CHAPTER 54-44.3
CENTRAL PERSONNEL SYSTEM

54-44.3-01. Purpose of chapter.

The general purpose of this chapter is to create North Dakota human resource management services in order to establish a unified system of human resource management for the classified service of the state based upon merit principles and scientific methods, governing the position classification, pay administration, and transfer of its employees. All appointments and promotions to positions in the state classified service must be made without regard to sex, race, color, national origin, age, religious affiliations, or political opinions on the basis of merit and fitness.

54-44.3-01.1. Compensation relationships - Policy.

It is the policy of this state to establish equitable, nondiscriminatory compensation relationships among all positions and classes within the state's classification plan.

54-44.3-01.2. Compensation philosophy statement.

The compensation program for classified state employees must be designed to recruit, retain, and motivate a quality workforce for the purpose of providing efficient and effective services to the citizens of North Dakota. For purposes of this section, "compensation" is defined as base salary and related fringe benefits.

The compensation program must:

1. Provide a competitive employee compensation package based on job content evaluation, internal equity, and external competitiveness balanced by the state's fiscal conditions.
2. Be based on principles of fairness and equity.
3. Include a consistent compensation policy which allows for multiple pay structures to address varying occupational specialties.
4. Set the external competitiveness target for salary range midpoints at a competitive level of relevant labor markets. For purposes of this section, "relevant labor markets" is defined as the labor markets from which the state attracts employees in similar positions and the labor markets to which the state loses employees in similar positions.
5. Include a process for providing compensation adjustments that considers a combination of factors, including achievement of performance objectives or results, competency determinations, recognition of changes in job content, and acquisition and application of advanced skills or knowledge.
6. Provide funding for compensation adjustments based on the dollar amounts determined necessary to provide competitive compensation in accordance with the state's compensation philosophy. Funding for compensation adjustments may not be provided as a statewide percentage increase attributable to all employees nor as part of a statewide pool of funds designated for addressing equity issues.
7. Consider the needs of the state as an employer and the tax effect on North Dakota citizens.

The office of management and budget shall develop and consistently administer the compensation program for classified state employees and ensure that state agencies adhere to the components of the state's compensation philosophy. The office of management and budget shall regularly conduct compensation comparisons to ensure that the state's compensation levels are competitive with relevant labor markets.

The legislative assembly recognizes the importance of providing annual compensation adjustments to employees based on performance and equity to maintain the market competitiveness of the compensation system.

54-44.3-02. Definitions.

As used in this chapter, unless the context clearly requires otherwise:

1. "Appointing authority" means the authority to appoint to positions in the classified service and is reserved to officials and heads of departments and agencies within the government.
2. "Board" means the state personnel board.
3. "Director" means the director of North Dakota human resource management services.
4. "Division" means North Dakota human resource management services.
5. "Employee" means any person who occupies a position in the classified service.
6. "Officer" means an employee of the state government who is appointed and serves at the pleasure of an official, board, or commission.
7. "Official" means a member of the state government elected by popular vote.

54-44.3-03. State personnel board - Composition - Terms - Vacancies - Qualifications.

1. The state personnel board is composed of the director, who must be the chairman of the board; one member appointed by the governor; two members elected by employees classified under sections 54-44.3-19 and 54-44.3-20; and one member with a professional human resource background appointed by the governor.
2. The term of each member of the board, except the director, must be for six years. The director's term coincides with employment as director. Any permanent vacancy in office must be filled for the unexpired term in the same manner as the selection of the person vacating the office.
3. Each member of the board must be a resident of the state for at least sixty days and must be known to be in sympathy with the application of merit principles to public employment. No member of the board may have held a position in a political party within four years immediately preceding the member's appointment or election to the board, and those members of the board elected by classified employees must be full-time employees in good standing of the classified service.

54-44.3-04. Compensation and expenses of members of board.

