sufficient for most employees, and that most agencies would be flexible if their employees needed more than 12 weeks. The federal law allows employees to use accrued paid leave in conjunction with uncompensated family

leave. State employees can also use paid annual leave, sick leave, and shared leave when eligible. Therefore, the number of employees who would actually be placed on leave without pay is very low. Thus, we believe that adjusting the state's family leave to 12 weeks to be consistent with the federal law will have a very minor impact for employees.

Section 1 of SB 2077, page 2, lines 3 through 7 were added to clarify how intermittent leave is addressed and consistent with the federal law.

In conclusion, SB 2077 provides consistency between the state and federal family leave laws and will minimize confusion for agencies in administering state and federal family leave.

We encourage a do pass on SB 2077.

This concludes my formal testimony. I am available to answer questions.



NORTH DAKOTA
PUBLIC EMPLOYEES ASSOCIATION

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AMERICAN FEDERATION
OF TEACHERS LOCAL 4660 AFL-CIO



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WEBSITE: www.ndpea.org

TESTIMONY ON SENATE BILL 2077

Before the Senate Government and Veterans Affairs Committee
North Dakota Public Employees Association, AFT Local 4660, AFL-CIO
January 10, 2003

Chairman Krebsbach members of the Senate Government and Veterans Affairs Committee, my name is Chris Runge and I am the Executive Director of the North Dakota Public Employees Association. I am here to testify mostly in support of SB 2077. NDPEA supports the coverage of childcare after birth concluding within 12 months of the child's birth.

We oppose the reduction of the benefit in Section 1 that reduces the state family leave from 16 weeks to 12 weeks. While Central Personnel has indicated that very few employees have used 16 weeks, there have been times when it has been used. Also just because the FMLA allows only 12 weeks and we want to be uniform with is not a good enough reason to reduce the state benefit of 16 weeks.

Yesterday I talked about the concerns with recruiting and retaining of public employees that are facing us. The sixteen weeks of state family medical leave is one of those benefits that while rarely used, are still a benefit that the state can tout when recruiting workers for public service. Further, if this benefit is reduced and an employee does need additional time, it will put that employee at risk of losing their employment and health insurance at a time when the employee needs it most.

This section of the bill should be amended to leave the language of 16 weeks. We support the rest of the bill. NDPEA strongly believes that 16 weeks of family leave under the state statute is not been a burden and has not been a burden to the state of North Dakota. Keeping the state family medical leave at 16 weeks shows the state's commitment to its employees and their families. We would respectfully ask this committee to support this bill with the change in section one to 16 weeks.

Quality Services from Quality People

Testimony

4-2000 7000

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NORTH DAKOTA CENTRAL PERSONNEL DIVISION

A Division of the Office of Management & Budget
600 E. Boulevard - 14th Floor, Dept. 113
Bismarck, North Dakota 58505-0120
www.discovernd.com/cpers

Information: 701-328-3290
TTY: 1-800-366-6888

Director: 701-328-3293
Fax: 701-328-1475

January 15, 2003

Honorable Senator Karen K. Krebsbach
State Senator
600 E. Boulevard Ave.
Bismarck, ND 58505

Dear Senator Krebsbach:

Re: Senate Bill 2077

As a follow-up to our testimony on SB 2077, we are providing the following attachments to assist the committee in considering a do pass for SB 2077:

1. A proposed amendment to SB 2077 clarifying employee eligibility and pro-rating leave for less than full-time employees consistent with the federal law.
2. Comparison Fact Sheet of General Provisions contained in the federal Family Medical Leave Act and the ND Family Leave Act.
3. The survey results of a telephone survey of 10 regional states regarding their state family medical leave. The survey indicates that only Colorado allows beyond 12 weeks of family leave. However, we were informed that Colorado allows 13 weeks as a result of a miscalculation. They said they considered 12 weeks to be 3 months, multiplied by the average number of hours worked in a month (173.33) and divided the total hours by 40 which resulted in 13 weeks (3 months x 173.33 = 520 hours/40 = 13 weeks).
4. Central Personnel Division responses to questions posed by members of the committee at the hearing last week.

Thank you for allowing us to provide this additional information.

