



HUMAN RESOURCE MANAGEMENT SERVICES

STATE OF NORTH DAKOTA

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Administrative Rules Committee Hearing
Testimony of Laurie Sterioti Hammeren, SPHR, Director
Human Resource Management Services
Division of Office of Management and Budget
December 15, 2011

Chairman Koppelman and Committee Members:

Following please find my written testimony concerning the adoption of administrative rules by Human Resource Management Services (HRMS), Division of Office of Management and Budget (OMB). The items listed are pursuant to Mr. John Walstad's, Code Revisor for the Legislative Council, request.

1. Statutory Changes: The Legislative Assembly passed the following bills:

SB 2060 provides twenty-four paid working hours per calendar year for an employee in a classified position to participate in an honor guard for a funeral service of a veteran. N.D. Admin. Code ch. 4-07-14 implements this legislation.

SB 2213 increases the use of available sick leave for the care of a parent, spouse, or child from forty to eighty hours within one year. In addition, this legislation provides that an employee may, with approval, take up to an additional ten percent per year of the employee's accrued sick leave to care for the employee's child, spouse, or parent with a serious health condition. N.D. Admin. Code § 4-07-13-07 (4) implements this legislation.

SB 2279 modified N.D.C.C. ch. 37.19.1, the law regulating veterans' preference requirements in public employment. It changed the title of Personnel System to Competitive Personnel System, clarified that veterans' preference pertains to recruitment and selection processes, outlined required documentation applicants must submit to receive veterans' preference, clarified required preference requirements and a distinction between hiring through a competitive system and a non-competitive system, clarified that an administrative head of a department required by law is exempt from veterans' preference, clarified the contents of a vacancy announcement regarding the posting of positions exempted from veterans' preference, clarified that state employees are not eligible for veterans' preference when applying for employment within the same agency or other state agencies, clarified preference of a spouse of a disabled veteran, clarified applicant's grievance and appeal process, and provided for legislative management to study ND veterans' preference laws. N.D. Admin. Code § 4-07-05-07 is rescinded because the detail of veterans preference is now included in N.D.C.C. ch. 37.19.1

2. Federal Changes: None this time that affect HRMS rules.

3. Procedure: The rule making procedure consisted of the following:

- 8/8/11 Communication with Veterans' Administration and AG's Office regarding a definition of Honor guard and essential ceremonial role.
- 8/9/11 Sent rules draft to task force for comment. Task force includes representatives from DOT, Health, Tax, DOCR, DHS, OAH, AG, Risk Mgmt., HRMS staff.

- 8/12/11 Revised rules draft sent to task force and Association of Counties and Office of the Governor.
- 8/15/11 Met with Jerod Tufte, Office of the Governor, on rules and rules process.
- 8/16/11 Sent final draft to task force; Association of Counties, Terry Traynor; Office of the Governor, Jerod Tufte; OMB Director, Pam Sharp; and Lynn Burgard, DHS HR Officer assigned to work with County Social Services.
- 8/17/11 Sent communication to the AG's Office to clarify who would be doing the technical review and who would be doing the later review for legality.
- 8/17/11 Prepared a statement that a regulatory analysis was not required as the proposed rules are not expected to have an impact on the regulated community in excess of \$50,000. HRMS prepared a Small Entity Regulatory Analysis before adopting the proposed rules. HRMS prepared an Economic Impact Statement before adopting the proposed rules.
- 8/19/11 Admin. Rules sent to the Assistant Attorney General for a technical review.
- 8/19/11 Sent final draft of rules to all HR contacts.
- 8/23/11 Sent Full Notice of Intent and one copy of the rules to the Legislative Council.
- 8/23/11 Sent copy of the full notice to any sponsor and co-sponsor and committee chair of legislation enacted by rule.
- 8/23/11 Sent Abbreviated Notice of Intent to the North Dakota Newspaper Association requesting that the notice be published in each official ND County newspaper at least 20 days before the public hearing.
- 8/23/11 Placed Notice of Intent, copy of rules, and summary of changes on HRMS website.
- 8/23/11 Notified the following groups that a copy of the rules and full notice to Legislative Council is available on-line: HR contacts; Agency Directors; HRMS staff; Council On State Employees; North Dakota Public Employees Association, Stuart Savelkoul; APT, Ken Tupa; County Directors Association Personnel Committee, Twila Novak; Association of Counties, Terry Traynor; President County Directors Association, Sherry Doe; Employee Benefits Committee Chairs; Jeff Nelson, Legislative Council; State Personnel Board; Kirsten Franzen; OAH Bonny Fetch; OMB Pam Sharp; Office of the Governor Jerod Tufte; Attorney General's Office Pam Crawford; Risk Management Tag Anderson; Veterans' Administration Lonnie Wangen.
- 9/26/11 Conducted public hearing.
- 10/6/11 Allowed 10 day comment period.
- 10/7/11 Gathered all written comments. Prepared a written summary of each. There were no oral comments made at the hearing. Prepared a written record of HRMS' consideration of all comments.
- 10/7/11 Submitted final proposed rules to the OMB Director and Office of the Governor.
- 10/8/11 Submitted final proposed rules and related materials to the Attorney General for an opinion on their legality.
- 10/17/11 Submitted rules to the State Personnel Board for adoption.
- 10/27/11 Submitted Attorney General's Opinion, the rules, written comments, and summary of HRMS's consideration of all comments to the Legislative Council.
- 11/10/11 Legislative Council notified interested parties of the Administrative Rules Committee hearing.
- 12/15/11 Administrative Rules Committee hearing conducted.
- 1/1/12, if approved by the Administrative Rules Committee, HRMS Rules become effective.

