

Human Resource Management Services
Testimony Before the Administrative Rules Committee
Laurie Sterioti Hammeren
September 11, 2008

Chairman Fischer and members of the Administrative Rules Committee, I am Laurie Sterioti Hammeren, Director of Human Resource Management Services (HRMS), a division of the Office of Management and Budget. I appreciate the opportunity to appear before you to provide information regarding the reconsideration of administrative rules proposed by my office for local county social service merit systems, Chapter 4-07-34.1.

To refresh your memories, agencies covered by the North Dakota merit system have a statutory requirement for the establishment and maintenance of personnel standards on a merit basis because of the funding for certain programs: Food Stamps; Temporary Assistance for Needy Families (TANF); Employment Security (Unemployment Insurance and Employment Services); Medical Assistance (Medicaid); Aging; Foster Care and Adoption Assistance Programs. **If North Dakota is found to be out of compliance with this federal regulation, the federal funds noted above may be at risk.**

Currently, County Social Service agencies are part of the ND State Merit System. SB 2321 was enacted which allows counties to opt out of the ND State Merit system by establishing (and receiving approval from HRMS and DHS) their own merit system within the county (54-44.3-31 and 54-44.3-32). These Rules provide the procedures for a local County Social Service agency to establish their own Merit System consistent with the Federal Merit Principles.

Human Resource Management Services organized taskforces to review the Division's proposed administrative rules. The original taskforce was established prior to the legislation being implemented and was comprised of Human Resource representatives from State agencies, the Association of Counties, County Social Service Directors, Cass County Commissioners, Department of Human Services, and ND Public Employees Association. The taskforce provided recommendations regarding proposed rules changes and assisted in the development of the merit system opt-out rules. When the Draft Rules regarding Chapter 4-07-34.1 were completed for the first attempt at legislation, they were presented to the East District County Commissioners, the ND County Social Service Director's Association, the SE and SC Social Service Boards, and the NE Devils Lake Regional Social Service Boards. The draft of Chapter 4-07-34.1 was ultimately finalized virtually unchanged from the original taskforce recommendations. It was that final draft that was brought forward to this rule making process.

HRMS conducted a public hearing on the proposed rules and while four people were in attendance, no one testified regarding the rules. Written comments were received through March 10, 2008. The Office of the Attorney General examined and approved the final version of adopted rules as to their legality. HRMS submitted the rules to the State Personnel Board for approval May 12, 2008, and filed the rules with the Legislative Council May 12, 2008.

The standards for a merit system are set out in 5 CFR sections 900.602 and 603. The Code of Federal Regulations in these sections state that:

Section 900.602 Applicability

(a) Sections 900.603-604 apply to those State and local governments that are required to operate merit personnel systems as a condition of eligibility for federal assistance or participation in an intergovernmental program. Merit personnel systems are required for State programs, irrespective of the source of funds for their salaries, where Federal law or regulations require the establishment and maintenance of such systems. A reasonable number of positions, however, may be exempted from merit personnel system coverage.

Section 900.603 outlines the standards for a merit system of personnel administration as addressed in the proposed rules 4-07-34.1-04 (1-6). The detail is provided by HRMS as a measure of oversight and compliance.

Cass County has said that they wish to opt-out of the State's Merit System so that they may have a unified personnel system in the county that pays employees consistently and provides uniform benefits.

Cass County has objected to the proposed administrative rules saying they want all of their employees to be "at Will" rather than "for Cause." Cass County also does not want to be required to have an appeals process through a neutral third party as proposed in the rules. Cass County's State's Attorney, Mr. Birch Burdick, requested an Attorney General Opinion on May 23, 2008.

Chief Deputy Attorney General, Thomas L. Trenbeath, responded in a letter dated July 3, 2008, stating that the Office of the Attorney General declines to issue an Attorney General's Opinion. I have provided a copy of that letter for your review.

Since then, the Cass County Social Services Board met on August 4, 2008, to discuss the matter. A copy of those meeting minutes is also provided to you.

If a county social service Board chooses to opt-out of the State's Merit System:

- They will not be subject to any of HRMS Administrative Rules except the new chapter 4-07-34.1.
- They can establish their own salary ranges.
- They can provide uniform benefits.
- They can provide uniform policies as long as they comply with the Federal Merit System Standards.
- They can exempt a reasonable number of positions from their local merit system.

