

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE SANDRA S. GARDEBRING
COMMISSIONER OF HUMAN SERVICES

BEFORE SISTER MARY MADONNA ASHTON
COMMISSIONER OF HEALTH

BEFORE RUDY PERPICH
GOVERNOR

IN THE MATTER OF THE PROPOSED ADOPTION OF
RULES OF THE MINNESOTA MERIT SYSTEM GOVERNING STATEMENT OF NEED
SALARY ADJUSTMENTS AND THE COMPENSATION PLAN AND REASONABLENESS

I. The following considerations constitute the regulatory authority upon which the above-cited rule amendments are based:

1. Federal law requires that in order for Minnesota to be eligible to receive grant-in-aid funds for its various human services, public health and public safety programs, it must establish and maintain a merit system for personnel administration. See, e.g. 42 USC Ch. ^{1/}62.

1/ Also see sections of the United States Code and Code of Federal regulations cited herein where the following programs have statutory or regulatory requirement for the establishment and maintenance of personnel standards on a merit basis:

- Aid to Families With Dependent Children - "AFDC" [42 USC sec. 602 (a) (5)]
- Food Stamps [7 USC sec. 2020 (e) (B)]
- Medical Assistance - "MA" [42 USC sec. 1396 (a) (4) (A)]
- Aid to the Blind [42 USC sec. 1202 (a) (5) (A)]
- Aid to the Permanently and Totally Disabled [42 USC sec. 1352 (a) (5) (A)]
- Aid to the Aged, Blind or Disabled [42 USC sec. 1382 (a) (5) (A)]
- State and Community Programs on Aging [42 USC sec. 3027 (a) (4)]
- Adoption Assistance and Foster Care [42 USC 671 (a) (5)]
- Old-Age Assistance [42 USC 302 (a) (5) (A)]
- National Health Planning and Resources Development, Public Health, Service Act [42 USC 300m-1 (b) (4) (B)]
- Child Welfare Services [45 CFR 1392.49 (c)]
- Emergency Management Assistance [44 CFR 302.5]

2. Pursuant to such congressional action the Office of Personnel Management, acting under authority transferred to the United States Civil Service Commission from the Departments of Health, Education and Welfare, Labor, and Agriculture by the Intergovernmental Personnel Act (IPA) of 1970 and subsequently transferred on January 1, 1979, to the Office of Personnel Management by the Reorganization Plan Number Two of 1978, promulgated the Standards for a Merit System of Personnel Administration 48 Fed. Reg. 9209-9212 (March 4, 1983), codified at 5 CFR Part 900, Subpart F, which imposes on the State of Minnesota general requirements for a merit system of personnel administration in the administration of the federal grant-in-aid programs. (See, Footnote 1 Supra.)

3. Under the aforementioned grant-in-aid programs the State of Minnesota, through its appropriate agencies, is the grantee of federal programs and administrative funds and, accordingly, the State is under an affirmative obligation to insure that such monies are properly and efficiently expended in compliance with the applicable federal standards. Those standards require that in order for the agencies under the Minnesota Merit System to be eligible to receive federal grant-in-aid funds the Minnesota Merit System rules must specifically include, among other things, an active recruitment, selection and appointment program, current classification and compensation plans, training, retention on the basis of performance, and fair nondiscriminatory treatment of applicants and employees with due regard to their privacy and constitutional rights (48 Fed. Reg. 9211 (March 4, 1983), codified at 5 CFR sec. 900.603).

4. In conformance with 5 CFR Part 900, Subpart F, the Minnesota Legislature enacted Minn Stat. sec. 12.22 Subd. 3, sec. 144.071 and sec. 256.012^{2/}, which respectively authorize the Governor, the Commissioner of Health, and the Commissioner of Human Services to adopt necessary methods of personnel administration for implementing merit systems within their individual agencies. Collectively, the resulting programs are referred to as the "Minnesota Merit System".

5. Pursuant to such statutory authority those state agencies have adopted comprehensive administrative rules which regulate administration of the Minnesota Merit System.^{3/}

6. The Minnesota Supreme Court has upheld the Authority of the Commissioner of Human Services and by implication that of the Commissioner of Health and the Governor to promulgate personnel rules and regulations. The Court quashed a writ of mandamus brought by the Hennepin County Welfare Board against the county auditor in attempting to force payment of salaries in excess of the maximum rates established by the Director of Social Welfare.^{4/} State ex rel. Hennepin County Welfare Board and another v. Robert F. Fitzsimmons, et. al., 239 Minn. 407, 420, 58 N.W. 2d 882, (1953). The court stated:

.....It is clear that the Director of Social Welfare was clearly right in adopting and promulgating a merit plan which includes initial, intervening, and maximum rates of pay for each class of position of the county welfare board system included within the plan and that plan so adopted was binding upon all county welfare boards within the stateIn our opinion the federal and state acts, properly construed, provide that the Federal Security Administrator as well as the Director of Social Welfare shall have authority to adopt rules and regulations with respect to the selection, tenure of office and compensation of personnel within initial, intervening and maximum rates of pay but shall have no authority or voice in the selection of any particular person for a position in the state welfare program nor the determination of his tenure of office and individual compensation.