4. Oral and Written Comments: Two people were in attendance at the public hearing. No one testified; however, individuals did ask questions about the rules and clarification was given. Two e-mails were received prior to the hearing. In both instances the rule was revised in acceptance of the comment or recommendation.

5. Cost: The approximate cost of giving public notice was \$906.01. This does not include staff time for developing and adopting the rules.

6. Justification of Changes to N.D. Admin. Code:

- § 4-07-05-07 Veterans' Preference (p. 4)

SB 2279 modified N.D.C.C. ch. 37.19.1, the law regulating veterans' preference requirements in public employment. It changed the title of Personnel System to Competitive Personnel System, clarified that veterans' preference pertains to recruitment and selection processes, outlined required documentation applicants must submit to receive veterans' preference, clarified required preference requirements and a distinction between hiring through a competitive system and a non-competitive system, clarified that an administrative head of a department required by law is exempt from veterans' preference, clarified the contents of a vacancy announcement regarding the posting of positions exempted from veterans' preference, clarified that state employees are not eligible for veterans' preference when applying for employment within the same agency or other state agencies, clarified that an employee of a political subdivision is not eligible for preference when applying for a different job within the same political subdivision, clarified preference of a spouse of a disabled veteran, clarified applicant's grievance and appeal process, and provided for legislative management to consider a study of ND veterans' preference laws. N.D. Admin. Code § 4-07-05-07 is amended because the detail of veterans preference is now included in N.D.C.C. ch. 37.19.1. Agencies will be referred directly to the statute for the detailed requirements of veterans' preference rather than HRMS Administrative Rules repeating the information. The History section was amended to reflect the effective date of the administrative rule change January 1, 2012. The Law Implemented section was amended to include N.D.C.C. ch. 37-19.1 which is the veterans' preference statute.

- § 4-07-05-08 Vacancy Announcement Contents (p. 5)

SB 2279 requires agencies posting positions that are exempt from veterans' preference to state in the advertisement that veterans' preference does not apply to the position being advertised. The History and Law Implemented sections were amended to reflect the effective date of this change January 1, 2012, and to reference N.D.C.C. ch. 37-19.1-02(4).

- § 4-07-6-02 Probationary Period (p. 6)

This rule change is intended to correct confusion about the status of employees who accept a promotion. The language makes it clear that employees do not serve a probationary period upon promotion within an agency. The History section was amended to reflect the effective date of the administrative rule change which is anticipated to be January 1, 2012. The Law Implemented section was corrected to include the N.D.C.C. citation.

- § 4-07-13-07(3)(a)(b) Uses of Sick Leave (p. 7)

SB 2213 increases the use of available sick leave for the care of a parent, spouse or child from forty to eighty hours within one year. In addition, this legislation provides that an employee may each year, with approval, take up to an additional ten percent of the employee's accrued sick leave to care for the employee's child, spouse, or parent with a serious health condition. N.D. Admin. Code § 4-07-13-07(3)(a)(b) implements this legislation. The effective date of the 40 hours to 80 hours of sick leave usage became effective when Governor Dalrymple signed the legislation on April 26, 2011. The effective date of the additional 10 percent usage of sick leave is the effective date of the approved HRMS Administrative Rules which is anticipated to be January 1, 2012. The History and Law Implemented sections were amended to reflect the effective date and reference to N.D.C.C.

- Ch. 4-07-14 Funeral Leave and Honor Guard Leave (pp. 8-9)

SB 2060 provided twenty-four paid working hours per calendar year for an employee in a classified position to participate in an honor guard for a funeral service of a veteran. Rather than create an entire separate chapter for honor guard leave, the funeral leave chapter 4-07-14 was amended to include honor guard leave.

