

**BEFORE THE
ADMINISTRATIVE RULES COMMITTEE
OF THE
NORTH DAKOTA LEGISLATIVE COUNCIL**

N.D. Admin. Code Chapter 75-02-04.1, Child Support Guidelines (Pages 277-282)))))	<u>REPORT OF THE</u> <u>DEPT. OF HUMAN SERVICES</u> June 11, 2008
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For its report, the North Dakota Department of Human Services states:

1. The proposed amendments to N.D. Admin. Code Chapter 75-02-04.1 arose out of 2007 Senate Bill No. 2129, relating to child support enforcement.
2. These rules are not related to changes in a federal statute or regulation.
3. The Department of Human Services uses direct and electronic mail as the preferred ways of notifying interested persons of proposed rulemaking. The Department uses a basic mailing list for each rulemaking project that includes the county social service boards, the regional human service centers, Legal Services offices in North Dakota, all persons who have asked to be on the basic list, and internal circulation within the Department. Additionally, the Department constructs relevant mailing lists for specific rulemaking. The Department also places public announcements in all county newspapers advising generally of the content of the rulemaking, of over 50 locations throughout the state where the proposed

rulemaking documents may be reviewed, and stating the location, date, and time of the public hearing.

The Department conducts public hearings on all substantive rule-making. Oral comments are recorded. Oral comments, as well as any written comments that have been received, are summarized and presented to the Department's executive director, together with any response to the comments that may seem appropriate and a re-drafted rule incorporating any changes occasioned by the comments.

4. Comments were received at the public hearing held in Bismarck on March 24, 2008. The record was held open until April 3, 2008, to allow written comments to be submitted. A summary of comments is attached to this report.
5. The cost of giving public notice, holding a hearing, and the cost (not including staff time) of developing and adopting the rules was \$1812.58.
6. The rules were amended to comply with 2007 Senate Bill No. 2129, relating to child support enforcement. The following specific changes were made:

Section 75-02-04.1-09. This section contains criteria for rebutting child support guideline amounts. A new subdivision was created under subsection 2 that allows a person to rebut the presumption that the amount of child support that would result from the application of the guidelines is the correct amount if a preponderance of the evidence establishes that a deviation from the

guidelines is in the best interest of the supported children and establishes the reduced needs of the child to support from the obligor when the net income of the obligee is at least three times higher than the net income of the obligor. A new subsection was also created to require any adjustment being made under the new subdivision to be made against the amount due under the guidelines after having considered the proportion by which the obligee's net income exceeds the obligor's net income.

7. No written requests for regulatory analysis have been filed by the Governor or by any agency. The fiscal impact of the rule amendments cannot be precisely calculated, but it possibly may exceed \$50,000. A regulatory analysis was prepared and is attached to this report.
8. A small entity regulatory analysis and small entity economic impact statement were prepared and are attached to this report.
9. A constitutional takings assessment was prepared and is attached to this report.
10. These rules were not adopted as emergency (interim final) rules.

Prepared by:

Julie Leer
Legal Advisory Unit
North Dakota Department of Human Services
June 11, 2008

John Hoeven, Governor
Carol K. Olson, Executive Director

**SUMMARY OF COMMENTS RECEIVED
IN REGARD TO PROPOSED AMENDMENTS TO
N.D. ADMIN. CODE CHAPTER 75-02-04.1
CHILD SUPPORT GUIDELINES**

The North Dakota Department of Human Services (the Department) held a public hearing on March 24, 2008, in Bismarck, ND, concerning proposed amendments to N.D. Administrative Code Chapter 75-02-04.1, Child Support Guidelines. The Department also allowed time for interested persons to submit written comments on these proposed rules. One person attended and provided comments at the public hearing. No written comments were received within the comment period. Commentors were:

1. John Aman

SUMMARY OF COMMENTS

Comment: The commentor asked about the requirement that the payee make three times the amount of the payer, whether that would eliminate payment, and whether an obligee's spouse's income would be part of the calculation.

Response: The legislature determined that the "at least three times the income" standard is the one the Department should use. It might eliminate the payment, more likely it would result in a proportionate reduction. Additionally, only the income of the obligee, and not the income of the obligee's spouse, would be part of any calculation.

Comment: The commentor noted that for the person that works out of town, child support enforcement wants paperwork, justifying where the money is going. It is burdensome for the person who works out of town to have to come up with all this paperwork on where the cash is being spent, but there is nothing in the law requiring proof that the child support payments are getting spent on the children.

Response: The law doesn't require an accounting from the parent receiving child support, but the language requiring paperwork be submitted by a parent who works out of town is an existing requirement as part of calculating an obligor's net income under the guidelines, and is not a part of the proposed rule under consideration at this time.