Each member of the board is entitled to compensation at the rate of fifty dollars for each day employed in the official duties of the board and other expenses as provided for by law.

54-44.3-05. Election committee.

The governor, the secretary of state, and the attorney general shall constitute a three-member committee to develop rules and regulations for a secret ballot election among all employees eligible under sections 54-44.3-19 and 54-44.3-20 to carry out the election of the two members of the board elected by classified employees. All elections of members of the board are the responsibility of the director who will ensure that proper and due notification is given to all employees in sufficient time to enable potential candidates to initiate necessary petitions and conduct campaigns. Nominees for candidacy are required to submit petitions containing no less than two hundred names of employees in good standing classified under sections 54-44.3-19 and 54-44.3-20. All elections will be conducted through a secret ballot process.

54-44.3-06. Meetings.

The board shall organize annually at the first meeting of each fiscal year. It shall meet at least once a year and at such times and places as are specified by call of the chairman or any three members of the board. All meetings must be open to the public. Three members constitute a quorum for the transaction of business. Three favorable votes are necessary for the passage of any resolutions or taking of any official action by the board at any meeting.

54-44.3-07. Duties of board.

The primary responsibility of the board is to foster and assure a system of personnel administration in the classified service of state government. In carrying out this function, the board shall:

1. Adopt any rules and hold any hearings as are necessary to properly perform the duties, functions, and powers imposed on or vested in the board by law. The adoption of rules must be accomplished in accordance with chapter 28-32.
2. Hear, consider, and determine appeals by nonprobationary employees in the classified service related to position classifications and pay grade assignments.
3. Ensure that the director includes the activities of the board in the office of management and budget's biennial report.
4. Keep minutes and maintain records necessary to assure the equitable administration of this chapter.

54-44.3-08. Testimony - Call witnesses - Request production of papers.

The board, as a body, may invite and hear witnesses, and request the production of books and papers or any other physical evidence pertinent to any investigation or hearing authorized by this chapter. Witnesses who testify at the invitation of the board shall receive remuneration in the same amount and manner received by witnesses in North Dakota district courts.

54-44.3-09. Board secretariat.

The division shall serve as the secretariat to the board.

54-44.3-10. Action to secure compliance with chapter.

The board may maintain such action or proceeding at law or in equity as the board considers necessary or appropriate to secure compliance with this chapter and its rules and orders thereunder. The attorney general may assign an assistant attorney general as legal adviser and counsel to both the board and the division. The attorney general is responsible for representing the personnel system in all legal contexts.

54-44.3-11. North Dakota human resource management services - Director - Appointment - Removal.

North Dakota human resource management services is created within the office of management and budget under the supervision and control of a director who is responsible for the performance and exercise of the duties, functions, and powers imposed upon the division.

1. The director must be experienced in the field of human resource management and shall hold considerable knowledge of merit principles, goals, and their methods of operation.
2. The director of the office of management and budget shall appoint the director. The position of director is not a classified position and the director shall serve at the pleasure of the director of the office of management and budget.

54-44.3-12. Duties of director.

The director shall direct and supervise, with the approval of the director of the office of management and budget, all the administrative and technical activities of the division. In addition to the duties imposed elsewhere in this chapter, the director shall:

1. Establish general policies, rules, and regulations, subject to the approval of the board, which are binding on the agencies affected, and which apply to the employees in the classified service. These rules must provide for:
    a. Establishing and maintaining a classification plan.
    b. Establishing and maintaining a compensation plan.
    c. Promoting a consistent application of personnel policies.
    d. Enhancing greater uniformity in matters relating to probationary periods, hours of work, leaves of absence, separations, transfers, disciplinary actions, grievance procedures, and performance management.
    e. Ensuring fair treatment and compliance with equal employment opportunity and nondiscrimination laws.
2. Establish and maintain a roster of all employees in the state classified service in which there must be set forth, as to each employee, the class title of the position occupied,

the salary or pay, change in class title, and any other personnel data that the division deems necessary.