Sincerely,


Laurie Steriott Hammeren, SPHR
Director

Enc.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2077

Page 1, after line 4 insert:

SECTION 1. AMENDMENT. Section 54-52.4-01 of the North Dakota Century Code is amended and reenacted as follows:

54-52.4-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Child" means a child by birth, an adopted or foster child, a stepchild, or a legal ward, who is:
 - a. Less than eighteen years of age; or
 - b. More than seventeen years of age and incapable of providing self-care because of a serious health condition.
2. "Employee" means an individual employed in this state by an employer, ~~whose employment is not limited in duration, who is employed for an average of at least twenty hours per week, and who has been employed by the same employer for at least one year, has been employed by the employer for at least 12 months and who has worked at least 1,250 hours over the previous 12 months.~~
3. "Employer" means the state but does not include any political subdivision of the state.
4. "Employment benefit" means all benefits provided or made available to employees by an employer, including education, health care, insurance, leave, and retirement benefits.
5. "Health care provider" means a registered nurse licensed under chapter 43-12.1, a physician licensed under chapter 43-17, a psychologist licensed under chapter 43-32, or a licensed certified social worker licensed under chapter 43-41.
6. "Health care services" means services rendered by a health care provider within the scope of the provider's license, including long-term care and hospice and hospital care.
7. "Parent" means a birth parent, foster parent, adoptive parent, or stepparent.
8. "Serious health condition" means a disabling physical or mental illness, injury, impairment, or condition involving:
 - a. Inpatient care in a hospital licensed under chapter 23-16 or operated by the United States or this state, long-term care facility as defined in section 50-10.1-01, or hospice program licensed under chapter 23-17.4; or
 - b. Outpatient care that requires continuing treatment by a health care provider.

Page 2, line 7, after "the leave is medically necessary," insert "Where an employee normally works a part-time schedule or variable hours, the amount of leave to which an employee is entitled is determined on a pro rata or proportional basis by comparing the new schedule with the employee's normal schedule."

Renumber accordingly

COMPARISON OF GENERAL PROVISIONS
contained in
FAMILY & MEDICAL LEAVE ACT OF 1993
and the current
NORTH DAKOTA FAMILY LEAVE ACT OF 1989 (NDCC 54-52.4)

	Federal	State
Reasons for unpaid leave	<ul style="list-style-type: none"> • Birth of a child and care for the newborn • Placement with the employee of a child through adoption or foster care • Care for spouse, child, or parent who has a serious health condition • Employee's serious health condition that makes them unable to perform functions of job 	<ul style="list-style-type: none"> • Care of child by birth • Care of child placed through adoption or foster care • Care for spouse, child, or parent who has a serious health condition
Definition of child	Includes a child 18 yrs or over who is incapable of self care because of mental or physical disability	Includes a child more than 17 yrs of age and incapable of providing self-care because of a serious health condition
Employee eligibility	<ul style="list-style-type: none"> • Worked at least 12 months • Worked 1250 hours during immediately preceding 12 months 	<ul style="list-style-type: none"> • Worked at least 1 year • Average of 20 hrs/wk (1040 hrs) • Temporary employees are not eligible
Entitlement	Up to 12 weeks of unpaid leave in a 12-month period	Up to 4 months in a 12-month period
Varying work schedule	Calculated on a pro rata or proportional basis according to average weekly hours worked during the 12 weeks prior to start of the leave	May take leave on a pro rata basis according to formula based on average number of hours worked per week (i.e. 20 hrs = 2 months; 40 hrs = 4 months)
When family leave for birth or placement of child must occur	Expires 12 months after the birth or placement	Must begin within 16 weeks of birth or placement
Husband/wife with same employer	Combined total of 12 workweeks during any 12-month period if taken for birth or placement of child; limitation does not apply to leave taken by either spouse to care for the other, a child, or his/her own serious illness or health condition	Aggregate period to which both are entitled may be limited to four months in any 12-month period
Intermittent use	Allowed	Not specifically addressed (may be implied) Allowed
Health Insurance	<ul style="list-style-type: none"> • Coverage continued • Employee pays same share of premium on leave as when not on leave 	<ul style="list-style-type: none"> • Coverage continued • Employer not required to pay premium
Return to work	Restored to same position or equivalent position	Restored to same position or equivalent position

1/13/03

Prepared by Central Personnel Division

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Operator's Signature

LaCosta Rickford

Date

10/15/03

**TELEPHONE SURVEY RESULTS
of Ten Regional States
Regarding Family Leave**

Ten regional states¹ were contacted by phone to determine answers to the following questions:

Does your state have a law that is different from the federal Family and Medical Leave Act of 1993 but that provides leave for employees for:

- Care of a child by birth or placed through adoption or foster care 4 Yes 6 No
Yes: CO, KS, MN, MO
No: IA, MT, NE, OK, SD, WY
- The employee's own serious illness or health condition 2 Yes 8 No
Yes: CO, MO
No: IA, KS, MN, MT, NE, OK, SD, WY
- Care of the employee's family members' serious illness or health condition 2 Yes 8 No
Yes: CO, MO
No: IA, KS, MN, MT, NE, OK, SD, WY

If yes, how many weeks of leave are provided?