Prepared by:



Julie Leer, Director
Legal Advisory Unit
N.D. Dept. of Human Services

April 24, 2008



John Hoeven, Governor
Carol K. Olson, Executive Director

MEMORANDUM

TO: Melissa Hauer, Director, Legal Advisory Unit

FROM: James C. Fleming, Deputy Director/General Counsel *J*

RE: Regulatory Analysis of Proposed Amendments to N.D. Admin.
Code ch. 75-02-04.1, Child Support Guidelines

DATE: June 6, 2007

The purpose of this regulatory analysis of proposed amendments to N.D. Admin. Code ch. 75-02-04.1, Child Support Guidelines, is to fulfill the requirements of N.D.C.C. § 28-32-08. The fiscal impact of the proposed amendments cannot be precisely calculated but it possibly may exceed \$50,000.

Purpose of Proposed Amendments

The purpose of these proposed amendments is to comply with the legislative requirement found in section 7 of SB 2129. The Legislative Assembly amended N.D.C.C. § 14-09-09.7 to provide that the child support guidelines must authorize a rebuttal of the presumptively correct child support amount based on the proportionate net income of the obligor and the obligee when the net income of the obligee is at least three times higher than the net income of the obligor.

Classes of Persons Who Will Probably be Affected by the Proposed Amendments

The classes of persons who will most likely be affected by these proposed amendments are:

1. Noncustodial parents whose child support obligations are being established or modified;
2. Custodial parents whose child support awards are being established or modified; and
3. Children who are covered by a child support award that is being established or modified (i.e., children of noncustodial and custodial parents).

Probable Impact

The proposed amendments create a new factor that may be applied to rebut the presumptively correct child support amount. Under the proposed amendments, the trial court, in the exercise of its discretion, is authorized to consider the reduced needs of a child to child support from the noncustodial parent in situations where the net income of the custodial parent is at least three times higher than the net income of the noncustodial parent. If applied in a particular case, the results will be to:

1. Reduce the amount of child support the noncustodial parent would otherwise be required to pay; and
2. Reduce the amount of child support the custodial parent would otherwise be awarded to receive on behalf of the children covered by the support award.

Probable Cost of Implementation

It is possible that there could be some effect on state revenues. This is chiefly due to the fact that child support is assigned to the State in certain cases (i.e., where the family is receiving TANF or the child is in foster care). Also, it is possible that since support amounts could be reduced, there could be an effect on families' ability to be self-sufficient. For example, a lower support amount could decrease a family's ability to be self-sufficient and increase the likelihood of eligibility for public assistance.

It is impossible to calculate the amount of any effect at this time.

Consideration of Alternative Methods

Since the proposed amendments are required to implement the express direction of the Legislative Assembly, there are no meaningful alternative methods to be considered.



John Hoeven, Governor
Carol K. Olson, Executive Director

MEMORANDUM

To: Melissa Hauer, Director, Legal Advisory Unit
From: James C. Fleming, Deputy Director/General Counsel *J*
Date: June 6, 2007
Subject: Small Entity Regulatory Analysis Regarding Proposed Amendments to N.D. Admin. Code ch. 75-02-04.1, Child Support Guidelines

The purpose of this small entity regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08.1(2). This regulatory analysis pertains to proposed amendments to N.D. Admin. Code ch. 75-02-04.1, Child Support Guidelines. In accordance with express direction of the Legislative Assembly in section 7 of SB 2129, the child support guidelines must be amended to authorize a rebuttal of the presumptively correct child support amount based on the proportionate net income of the obligor and the obligee when the net income of the obligee is at least three times higher than the net income of the obligor.

Consistent with public health, safety, and welfare, the Department of Human Services has considered using regulatory methods that will accomplish the objective of the applicable statute while minimizing any adverse impact on small entities. For this analysis, the Department has considered the following methods for reducing the impact of the proposed amendments on small entities:

1. Establishment Of Less Stringent Compliance Or Reporting Requirements

The proposed amendments will not alter in any material way any compliance or reporting requirements of small entities. Therefore, establishment of less stringent compliance or reporting requirements for small entities was not considered.

2. Establishment Of Less Stringent Schedules Or Deadlines For Compliance Or Reporting Requirements For Small Entities

The proposed amendments will not alter in any material way any required schedules or deadlines for compliance or reporting requirements of small entities. Therefore, the

establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities was not considered.

3. Consolidation Or Simplification Of Compliance Or Reporting Requirements For Small Entities

The proposed amendments will not alter in any material way any required compliance or reporting requirements of small entities. Therefore, neither consolidation nor simplification of compliance or reporting requirements for small entities was considered.

4. Establishment Of Performance Standards For Small Entities To Replace Design Or Operational Standards Required In The Proposed Rules

The proposed amendments do not impose any design standards or any additional operational standards and will not alter in any material way any required performance standards or operational standards for small entities. Therefore, establishment of new performance standards to replace operational standards was not considered.

5. Exemption Of Small Entities From All Or Any Part Of The Requirements Contained In The Proposed Rules

The proposed amendments do not impose any requirements on small entities. Therefore, exempting small entities from all or part of the requirements contained in the proposed amendments was not considered.