- N.D. Admin. Code § 4-07-14-01. Scope of chapter. This section was amended to include the law implemented N.D.C.C. ch. 54-06-36.
- N.D. Admin. Code § 4-07-14-02. Definitions. This section was amended to include a reference to N.D.C.C. ch. 54-06-36.
- N.D. Admin. Code § 4-07-14-02(3)(4)(5). Definitions. This section implements the legislation by defining honor guard, honor guard leave, and individual with an essential ceremonial role so it is clear that a member of the flag bearers, a member of the flag folding team, a member of the firing party, the bugler, or the honor guard captain performing as part of the official funeral honors is eligible to take honor guard leave. This section was also amended to include the effective date of the administrative rule change January 1, 2012, and to include the reference to the law implemented N.D.C.C. ch. 54-06-36.
- N.D. Admin. Code § 4-07-14-03. Granting funeral or honor guard leave. This section was amended to include honor guard leave to make it clear that an appointing authority may grant a request for such leave even if the absence of the employee might interfere with the normal operations of the agency. The History and Law Implemented sections were amended to reflect the effective date of the administrative rule change January 1, 2012, and the N.D.C.C. citation.
- N.D. Admin. Code § 4-07-14-04. Not considered sick leave or annual leave. This section was amended to include honor guard leave to clarify that it is not to be considered sick or annual leave. The History and Law Implemented sections were amended to reflect the effective date of the administrative rule change as January 1, 2012, and the N.D.C.C. citation.

- § 4-07-14-02(1) Definitions (p. 8)

The term "Family" was amended to include brother-in-law and sister-in-law to correct what was an apparent omission and resultant inconsistency in the application of funeral leave. The interpretation of the current definition is that an employee can take funeral leave for those brothers-in-law and sisters-in-law who are blood relatives of the employee or the employee's spouse only because brother-in-law and sister-in-law is currently not listed, but if it is a spouse of the blood brother or sister, the employee has to take annual leave. Clearly, half of all brothers-in-law and sisters-in-law are being treated differently. When a death in a family occurs, it does not seem appropriate for one member of the family to take funeral leave while another family member is required to take a different type of leave to attend the same funeral for the same family member. This incident has happened, and agencies have therefore requested an amendment to this rule. This rule clarifies that all brothers-in-law and sisters-in-law are eligible "family" for funeral leave.

- § 4-07-24-07(2) Merit System Application Appeals to the Agency Appointing Authority (p. 10)

This section was amended to include electronic means and to define the date of service of the notice. In addition, this section directs the agency to prepare a certificate of service or provide reliable means to show proof of the date of mailing, transmittal by electronic means, or hand delivery of the letter to the applicant. These changes help to clarify timeframes for appeals and provide consistency with other appeals procedures within HRMS administrative rules. The History section was amended to reflect the effective date of the administrative rules change which is anticipated to be January 1, 2012.

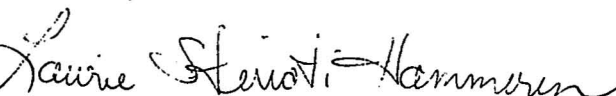
- § 4-07-24-08(1) Merit System Application Appeals to Human Resource Management Services (pp. 10-11)

This section was amended to better clarify the timeframe for appeals, to define date of service of the notice, to direct the agency to prepare a certificate of service or provide reliable means to show proof of the date of mailing, transmittal by electronic means, or hand delivery of the agency's response to the appeal. These changes help to clarify timeframes for appeals and provide consistency with other appeals procedures within HRMS administrative rules. The History section was amended to reflect the effective date of the administrative rules change which is anticipated to be January 1, 2012.

7. **Regulatory Analysis:** No regulatory analysis is required as the proposed rules are not expected to have an impact on the regulated community in excess of \$50,000, and neither the Governor nor any member of the Legislative Assembly requested a regulatory analysis.
8. **Small Entity Regulatory Analysis and Impact Statement:** HRMS prepared a Small Entity Regulatory Analysis and Economic Impact Statement because Senate Bill 2060 which established Honor Guard Leave, specifies that N.D.C.C. ch. 54-06-36 applies to each governmental entity that employs an individual in a position classified by HRMS. County Social Service Offices are not exempt because they employ individuals in positions classified by HRMS.
9. **Fiscal Note:** HRMS prepared a fiscal note at the request of Representative Bette Grande. The fiscal note assumes fifty state employees participating in honor guard leave each year. The estimated cost of fifty employees participating for the maximum hours (twenty-four) per calendar year would be \$25,788 per calendar year.
10. **Constitutional Takings Assessment:** No takings assessment for HRMS was required because the HRMS rules do not limit the use of private real property.
11. **Emergency Rules:** No rules were adopted as emergency rules.