^{2/} See also Minn. Stat. secs. 393.07 (5), 256.01 (4), 393.07 (3) and 256.011.

^{3/} Minnesota Rules parts 9575.0010 - 9575.1580, parts 7520.0100 - 7520.1200, and parts 4670.0100 - 4670.4300.

^{4/} "Director of Social Welfare" was the former title of the Commissioner of Human Services.

7. The above cited proposed rule amendments are promulgated in accordance with the provisions of applicable Minnesota statutes and expressly guarantee the rights of public employers and Minnesota Merit System employees in conformance with the terms of the state's Public Employment Labor Relations Act (Minn. Stat. secs. 179.61 - 179.77).

II. The justification establishing the reasonableness of the specific substantive provisions of the proposed rules, all of which concern the Minnesota Merit System operation, is as follows:

Compensation Plan

Minnesota Rules, parts 9575.1500, 4670.4200-4670.4240 and 7520.1000-7520.1100.

Amendments proposed to these parts specifically recommend adjustments to the 1988 minimum and maximum salaries for all Merit System classes of positions covered by the Human Services, Health and Public Safety Merit System rules to be effective January 1, 1989. Amendments to these rules are necessary to provide Merit System agencies with salary ranges for all classes that are competitive in terms of salary rates being offered for comparable work elsewhere in the public and private sector and also to comply with the provisions of Minn. Stat. Sections 471.991-471.999 requiring the establishment of equitable compensation relationships between classes of positions based on their comparable work value as determined by a formal job evaluation system.

Merit System rules require that Merit System compensation plans be adjusted annually to reflect changes in the level of salary rates in business and government for similar and competing types of employment and to achieve equitable compensation relationships between classes of positions based on their comparable work value. The Merit System reviewed current compensation plans from the state of Minnesota,

city of St. Paul and the counties of Hennepin, Ramsey, St. Louis, Anoka, Blue Earth, Dakota, Itasca, Olmsted, Scott and Washington and considered them in proposing amendments affecting the minimum and maximum salaries for Merit System classifications.

Proposed amendments to parts 9575.1500, 4670.4200-4670.4240 and 7520.1000-7520.1100 adjust the minimum and maximum salaries for many, but not all, Merit System classes by 3%, the same percentage adjustment that is being recommended as a general salary adjustment for employees in all Merit System classifications. This is reasonable in terms of the practice in many, if not most, other public jurisdictions of adjusting salary ranges by the same percentage amount as the general salary adjustment granted to all employees in the jurisdiction. These amendments are necessary in order to provide competitive salary adjustments in 1989 for employees covered by the Human Services, Health and Emergency Services Merit System rules. They are also reasonable when compared to 1988-89 settlements in other public jurisdictions to which the Merit System has traditionally compared its salaries as well as to other measures of general wage increases in the economy.

The State of Minnesota granted a general salary adjustment of 3% effective July 1, 1988, to some 17,819 state employees represented by AFSCME Council 6. In addition, the state granted a general salary adjustment of 3% to approximately 5,412 professional employees represented by MAPE and another 2,541 employees represented by the Middle Management Association in July 1988.

Hennepin County granted a general salary adjustment of 3% to all contract and non-contract employees effective January 1, 1988 and will be granting a general salary adjustment of 3.25% to all contract employees to be effective January 1, 1989. Ramsey County granted a general salary adjustment of 3% to its contract and non-contract employees effective January 1, 1988, but has not settled on an adjustment for 1989. Dakota County granted a general salary adjustment of 4% to all contract and non-contract employees effective January 1, 1988, and has not settled on an adjustment for 1989 as yet. Washington County granted a general salary adjustment of 3% to all contract and non-contract employees effective January 1, 1988, and also has not settled on an adjustment for 1989. Anoka County granted all contract and non-contract employees a 2.5% general salary adjustment effective January 1, 1988 plus a 3% money pool to be used to grant salary increases to individual employees. For 1989, Anoka County has agreed to a 3.5% general salary adjustment for one group of contract employees. Scott County granted a 3% general salary adjustment for all contract and non-contract employees effective January 1, 1988, and will be granting a 3% general salary adjustment to all contract employees effective January 1, 1989. Blue Earth County granted a 3% general salary adjustment to all contract and non-contract employees effective January 1, 1988, and has agreed to a 3% general salary adjustment for 3 out of 5 groups of contract employees to be effective January 1, 1989. Olmsted County provided all employees with a 0-6% performance-based increase pool for 1988 which resulted in individual salary increases for employees of 3.5%-4.5%. Olmsted County has not decided on salary adjustments for 1989. Itasca County granted a general salary adjustment of 2.5% to all contract and non-contract employees effective January 1, 1988 and has agreed to a similar increase for contract and non-contract employees to be effective January 1, 1989. In St. Louis County, management has