3. Select for appointment under this chapter such employees of the division and such experts and special assistants as are necessary to carry out effectively the provisions of this chapter. Salaries and positions of personnel in the division must conform to the classification and pay plan provided by this chapter.
4. Assist the employee-appointing authorities, in accordance with the provisions of this chapter and the rules adopted thereunder, in the preparation and administration of appropriate selection procedures.
5. Encourage and assist in the development of personnel administration within the various departments and agencies of the state.
6. Cooperate with employee-appointing authorities and other supervisory officers in the conduct of employee training programs.
7. Develop procedures that, notwithstanding any other law, must be followed by all state agencies and institutions for employees in the state classified service, to ensure that all salaries are paid in a manner consistent with the state's compensation, classification, and salary administration policies.
8. Consult with state agencies and institutions in the development of salary administration procedures for employees in the state classified service.
9. Recognize knowledge, skills, complexity, accountability, and working condition hazards as compensable factors of the state's classification plan, required in the performance of work for all positions in the state classified service.
10. Develop guidelines for allowing exceptions to the rules of the classification and compensation plans for use when the market salaries of specific positions are not consistent with the state's compensation policy.
11. Conduct in-state and out-of-state labor market surveys that are representative of the state's classified service occupations to enable the state to position itself accurately against the market.
12. Communicate classification and compensation policies to the managers and employees in the state-classified service by providing written information on the state's classification and compensation procedures.
13. Adopt rules, subject to the approval of the board, to ensure compliance with and resolve compliance issues relating to agencies required by state or federal law or rule to be subject to a merit personnel system.

54-44.3-12.1. Revisions to compensation plan.

Revisions to the compensation plan may only be made on July first, following the close of a regular legislative session, except that new classifications may be added to the compensation plan during a biennium when deemed necessary by the director. Revisions to the compensation plan for county employees covered by the plan become effective on January first of the first full calendar year following the revision or on July first following the close of a regular legislative session, based on official action by the board of county commissioners. Revisions to the compensation plan may only be made to the extent the legislative assembly appropriates funds to implement such plans.

54-44.3-12.2. Employee complaints - Cooperation in development and implementation of basic agency grievance procedures and a statewide appeal mechanism - Appeals.

It is the intent of the state of North Dakota to assure fair and equitable treatment and promote harmony between and among all classified employees by requiring affected agencies to adopt grievance procedures and through the creation of a statewide appeals mechanism with primary jurisdiction to entertain and resolve classified employee appeals. It is the policy of this state to resolve bona fide employee complaints as quickly as possible. The division shall cooperate with and assist the various departments, agencies, and institutions of the state in the development and implementation of basic agency grievance procedures and a statewide appeal mechanism. The division shall certify appeals from nonprobationary employees in the classified service which are related to discrimination, merit system qualification, reprisals, reduction in

force, forced relocation, demotion with loss of pay, suspension without pay, and dismissal, and from applicants for positions in the classified service and probationary employees in the classified service which are related to discrimination or reprisal. Upon receipt of an appeal, the division shall submit a written request to the director of the office of administrative hearings to designate an administrative law judge for the division to conduct the hearing and related proceedings, including receiving evidence and preparing findings of fact, conclusions of law, and issuing a final decision. The moving party in the initial action bears the burden of proof in the appeal. An appeal to the district court from the determination of the administrative law judge must be filed according to chapter 28-32, including proper service upon the division, but neither the division nor the office of administrative hearings may be named as a party to the appeal under chapter 28-32 unless an employee of one of those two agencies is involved in the grievance.

54-44.3-13. Records and information to be furnished.

All departments and agencies covered by the personnel system shall furnish any reasonably necessary, nonprivileged records and information to the division which the division requests, except records made confidential by statute.

54-44.3-14. Records public.

The records of the division and the board, except such records as the statutes may require to be held confidential, are public records and must be open to public inspection, subject to regulations as to the time and manner of inspection which may be prescribed by the division or board.