John Hoeven, Governor
Carol K. Olson, Executive Director

MEMORANDUM

To: Melissa Hauer, Director, Legal Advisory Unit

From: James C. Fleming, Deputy Director/General Counsel *J*

Date: June 6, 2007

Subject: Small Entity Economic Impact Statement Regarding Proposed Amendments to N.D. Admin. Code ch. 75-02-04.1, Child Support Guidelines

The purpose of this small entity economic impact statement is to fulfill the requirements of N.D.C.C. § 28-32-08.1(3). This impact statement pertains to proposed amendments to N.D. Admin. Code ch. 75-02-04.1, Child Support Guidelines. In accordance with express direction of the Legislative Assembly in section 7 of SB 2129, the child support guidelines must be amended to authorize a rebuttal of the presumptively correct child support amount based on the proportionate net income of the obligor and the obligee when the net income of the obligee is at least three times higher than the net income of the obligor.

The proposed amendments are not anticipated to have an adverse economic impact on small entities.

1. Small Entities Subject To The Proposed Amendments

Individuals who will probably be affected by the proposed amendments are custodial and noncustodial parents and their children. With respect to small entities, the proposed amendments may have an effect on law firms whose practice includes child support matters. Any impact on small entities is expected to be inconsequential.

2. Administrative And Other Costs For Compliance With The Proposed Amendments

Noncustodial parents will continue to incur child support obligations based on application of the guidelines. Both noncustodial and custodial parents may incur attorney's fees related to pursuing or resisting modifications of the child support amount as a result of the proposed amendments. Staff at law firms may incur inconsequential training costs in order to become familiar with the proposed amendments.

3. Probable Costs And Benefits To Private Persons And Consumers Affected By The Proposed Amendments

Noncustodial parents will continue to incur child support obligations based on application of the guidelines.

Custodial parents and children will continue to receive child support awards based on application of the guidelines.

Both noncustodial and custodial parents may incur attorney's fees related to pursuing or resisting modification of the child support amount as a result of the proposed amendments. Law firms may experience increased revenues from representing noncustodial and custodial parents pursuing or resisting modification of the child support amount.

Staff at private law firms may incur inconsequential training costs in order to become familiar with the proposed amendments.

The amount of child support awarded could affect families' ability to be self-sufficient. Depending on the degree of self-sufficiency, the likelihood that a family will be eligible for public assistance could increase as a result of the proposed amendments. In turn, the degree of eligibility for public assistance could affect the amount that is paid in taxes to the state general fund. Thus, there could be costs to taxpayers in the form of increased taxes.

It is impossible to quantify any costs and benefits at this time.

4. Probable Effect Of The Proposed Amendments On State Revenues

There could be some effect on state revenues. This is chiefly due to the fact that child support is assigned to North Dakota in certain cases (i.e., where the family is receiving TANF or the child is in foster care). Also, it is possible that since support amounts could be affected (i.e., decreased), there could be an effect on families' ability to be self-sufficient which, in turn, could affect the likelihood of eligibility for public assistance.

It is impossible to quantify the effect on state revenues at this time.

5. Less Intrusive Or Less Costly Alternative Methods Of Achieving The Purpose Of The Proposed Amendments

Since the proposed amendments are required to implement the express direction of the Legislative Assembly, there are no meaningful alternative methods to consider.



John Hoeven, Governor
Carol K. Olson, Executive Director

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TAKINGS ASSESSMENT

concerning proposed amendment to N.D. Admin. Code chapter 75-02-04.1.

This document constitutes the written assessment of the constitutional takings implications of this proposed rulemaking as required by N.D.C.C. § 28-32-09.

1. This proposed rulemaking does not appear to cause a taking of private real property by government action which requires compensation to the owner of that property by the Fifth or Fourteenth Amendment to the Constitution of the United States or N.D. Const. art. I, § 16. This proposed rulemaking does not appear to reduce the value of any real property by more than fifty percent and is thus not a "regulatory taking" as that term is used in N.D.C.C. § 28-32-09. The likelihood that the proposed rules may result in a taking or regulatory taking is nil.

2. The purpose of this proposed rule is clearly and specifically identified in the public notice of proposed rulemaking which is by reference incorporated in this assessment.

3. The reasons this proposed rule is necessary to substantially advance that purpose are described in the regulatory analysis which is by reference incorporated in this assessment.

4. The potential cost to the government if a court determines that this proposed rulemaking constitutes a taking or regulatory taking cannot be reliably estimated to be greater than \$0. The agency is unable to identify any application of the proposed rulemaking that could conceivably constitute a taking or a regulatory taking. Until an adversely impacted landowner identifies the land allegedly impacted, no basis exists for an estimate of potential compensation costs greater than \$0.

5. There is no fund identified in the agency's current appropriation as a source of payment for any compensation that may be ordered.

6. I certify that the benefits of the proposed rulemaking exceed the estimated compensation costs.

Dated this 6th day of June, 2007.

by: Julie Leen
N.D. Dept. of Human Services