offered general salary adjustments to contract employees of 2% effective January 1, 1988 and 4% effective January 1, 1989, but no final vote has been taken on the offer as yet. The City of St. Paul granted, effective January 1, 1988, adjustments of 2.85% to its professional employees and 2% plus a 1% lump sum payment to its clerical and technical employees. They have also agreed to identical adjustments to be effective January 1, 1989.

The Department of Labor Bureau of Labor Statistics has calculated the increase in the consumer price index for all urban consumers in the North Central Region (which includes Minnesota) to be 3.5% for the period June 1987 to June 1988. The Bureau of Labor Statistics also calculates an Employment Cost Index which, among other things, measures the increase in wages and salaries for various groups of employees. On a nationwide basis, wages and salaries for state and local government workers increased 4.4% between June 1987 and June 1988.

Given the magnitude of general salary adjustments granted to contract and non-contract employees by other public jurisdictions for 1988 and 1989 as well as other measures of salary progression and increases in consumer costs as indicated above, it is reasonable to recommend that salaries of Merit System employees not covered by the terms and conditions of a collective bargaining agreement be increased by 3% effective January 1, 1989, or on the beginning date of the first payroll period following January 1, 1989, for those agencies on a biweekly or four-week payroll period.

It should be emphasized that the recommended general salary adjustment of 3% is simply that, a recommendation. It lacks the binding effect of a negotiated collective bargaining agreement. Agencies, even those where there is no collective bargaining agreement, are not required to adopt the Merit System recommended general salary adjustment but have the flexibility, under the Merit System rules, to adopt a different salary adjustment (or no adjustment at all) for agency employees. Under whatever salary adjustment is finally adopted by an agency, the only salary increases that agencies are required to make are those necessary to bring the salaries of individual employees up to the new minimum salary rate for their classification on the Merit System compensation plan adopted by the agency for that classification.

Another important point to mention is that, under Merit System rules, Merit System compensation plans do not apply to employees in a formally recognized bargaining unit. There are 39 Merit System agencies where most of the agency employees are covered by a collective bargaining agreement and employee compensation is the product of negotiation between the appointing authority and the exclusive representative. In these agencies, the only employees subject to Merit System compensation plans are those in positions that are excluded from the bargaining unit by virtue of being supervisory or confidential in nature.

Some of the proposed amendments to 9575.1500, 4670.4200-4670.4240 and 7520.1000-7520.1100 do not propose a 3% adjustment to the minimum and maximum salaries for certain classes of positions. These amendments apply to classes of positions where a 3% adjustment is not appropriate because of a need to establish equitable compensation relationships between classes of positions based on their comparable work value or where labor market data does not support a 3% adjustment. Subsequent to passage of Minn. Stat. Sections 471.991-471.999, the Merit System conducted a formal job evaluation study and determined the comparable work value of all Merit System classes of positions. Classes with identical or similar comparable work values should have identical or similar salary ranges. The results of the study revealed a number of situations where classes of positions with similar comparable work values had quite disparate salary ranges. These situations represented compensation inequities and, in 1986, 1987 and 1988, the Merit System proposed a significant number of comparability adjustments to either equalize or reduce the differences between salary ranges for classes with similar comparable work values. It is necessary to continue this process in 1989 to attain the statutorily-mandated requirement to establish equitable compensation relationships between all classes of positions. Practically all of these varying adjustments are based on attaining the objective of having an internally consistent Merit System compensation plan with reasonable compensation relationships existing between classes of positions based on their comparable work value which is obviously consistent with the objective of the Local Government Pay Equity Act (Minn. Stat. Sections 471.991-471.999).

Minnesota Rules, part 9575.1500 includes the Department of Human Services Merit System compensation plan. The plan contains three separate salary schedules (designated as Plan A, B and C) for professional, support and clerical classes of positions and two separate salary schedules (designated as Plan A and B) for

maintenance and trades classes of positions. It is important this be noted since the proposed adjustments for some classes are not the same on all plans.