The County that opts-out would however be required to:

- Write a plan and have it approved by the Department of Human Services and Human Resource Management Services to assure that it complies with the Federal

Standards for a Merit System of Personnel Administration so as not to jeopardize the State's federal funding for certain programs.

- All employees could not be "at will"- only a reasonable number of positions may be exempted in accordance with 5 CFR Part 900.603 of the Federal Standards.

As a possible solution, I previously suggested to you Chairman Fisher and to the Cass County Social Service Board that permissive language could be drafted to propose legislation to allow County Social Service Agencies to determine whether they wish their County Director position to be exempted. That would be in keeping with the Federal Code.

HRMS and the Department of Human Services have oversight and audit responsibilities for any County Social Service agency opting out of the State's Merit System. For practical purposes without a for cause limitation on discipline and dismissal we would not have a real oversight mechanism to assure fairness and impartiality- and without that there is no oversight. Fairness, equality, and impartiality must be assured in the monitoring of basic merit principles. Without the for cause standard I believe that we could not fulfill our oversight responsibilities.

The proposed rules are in keeping with the Federal Standards, they provide a mechanism for local government to establish their own merit system, and they provide the essential oversight necessary to avoid risk to federal funding in our State.

I sincerely request that you move forward in approving the Administrative Rules as proposed. The legislation allowing local government to opt-out of the State's Merit System and these rules have been a long time coming. The immediate adoption of these rules will allow other counties to finally move forward with their plans to opt-out.

Thank you for your time and consideration. I will stand for any questions.

A new chapter to Article 4-07 is created as follows:

**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 board of commissioners or group of county boards in consultation with the social service board or boards 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 county board of commissioners 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 board of commissioners 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 employment application form;
 - 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; and
 - 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; and

- 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 for 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; and
 - 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, and 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; and
 - 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 county board of commissioners or group of county boards shall submit a corrective action plan within sixty days of receipt of the audit findings.
3. The county board of commissioners or group of county 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 county board of commissioners or group of county 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 of commissioners 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 of commissioners 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 of commissioners or group of county boards in consultation with the social service board or 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

**Sixtieth Legislative Assembly of North Dakota
In Regular Session Commencing Wednesday, January 3, 2007**

SENATE BILL NO. 2321
(Senators Mathern, Hacker, J. Lee)
(Representatives Wieland, N. Johnson, Conrad)

AN ACT to create and enact two new sections to chapter 54-44.3 of the North Dakota Century Code, relating to authorizing political subdivisions to request an exemption from coverage under the state merit system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new sections to chapter 54-44.3 of the North Dakota Century Code are created and enacted as follows:

Political subdivision may request to be exempted from state merit system. A political subdivision subject to the merit system under this chapter may file a request with the division and the director of the department of human services to be exempted from the merit system. The request must describe a plan and policy that assures the political subdivision has developed a merit system plan that meets federal standards for personnel administration. The division and the director of the department of human services shall authorize the political subdivision plan within sixty days of receiving a request under this section if the plan and policies meet federal requirements. If the division and the director of the department of human services determine that the proposed plan and policies fail to meet the federal requirements, the division and the director shall deny the request and notify the requester of the specific reasons for the denial.

Political subdivision merit system compliance. The division and the department of human services shall develop oversight and audit procedures for political subdivision merit systems to assure compliance with federal merit system principles. If the division and the department of human services determine that a political subdivision has failed to maintain compliance with federal merit system principles, the division and the department shall notify the political subdivision of the noncompliance and order the political subdivision to take corrective action. If a political subdivision does not take the necessary corrective action to comply with federal merit system principles, the division and the department of human services shall revoke the political subdivision's exemption from the state merit system and return the political subdivision to the state merit system. The political subdivision is responsible for any penalty assessed by a federal authority for a noncompliant political subdivision merit system.

John S. Delany
President of the Senate

Jeff W. Daler
Speaker of the House

Timothy W. Wood
Secretary of the Senate

Bull J. Reich
Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2321.

Senate Vote:	Yeas	46	Nays	0	Absent	1
House Vote:	Yeas	65	Nays	26	Absent	3

Timothy W. Wood
Secretary of the Senate

Received by the Governor at 12:18 P.M. on April 4, 2007.

Approved at 2:26 P.M. on April 5, 2007.

[Signature]
Governor

Filed in this office this 5th day of April, 2007,
at 4:08 o'clock P. M.