Thank you for consideration of the Human Resource Management Services rule changes.

Sincerely,


Laurie Sterioti Hammeren, SPHR
Director

Human Resource Management Services
A Division of the Office of Management and Budget

Regulatory Analysis, Small Entity Regulatory Analysis, Economic Impact Statement,
and Takings Assessment
on Proposed Administrative Rules North Dakota Administrative Code Article 4-07
Organization of Human Resource Management Services

August 17, 2011

PURPOSE

In accordance with N.D.C.C. §§ 28-32-08 and 28-32-08.1, this is a regulatory analysis, small business regulatory analysis, economic impact statement, and takings assessment regarding the effect of proposed administrative rules on the regulated community.

REGULATORY ANALYSIS - N.D.C.C. § 28-32-08

No regulatory analysis is required as the proposed rules are not expected to have an impact on the regulated community in excess of \$50,000 and neither the Governor nor any member of the Legislative Assembly requested a regulatory analysis.

SMALL ENTITY REGULATORY ANALYSIS - N.D.C.C. § 28-32-08.1

Human Resource Management Services prepared the following Small Entity Regulatory Analysis before adopting proposed rules.

1. Was establishment of less stringent compliance or reporting requirements for small entities considered? To what result?

The proposed rules do not impose additional compliance or reporting requirements on small entities. Therefore, less stringent compliance or reporting requirements are not necessary and were not considered.

2. Was establishment of less stringent schedules or deadlines for compliance or reporting requirements considered for small entities? To what result?

The proposed rules do not impose additional compliance or reporting requirements on small entities. There are no schedules or deadlines for compliance or reporting.

3. Was consolidation or simplification of compliance or reporting requirements for small entities considered? To what result?

Consolidation or simplification of compliance or reporting requirements was not considered because the proposed rules do not impose additional compliance or reporting requirements on small entities.

4. Were performance standards established for small entities for replacement design or operational standards required by proposed rules? To what result?

The proposed rules do not impose performance standards on small entities.

5. Was exemption of small entities from all or any part of the requirements in the proposed rule considered? To what result?

Senate Bill 2060, which established Honor Guard Leave, specifies that NDCC 54-06-36 applies to each governmental entity that employs an individual in a position classified by HRMS. County Social Service Offices are not exempt.

ECONOMIC IMPACT STATEMENT – N.D.C.C. § 28-32-08.1(3)

Human Resource Management Services prepared the following Economic Impact Statement before adopting proposed rules.

- A. County Social Service Offices are subject to HRMS Administrative Rules because they employ individuals in positions classified by HRMS. SB 2060, which established Honor Guard Leave, specifies that NDCC 54-06-36 applies to each governmental entity that employs an individual in a position classified by HRMS. County Social Service Offices are not exempt.
- B. Attached is a fiscal note prepared at the request of Representative Bette Grande. The fiscal note assumes 50 state employees participating in honor guard leave each year. Each County Social Service Board is considered a separate employer, and is not likely to have anywhere near 50 employees participating in honor guard leave. It is unknown if this would actually impact any county social service employee.
- C. Private citizens would benefit if they have family members receiving a military funeral at which a public employee could serve to perform the essential ceremonial role of the flag folding team, a firing party, or a bugler as part of the official funeral honors.
- D. For state purposes, the estimated cost of 50 employees with an average salary of \$44,998 would be \$21.49 per hour. For the maximum hours (24) per calendar year this would be \$515.76 per participating employee. If 50 employees participated, the total estimated cost would be \$25,788 per calendar year.
- E. Compliance with NDCC 54-06-36 does not provide an alternative to honor guard leave.

TAKING ASSESSMENT – N.D.C.C. § 28-32-09

Taking assessment was not required because the rules do not limit the uses of private real property.

FISCAL NOTE
Requested by Legislative Council
03/10/2011

Bill/Resolution No.: SB 2060

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The estimated cost for 50 employees with an average salary of \$44,998 would be \$21.49 per hour. For the maximum hours (24) per year this would be \$515.76 per employee. For 50 employees the total estimated cost would be \$25,788. Rep. Grande asked us to prepare the fiscal note assuming 50 employees.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

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, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Laurie Sterioti Hammeren	Agency:	OMB - HRMS
Phone Number:	701-328-4735	Date Prepared:	03/11/2011