Adjustments proposed to minimum and maximum salaries for Human Services Merit System professional classifications are 3% with the following exceptions:

1. Collections Services Supervisor II, Community Health Services Supervisor, Methods and Procedures Analyst, Psychologist III, Staff Development Specialist, Systems Programmer Analyst and Work Experience and Training Specialist minimum and maximum salaries are adjusted by 1.5% on all salary schedules.
2. Employment Guidance Counselor, Human Services Supervisor II and Welfare Director I minimum and maximum salaries are adjusted 5% on all salary schedules.
3. Assistant Human Services Director, Assistant Welfare Director, Director of Business Management II, Director of Financial Assistance, Director of Planning, Director of Social Services, Human Services Director III, Welfare Director II, Welfare Director III and Welfare Director IV minimum salaries are adjusted 3% and maximum salaries are adjusted 7% on all salary schedules.
4. Public Health Nurse and Registered Nurse minimum and maximum salaries are adjusted 7% on all salary schedules.
5. Director of Business Management I minimum and maximum salaries are adjusted approximately 10% on all salary schedules.

6. Adult Day Care Center Supervisor minimum salaries are reduced by 21% and maximum salaries are reduced by 16% on all salary schedules.

In the case of the Adult Day Care Center Supervisor classification, the county agency using that class made substantial changes in the duties and responsibilities assigned to the position at a time when it was vacant. The county then requested the Merit System to again review the position to determine its comparable work value in light of those changes. In the case of the Director of Business Management I, the agency with the position added some significant responsibilities to it and also requested the Merit System to review and redetermine the comparable work value of the position.

Adjustments proposed to minimum and maximum salaries for Human Services Merit System support classifications are 3% with the following exceptions:

1. Child Support Officer I, Collections Officer, Collections Services Supervisor I, Computer Operations Specialist and Welfare Fraud Investigator minimum and maximum salaries are adjusted by 1.5% on all salary schedules.
2. Family Service Aide I, Family Service Aide II, Family Service/Home Health Aide, Home Health Aide and Senior Citizen's Aide minimum and maximum salaries are adjusted 5% on all salary schedules.
3. Coordinator of Aging minimum and maximum salaries are adjusted by 5% on the A plan. On the B and C plans, minimum salaries for this class are adjusted 10% and maximum salaries are adjusted 5%.
4. Community Service Aide and Public Health Aide minimum salaries are adjusted 7% and maximum salaries are adjusted 3% on the A and B plans.

Adjustments proposed to minimum and maximum salaries for Human Services Merit System clerical classifications are 3% with the following exception:

1. Clerk Typist III minimum and maximum salaries are adjusted 5% on the A plan only.

Adjustments proposed to minimum and maximum salaries for Human Services Merit System maintenance and trades classifications are 3% with the following exception:

1. Auto Driver minimum and maximum salaries are adjusted 1.5% on the B plan only.

Minnesota Rules, parts 4670.4200-4670.4240 includes the Department of Health Merit System compensation plan. It also contains three separate salary schedules (designated as Plan A, B and C) for professional, support and clerical classes of positions and two separate salary schedules (designated as Plan A and B) for building maintenance classes of positions. As with proposed amendments to the Human Services Merit System compensation plan, proposed amendments for certain classes are not the same on all plans.

Adjustments proposed to minimum and maximum salaries for Health Merit System professional classes are 3% with the following exception:

1. Public Health Nurse and Registered Nurse minimum and maximum salaries are adjusted 7% on all salary schedules.

Adjustments proposed to minimum and maximum salaries for Health Merit System support classifications are 3% with the following exceptions:

1. Home Health Aide minimum and maximum salaries are adjusted 5% on all salary schedules.
2. Public Health Aide minimum salaries are adjusted 7% and maximum salaries are adjusted 3% on the A and B plans.

Adjustments proposed to minimum and maximum salaries for Health Merit System clerical classifications are 3% with the following exception:

1. Clerk Typist III minimum and maximum salaries are adjusted 5% on the A plan only.

Minnesota Rules, parts 7520.1000-7520.1100 includes the Emergency Services Merit System compensation plan. It contains three separate salary schedules (designated as Plan A, B and C) for professional and clerical classes of positions.