54-44.3-14.1. Mediation - Open records exemption - Retaliation prohibition.

Records of the division relating to mediation services provided by the division are exempt from section 44-04-18. An employee may not be discharged, disciplined, or penalized concerning the employee's compensation, conditions, location, or other privileges of employment because of the employee's request for or participation in the mediation services provided by the division.

54-44.3-15. Payment disapproved by director.

The director may disapprove the payment for personal service for any person holding a position in the classified service, except a person appointed to a position for the duration of an emergency, if the director determines that the person named therein has not been classified and is not imminently to receive classification in accordance with the provisions of this chapter and the rules and orders thereunder or that the rate of pay is not authorized.

54-44.3-16. Agency personnel officers.

The elected or appointed chief officer of each agency or department of the service shall designate a staff employee to serve as personnel officer for that division of the service to assist the chief officer in that person's duty to administer personnel responsibilities specified in this chapter and by the personnel rules. The designated personnel officer of each agency or department shall certify to the agency elected or appointed chief officer that each person holding a position in the classified service authorized for payment through payroll has been classified in accordance with the provisions of this chapter and the rules and orders under this chapter and that the rate of pay is within established current salary ranges or excepted from the ranges by written authorization by the director.

54-44.3-17. Grant-in-aid programs.

Whenever the provisions of any law, rule, order, or regulation of the United States or of any federal agency or authority providing or administering federal funds for use in North Dakota require civil service or merit standards or classifications other than those required by the provisions of this chapter and rules and regulations promulgated under this chapter, then the provisions of such law, rule, order, or regulation must prevail and must govern the employees

affected thereby. The division shall provide those services necessary to comply with merit standards for federal grant-in-aid agencies.

54-44.3-18. Authority to provide services to cities and political subdivisions.

The division may enter into agreement with any city or political subdivision of the state to furnish services and facilities of the division to the city or political subdivision in the administration of its personnel on merit principles. Any such agreement must provide for the reimbursement to the state of the cost of the services and facilities furnished, such reimbursements to be deposited to the credit of the general fund. All cities and political subdivisions of the state may enter into such agreements.

54-44.3-19. Board authority to provide service to cities, political subdivisions, and other entities.

The board may enter into agreement with any city or political subdivision of this state to furnish any of its services and facilities, other than factfinding or conciliation services, and the agreement must provide for reimbursement to the state of the cost of the services and facilities furnished. All cities and political subdivisions of this state may enter into the agreements. The board and division shall provide coverage to other agencies or political subdivisions as may by federal laws or regulations be required to be subject to a personnel system in order to obtain federal grants-in-aid. The board and division shall provide coverage to political subdivisions upon the request of the subdivisions. Other agencies, departments, or divisions or positions may be placed under the complete or limited board and division personnel plan in the manner and to the extent the legislative assembly shall by law direct.

54-44.3-20. Categories of positions in the state service.

All positions in the state service are included in the classified service except:

1. Each official elected by popular vote and each person appointed to fill vacancies in an elective office, one principal assistant, and one private secretary.
2. Members of boards and commissions required by law.
3. Administrative heads of departments required by law, other than the superintendent of North Dakota vision services - school for the blind, the superintendent of the school for the deaf, and the state librarian.
4. Officers and employees of the legislative branch of government.
5. Members of the judicial branch of government of the state of North Dakota and their employees and jurors.
6. Persons temporarily employed in a professional or scientific capacity as consultants or to conduct a temporary and special inquiry, investigation, or examination for the legislative branch of government or a department of the state government.
7. Positions deemed to be inappropriate to the classified service due to the special nature of the position as determined by the division and approved by the board.
8. Employees of the institutions of higher education under the control of the state board of higher education.
9. Members and employees of occupational and professional boards.
10. Officers and employees of the North Dakota mill and elevator association.
11. The director of the committee on employment of people with disabilities of the department of human services.
12. Positions referred to under law as serving at the pleasure of or at the will of the appointing authority.
13. Licensed teachers engaged in teaching at the North Dakota youth correctional center, North Dakota vision services - school for the blind, and the school for the deaf.
14. Officers of workforce safety and insurance.
15. Officers and employees of the department of commerce.
16. Attorneys employed by the insurance commissioner.
17. Engineers, engineering technicians, and geologists employed by the director of mineral resources.