[Signature]
Secretary of State



Wayne Stenehjem
ATTORNEY GENERAL

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July 3, 2008

Birch Burdick
Cass County State's Attorney
Box 2806
Fargo ND 58108

Dear Mr. Burdick:

Thank you for your May 23, 2008, request for an Attorney General's Opinion. Under N.D.C.C. § 54-12-01(4), the Attorney General consults with and advises state's attorneys in matters relating to the duties of their office. Normally this office encourages, if not requires, state's attorneys to submit their research and preliminary opinions to this office before a request relating to the duties of a state's attorneys office will be addressed.

Your request, however, appears to ask this office to arbitrate or adjudicate a dispute between the Cass County Social Service Board, the North Dakota Human Resources Management Services (HRMS), and the Department of Human Services. Further, you state that "under current law there is little doubt HRMS may establish whatever administrative code provisions it wishes, and can get the Legislature to accept, relative to local social service agencies."

In view of the foregoing, an Attorney General's opinion is not the appropriate medium to address this dispute; therefore this office declines to issue an Attorney General's Opinion based upon the question presented.

Sincerely,

Thomas L. Trenbeath
Chief Deputy Attorney General

copy: ✓ Laurie Sterioti Hammeren, HRMS

CASS COUNTY SOCIAL SERVICES BOARD MEETING

August 4, 2008

There being a quorum present, Chair Sorum called the meeting to order at 2:00 pm.

Roll Call

Present: Michelle Macintosh, Ken Pawluk, Darrel Vanyo,
Robyn Sorum, Scott Wagner, Vern Bennett
Absent: Laurie Dahley

Approval of Minutes

Motion, passed

Mr. Wagner moved and Mr. Vanyo seconded to approve the July 7, 2008 meeting minutes as written. Motion passed unanimously.

General Assistance

Mr. Ammerman requested a committee be formed to review the General Assistance Policy. The price of cremation and rent have risen since the policy was last reviewed in October, 2004. In the past this review committee consisted of two Board members, 2-3 agency staff with input from funeral directors and Housing Assistance.

Motion, passed

Mr. Wagner moved and Mr. Vanyo seconded to appoint Ms. Sorum and Mr. Bennett to serve on the General Assistance Policy Review Committee. Motion passed unanimously.

Line Item Transfer, Attendant Care Costs

Mr. Ammerman requested a line item transfer to cover expenses for services of Attendant Care for the remainder of 2008. The request was for transferring \$4,000 from the Contracted Services line item to Shelter Care line item. Contracted Services covers expenses incurred for visitations of foster children by Rainbow Bridge. The original budget was for \$10,000 and only \$2,000 has been expended.

Motion, passed

Mr. Pawluk moved and Mr. Wagner seconded to transfer \$4,000 from line item #201.5030.444.51-04 (Contracted Services) to line item #201.5030.444.37-24 (Shelter Care). Motion carried unanimously.

Update, Targeted Case Management

Mr. Ammerman reported the state has informed counties that billing through Targeted Case Management can resume for costs back to March 1, 2008 through March, 2009. This will involved approximately \$150,000. This is a result of a federal bill that put a moratorium on the bill that discontinued payments.

Merit System, Attorney General Response

The Board received a copy of the Attorney General letter responding to a request from Cass County for an opinion regarding "for cause" versus "at will" status for merit system employees. The Attorney General declined to issue an opinion on this matter.

Mr. Ammerman suggested a committee be formed to progress with reviewing opting out of the ND Merit System. Mr. Pawluk commented that he is not in favor of creating another personnel system in the county.

Motion, passed

Mr. Wagner moved and Mr. Vanyo seconded to ask Cass County States Attorney to work in identifying the appropriate federal agency that drafted these rules and ask them to clarify the rules as to how they relate to county personnel systems. Motion carried with five members voting in favor and Mr. Pawluk opposed.

Child Support Allocation

Mr. Ammerman reported that the county will now be receiving reimbursement for administrative costs incurred for 2006 and 2007. Child Support is now state administered, the transition occurring in 2007. The reimbursements will be approximately \$114,000 for each year.

Public Comment

Comment was presented to the Board by Margaret Jakobson.

Operations Report

The Board received and filed the agency August operations report.

Adjournment

There being no further business, the meeting as adjourned at 2:40 pm on a motion by Mr. Wagner and seconded by Mr. Pawluk.

Robyn Sorum, Chair
Cass County Social Service Board

Mary Denis, Recorder