Adjustments proposed to minimum and maximum salaries for Emergency Services Merit System professional classifications are 3% for all classes. Adjustments proposed to minimum and maximum salaries for Emergency Services Merit System clerical classifications are 3% with the following exception:

1. Clerk Typist III minimum and maximum salaries are adjusted 5% on the A plan only.

An amendment is proposed to Minnesota Rules, part 9575.1500 providing a class title and minimum and maximum salaries for the following new classes established in response to a legitimate need for such new classifications in one or more Merit System agencies: Contract Services Representative, Family Based Services Provider, Family Based Services Supervisor, Maintenance Worker, Monitoring and Review Specialist, Registered Dietitian, Social Services Supervisor III and Support

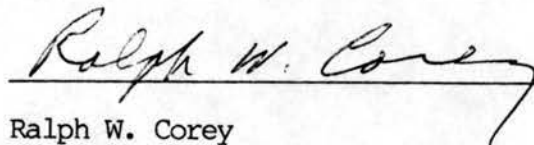
Services Supervisor. This amendment is both necessary and reasonable to ensure that the Merit System compensation plan reflects appropriate class titles and salary ranges that are current.

Amendments are proposed to Minnesota Rules, parts 9575.1500 and 4670.4210 deleting the class titles and minimum and maximum salaries for the following classes that have been abolished because there are no employees in them and the employing agencies no longer intend to use the classes: Fiscal Manager, Medical Assistance Prepayment Project Manager, Public Health Nurse (Team Leader) and Student Social Worker (SWEP). These amendments are necessary and reasonable to ensure that Merit System salary schedules properly reflect current class titles that are reflective of functions actually being performed by Merit System employees.

Finally, an amendment is proposed to Minnesota Rules, part 9575.1500 retitling and re-alphabetizing all Merit System Social Worker classes to "County Agency" Social Worker classes. This amendment is not only reasonable but highly desirable in light of language contained in Minn. Stat. Section 148B.27 Subd. 2 suggesting use of the title "county agency social worker" for social workers employed in a county.

It is anticipated that there will be no expert witnesses called to testify on behalf of the agency.

The foregoing authorities and comments are submitted in justification of final adoption of the above-cited proposed rule amendments.



Ralph W. Corey

Merit System Supervisor

Dated: *Sept. 26, 1988*

the taxing powers of the State of Minnesota or any political subdivision thereof to pay the Bonds or the interest thereon nor to enforce payment against any property of said State or said political subdivision.

A copy of the Applications to the Board for approval of the Project, together with all attachments and exhibits thereto and a copy of the Board's resolution accepting the Applications and accepting the Project is available for public inspection at the offices of the Board at 900 American Center Building, 150 East Kellogg Boulevard, Saint Paul, Minnesota from the date of this notice to the date of the public hearing hereinabove identified, during normal business hours.

Dated: 1 July 1988

BY ORDER OF THE MEMBERS OF THE
MINNESOTA AGRICULTURAL AND
ECONOMIC DEVELOPMENT BOARD

Dave Mocol, Executive Director,
Minnesota Agricultural and
Economic Development Board

Departments of Human Services, Health and Public Safety

Notice of Intent to Solicit Outside Information or Opinions Regarding Proposed Merit System Rules Governing Compensation Plans

NOTICE IS HEREBY GIVEN that the State Department of Human Services, Health, and Public Safety are seeking information or opinions from sources outside the agencies in preparing to propose amendments to the rules governing the Minnesota Merit System's compensation plans. The amendments to the rules are authorized by *Minnesota Statutes*, sections 256.012, 144.071 and 12.22, subd. 3, which permits the Merit System to establish compensation plans for non-union employees in some local and county welfare, human services, health and emergency management agencies. The amendments would provide for salary adjustments for incumbents and adjustments to the various salary ranges for purposes of continued implementation of comparable worth.

The State Departments of Human Services, Health and Public Safety request information and opinions concerning the subject matter of the rules. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements of information and comment should be addressed to:

Ralph W. Corey
Minnesota Merit System
Human Services Building
444 Lafayette Road
St. Paul, Minnesota 55155-3822

Oral statements will be received during regular business hours over the telephone by Ralph Corey at (612) 296-3996 and in person at the above address.

All statements of information and opinions shall be accepted until further notice is published in the *State Register* or the Notice of Hearing or Notice of Intent to Adopt Rules Without a Hearing is published in the *State Register*. Any written material received by the Minnesota Merit System shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Dated: 18 July 1988

Ralph W. Corey
Merit System Supervisor

Minnesota Job Skills Partnership

Notice of Cancellation of Meeting

The August 15, 1988 meeting of the Minnesota Job Skills Partnership Board has been canceled.

The Minnesota Job Skills Partnership Board solicits grant proposals from educational and other non-profit organizations for training programs designed for specific businesses. Please contact the Partnership at 612/296-0388 for details regarding grant applications. Please Note: Grantees must provide a Certificate of Compliance from the State Commissioner of Human Rights with the submission of proposals to the MJSP Board.