54-44.3-21. Employment only under approved class title.

No person may be appointed to or employed in a position in the classified service under a class title which has not been approved by the director as appropriate to the duties to be performed.

54-44.3-22. Limitations on inquiries in application or test - Discrimination prohibited.

No question in any form of application or in any test may be so framed as to elicit any information concerning the political or religious opinions or affiliations of any applicant, nor may any inquiry be made concerning such opinions or affiliations. All disclosures thereof must be discountenanced. No discrimination may be exercised, threatened, or promised by any person in the employ of any division of the service or of the personnel division against or in favor of any applicant, eligible, or employee because of sex, race, color, national origin, age, or religious or political opinions or affiliations.

54-44.3-23. Veterans' preferences.

Veterans' preferences must be in accordance with chapter 37-19.1.

54-44.3-24. Application of chapter to existing employees.

All employees in positions which are in the classified service as defined in this chapter and who, prior to July 1, 1975, have served continuously for a period of six months or more, or as regular seasonal employees have satisfactorily served in such positions through one seasonal service period, shall be certified to such positions, and grades and classifications, under the personnel system, and shall not be subject to examination or trial service periods of employment.

54-44.3-25. Prohibited conduct.

1. No person may make any false statement, certificate, mark, rating, or report with regard to any test, certification, or appointment made under this chapter, or in any manner commit or attempt to commit any fraud preventing the impartial execution of this chapter and the rules.
2. No person may, directly or indirectly, give, render, pay, offer, solicit, or accept any money, service, or other valuable consideration for or on account of any appointment, proposed appointment, promotion, or proposed promotion to, or any advantage in, a position in the classified service.
3. No employee of the division, examiner, or other person may defeat, deceive, or obstruct any person in that person's right to examination, eligibility, certification, or appointment under this chapter, or furnish to any person any special or confidential information for the purpose of affecting the rules or prospects of any person with respect to employment in the classified service.

54-44.3-26. Penalty.

Any person who intentionally violates any provision of this chapter is guilty of an infraction and, upon conviction thereof, is, for a period of one year, ineligible for appointment or employment in the classified service.

54-44.3-27. Transfer of records of merit system council.

All personnel and records of the North Dakota merit system council are hereby transferred to the division created by this chapter.

54-44.3-28. College student cooperative education or intern program - Eligibility.

The director shall establish and administer within the executive and legislative branches of state government a program through which college students may receive stipends and academic credit for participating in a cooperative education or internship program. The program must be open to any student enrolled in a public or private educational institution in this state which has been accredited by an agency recognized by the United States department of

education. The director shall establish classifications and develop uniform application procedures for the cooperative education or internship program.

54-44.3-29. Acceptance of federal funds.

The director is authorized to accept federal funds through grant-aided agencies or directly for the purpose of operating or ensuring operation of a merit personnel system.

54-44.3-30. Agencies subject to merit system.

All personnel employed by the department of human services, the regional offices of that department, job service North Dakota, North Dakota human resource management services, the state department of health, and other agencies or political subdivisions as may by federal law or rule be required to be subject to a merit system in order to obtain federal grants-in-aid are covered by the merit system provided in this chapter. Merit system coverage must also be provided to personnel employed as purchasing agents or buyers in the purchasing division of the office of management and budget. Other agencies, departments, or divisions and positions must be placed under a merit system in the manner and to the extent required by law.

54-44.3-31. 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.

54-44.3-32. 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.