

Testimony on HB 1007
 Prepared for the Senate Appropriations Committee
 Erica Thunder, Commissioner

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Good morning, Chairman Holmberg and members of the Senate Appropriations Committee. My name is Erica Thunder, and I am the Commissioner for the North Dakota Department of Labor and Human Rights.

Department Responsibilities

I would like to provide some background on the North Dakota Department of Labor and Human Rights (hereinafter “Department”). The Department has three primary areas of responsibility. The first is establishing and enforcing laws and regulations relating to the wages and working conditions of employees in North Dakota. This is our Wage and Hour Division. Second, the Department administers and enforces North Dakota's human rights and housing laws. This is our Human Rights Division. Finally, the Department is tasked with educating the public about all areas of the law for which it is responsible.

Wage and Hour Division

The Wage and Hour Division enforces minimum wage and overtime laws and regulations (N.D.C.C. ch. 34-06). In addition, the Division enforces North Dakota's laws and regulations dealing with equal pay for men and women, child labor, labor unions, employment agencies, and wage collection (N.D.C.C. chapters 34-06.1, 34-07, 34-12, 34-13, and 34-14). The Wage and Hour Division receives and investigates claims of unpaid wages or overtime, failure to pay minimum wage, misclassification of employees, and other general complaints that North Dakota's labor laws are not being followed. The Division also reviews requests to issue youth employment certificates for 14 and 15-year old workers.

Here are some of the Division's accomplishments so far in the current biennium:

July 1, 2019- December 31, 2020	Wage Claims Closed	Amount Collected for Claimants	Youth Employment Certificates
	568	\$609,951.08	1,433

Human Rights Division

The Human Rights Division administers and enforces the North Dakota Human Rights Act (N.D.C.C. ch. 14-02.4) and the North Dakota Housing Discrimination Act (N.D.C.C. ch. 14-02.5). Under these anti-discrimination laws, the Department receives and investigates complaints alleging discrimination in employment, housing, public services, public accommodations, and credit transactions. As required by law, the Department emphasizes conciliation to resolve complaints, provides administrative hearings on complaints where there is probable cause to believe a discriminatory practice has occurred, and fosters prevention of discrimination through education about the rights and responsibilities provided under North Dakota's human rights and housing laws. Finally, the Human Rights Division handles complaints of retaliation under North Dakota's "whistleblower" law (N.D.C.C. § 34-01-20) and Public Employee Relations Act (N.D.C.C. § 34-11.1-04.1).

In addition to receiving and investigating complaints directly from individuals who believe they have been victims of unlawful discrimination under state anti-discrimination and whistleblower laws, the Department's Human Rights Division also investigates cases for the United States Department of Housing and Urban Development (HUD) and the Equal Employment Opportunity Commission (EEOC).

Here are some of the Division's accomplishments so far in the current biennium:

July 1, 2019-December 31, 2020	Employment	Retaliation	Housing	Public Service/Public Accommodation/Credit Transactions
Closed	278	53	51	17
Amount Collected	\$492,3381.17	\$118,240.00	\$31,673.50	\$500.00

Public Education

In addition to the Department's enforcement duties, the Commissioner of Labor is required to "improve working conditions and living conditions of employees and advance their opportunities for profitable employment".... "foster, promote, and develop welfare of both wage earners and industries in N.D." and "promote friendly and cooperative relations between employers and employees." To do this, the Department continues to broaden awareness of wage and hour issues and human rights protections through public education and outreach, working with groups representing human rights, business, labor, professional, and non-profit organizations. The Department continues to provide speakers and trainers for conferences, workshops, schools, employers, labor organizations, businesses, landlord and tenant organizations, government agencies, and other community groups. The Department has made strides in educating the public and I am always looking for additional ways to provide information to both employers and employees in North Dakota. This last year particularly, has proved the Department's ability to still educate even in remote settings, which became a common practice.

Organizational Chart:



Financial Audit Findings

The Department's most recent financial audit, conducted and concluded in October 2019, resulted in a clean audit, with no outstanding financial findings.

FTEs

The Department began this session with no change in its request for FTEs. The Department currently has fourteen total FTEs. Four positions are currently vacant. One of those FTE positions is completely unfunded, and one is partially funded. The third and fourth positions are currently in the process of being filled, with one already posted and a

hire predicted to fill that FTE position in April 2021. Due to uncertainty in workload, particularly due to COVID-19, the Department had requested during its House Appropriations testimony, that all FTE positions should remain the same and we had no changes. After HB 1007 was heard, the House Appropriations Committee made two changes that we were able to make a compromise on: 1) the unfunded FTE position would be removed, and 2) the partially funded FTE position would be kept, but would become fully unfunded. Again, we were able to make this compromise, and the Department asks this Committee to keep that compromise as is, bringing down the total FTEs to thirteen, with one completely unfunded. Thus, the Department would now be down to twelve full-time FTEs. We believe this is fair.

Budget Request

I will now focus on the Department's base budget, estimated 2021-2023 spending, one time expenditures, and the Department's Federal funds.

Outline of Budget

In the 2019-2021 biennium, the Department's total appropriation was \$2,875,850. Salary and wages total \$2,475,765, with operating expenses at \$400,085. The budget is a combination of general funds and \$480,681 in federal fund authority, through the partnerships with HUD and EEOC. The Department has one one-time spending item in its current budget.