CO - 13 wks
IA - 12 weeks (state law mirrors the federal law)
KS - 12 wks as provided in federal law
MN - 6 weeks for birth/adoption in a Parental Leave Law (employees can use SL to care for a child)
MO - 12 weeks
OK - 12 weeks

the leave: 4 Paid 7 Unpaid

CO - requires use of SL & AL before LWOP (runs concurrently)
IA - allows use of SL & AL
KS - requires employees to use sick and vacation leave before going on LWOP
MN - can use sick leave instead of LWOP

(If yes) What are the eligibility requirements?

CO - Need to have one year of service, doesn't apply 1250 hrs as long as employee has 1 yr of service; employee can use up to 13 wks (520 hrs) for full time; part-time prorated
KS - Uses federal eligibility requirements; state administrative rule allows husband & wife to each use 12 weeks to care for child by birth or adoption/foster care
MO - 12 months, 1250 hours

(If yes) What kinds of problems do you encounter in administration of the two laws?

CO - No state law, just administrative code that existed prior to federal law; administrative code aligned with federal law with exception of the 13 wks; more problems administering federal law.
MO - No difference

¹Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Oklahoma, South Dakota, Wyoming. The Central Personnel Division uses these states for market data comparison purposes.

1/15/03

Prepared by Central Personnel Division

Questions of Committee Members Regarding SB 2077 as posted by Lisa Hixson:

Responses prepared by Central Personnel -

- 1) If a full-time employee takes six weeks of unpaid leave (i.e. birth of child), and came back at half time, what flexibility exists?**

Under federal law, the employee may take leave intermittently or work a reduced schedule under certain circumstances.

- Intermittent/reduced schedule leave may be taken when medically necessary to care for a seriously ill family member, or because of the employee's serious health condition.
- Intermittent/reduced schedule leave may be taken to care for a newborn or newly placed adopted or foster care child only with the employer's approval.

State law does not specifically address intermittent leave; it may be implicit.

Only the amount of leave actually taken may be counted toward the leave to which an employee is entitled. Therefore, if the employee comes back at half time and takes family leave for the remaining half of the workweek, they have used one-half week of family leave. At a half-time schedule, this full-time employee essentially, would take 20 weeks to exhaust the leave entitlement when using intermittent leave.

If the employee regularly worked half time, the employee would exhaust the leave entitlement with 10 weeks at the half-time rate.

If an employee's work schedule varies from week to week, the average weekly hours worked during the 12 weeks prior to the start of the FMLA leave will be used to calculate the employee's "normal" work schedule for this purpose.

- 2) If an employee takes four months of unpaid leave and needs more, can s/he draw upon the 10% leave payout?**

The employee typically uses any accrued annual and sick leave in conjunction with (unpaid) family and medical leave. Additionally, if employees are eligible and receive donated leave, it also is used in conjunction with (unpaid) family and medical leave.

Some agencies do not require the paid and unpaid leave to run concurrently, and then the unpaid family and medical leave would be used after any accrued leave and donated leave is exhausted.

The 10 percent is paid out only upon termination of employment after ten continuous years of service. If an employee uses all available sick leave, there is no sick leave payout available.



NORTH DAKOTA CENTRAL PERSONNEL DIVISION

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February 14, 2003

Honorable Karen K. Krebsbach
State Senator
600 E. Boulevard Ave.
Bismarck, ND 58505

Dear Senator Krebsbach:

Yesterday during the Senate Government & Veterans Affairs Committee work on Senate Bill 2077 pertaining to family and medical leave, you requested summary information on the use of donated leave during the biennium.

So far this biennium (7/1/01 to present), 764 employees have donated 7,189 hours of annual leave and 11,661 hours of sick leave to 102 employees for their own or a family member's severe illness, injury, or impairment.

A state employee is eligible to receive shared leave for a severe or extraordinary illness, injury, or impairment of their own or a family member if: 1) It is likely to cause the employee to take leave without pay or terminate employment, 2) has abided by state policy regarding the use of sick leave, and 3) if their use of shared leave (including both annual and sick leave) does not exceed four months in any 12-month period. A state employee may donate any amount of annual leave as long as they retain a balance of 40 hours and may donate not more than five percent of their accrued sick leave hours.

If you have further questions, please contact me at 328-3374.

Sincerely,

Virginia Rivinius

Virginia Rivinius, SPHR
Senior Personnel Officer

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