The 2021-2023 Executive Budget Recommendation includes \$2,440,237 for salaries and wages, and \$611,604 for operating expenses, this totals \$3,051,841.

The 2021-2023 base budget changes had totaled \$281,178. This included \$95,529 for the rent model change. However, because the rent model change has now turned into a study, the 2021-2023 base budget for the Department totals \$185,649.

Also included in the 2021-2023 base budget changes is \$7,932 for the allocation of a Key Customer Manager (KCM) from North Dakota Information Technology (NDIT), as well as the Office 365 software. Broken down, the KCM's cost in the budget is \$6,720, while the Office 365 software accounts for \$1,212 of the budget.

This KCM position is crucial to the agency, as our KCM play many roles for the Department, and was vital to the Department's ability to adapt to new technology, business process improvements, and assist the agency overall in our software and technology needs during this time wherein we are working remotely indefinitely.

The Office 365 is absolutely a necessary item for the Department, as its tools, including Outlook, Microsoft Word, Microsoft teams, etc., are software items we need in order to conduct business.

The final piece of the 2021-2023 base budget changes includes the \$177,717 for IT Contractual Services and Repairs – which is for a one-time expense to improve the Department's current case management software, and what is the "Phase II" of the Power

Dynamics system. This system has allowed us to go completely paperless and create a case management system wherein we can continue to expand on a “smarter” system, creating faster and more efficient work for the citizens of North Dakota. One of the reasons the Department is able to make the compromise in FTEs is because we believe that with this improved software, we can work efficiently without the need for a larger Department.

Again, the 2021-2023 Executive Budget Recommendation totals \$3,051,841. This includes the above stated total for salaries and wages, along with operating expenses. The Department strongly urges the Committee to approve of this budget recommendation, as much thought, time, work, and consideration went into this total number. The Department’s goal with the proposed budget is to continue its good work, with an extremely talented team, and its focus on a better experience for the North Dakota citizen who will use our services.

Federal Funding

The Department’s federal funding, which supplements the legislatively approved state general funding, is received through work-sharing/cooperative agreements with the EEOC and HUD. The Department’s current projected federal dollars that provide to our budget includes \$516,868. This dollar amount must be reiterated that we have to work for these funds. It helps us lower the Department’s State dollars in our budget. \$30,000 of those dollars have been set aside in order to provide for our “Phase II” funding for our major technology upgrade to our current system. It is vital to note that we cannot make a compromise on any changes proffered based on this Federal dollar amount. The House Appropriations Committee made the change to expand Federal dollars to be put towards the Phase II upgrade, however, \$30,000 is the most we are allowed to spend on this upgrade. This is because of the types of dollars our Federal partners will allow us to use for upgrades. Federal revenue is always speculative and uncertain, and because we are contracted by our Federal partners to conduct a certain amount of work, we cannot budge on this dollar amount. This is because the Department receives a certain dollar amount from the EEOC and HUD for each case it closes. Our ask today is for the Senate Appropriations Committee to reverse and restore our original budget amount set aside for the Phase II Power Dynamics software upgrade, leaving \$30,000 to come from our Federal fund budget, and \$147,717 from General Funds.

One Time Expense -- “Phase II Power Dynamics”

The Department's Phase II Power Dynamics software system is a necessity for the Department. As mentioned earlier in this testimony, its total cost is \$177,717. The very shortened purpose its importance is so that the Department can continue forward in its effort in performing as a more efficient agency. Looking back at the Department’s previous budgets and requests, the Department has always been incredibly frugal, and proudly continues to act in a way that benefits the taxpayer. This one-time ask to make sure that the Department can expand and finish the current software upgrade we began in April 2020, and finished on July 6th, 2020. Our 2020 upgrade has made a tremendous improvement for the Department in our goals for upgrading an outdated case

management system, finally going paperless after more than a decade of planning, and turned out to be the best investment we could have made, while not knowing we were about to be a remote Department. While we started the project in April 2020, it was actually in September 2019, that the Department started to negotiate with Power Objects, and begin to put together a Statement of Work. At that time, we would have never imagined that 2020 would turn into the year it did. The expansion in Phase II is to directly address many of the items we never thought to include in its first phase, most of which involve our remote work style. Outside of just improvements made for working remotely, the Department has been able to utilize our new system long enough to know that there are still improvements to be made to make it a “smart” system, one that uses predictive elements in order to assist us in our daily work, and also trend forecasting. I am happy to discuss this further, as there are many technical areas I may not be able to address fully today. In sum, system will allow the Department to become more efficient and reduce operating costs in the long term.

Conclusion

This Commissioner is extremely proud of the Department and its members. The Department is always seeking ways to hold down costs, and this Commissioner believes we have done a very great job at continuing that work. The agency’s long-term plan is for improving the efficiency and effectiveness of achieving its statutory duties continues. This includes our major efforts in improving our technology. Finally, we will continue to look for ways to train employees in the most efficient and effective manner, especially as we look towards onboarding future team members in a remote style. We please urge that the changes outlined in this Testimony be supported, and the Department thanks the Committee for your kind attention.

Thank you and I’d be happy to answer any questions you may have.

Erica Thunder

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Commissioner
North Dakota Labor and Human Rights