

# THE STANDARD



ND OFFICE OF MANAGEMENT AND BUDGET

## DIRECTORS

Pam Sharp  
 Director of OMB  
 701-328-4606  
[www.nd.gov/omb/](http://www.nd.gov/omb/)

Sherry Neas, Director  
 Central Services Division  
 701-328-1726  
[www.nd.gov/csd/](http://www.nd.gov/csd/)

John Boyle, Director  
 Facility Management  
 Division  
 701-328-2471  
[www.nd.gov/fac/](http://www.nd.gov/fac/)

Sheila Peterson, Director  
 Fiscal Management Division  
 701-328-2680  
[www.nd.gov/fiscal/](http://www.nd.gov/fiscal/)

Ken Purdy, Director  
 Human Resource  
 Management Division  
 701-328-3293  
[www.nd.gov/hrms/](http://www.nd.gov/hrms/)

Tag Anderson, Director  
 Risk Management Division  
 701-328-7584  
[www.nd.gov/risk/](http://www.nd.gov/risk/)

## HUMAN RESOURCE MANAGEMENT SERVICES

### SICK LEAVE

Several bills (HB1244, HB1387, HB1403) combined to make changes to use of sick leave by state employees. The changes will become effective August 1, 2015.

Specific provisions include:

- Employees may use up to 6 weeks of sick leave in the first 6 months for birth or placement for adoption of a child.
- Employees may use up to 12 weeks of sick leave in a 12 month period to care for a child, spouse, or parent with a serious health condition.
- Employees may use sick leave to obtain services or assist immediate family members to obtain services relating to domestic violence, sex offense, stalking, & terrorizing situations.
  - Immediate family member includes spouse, parent, child, or sibling.
  - Supervisors may limit use to 40 hrs in a calendar year.

### EMPLOYEE COMPENSATION

The final compensation package passed by the legislature provides that salary increases in both years of the biennium are to be in a range from 2% to 4% based on performance. The legislature included appropriations of 3% to fund the increases.

In addition, \$3,750,000 in general funds and \$740,000 in other funds were appropriated for Targeted Market Equity increases in a selected group of agencies. The Targeted Market Equity increases are intended to address several very serious compensation issues in those agencies. OMB and HRMS are completing the analysis and developing the guidelines for distribution of those funds to the affected agencies.

### STATE GOVERNMENT STUDENT INTERNSHIPS: A WIN-WIN!

The ND State Government Student Internship Program is an educational program integrated with practical experience. Both students and agencies benefit from this stipend internship program. Since July 1, 2009, HRMS has received \$200,000 in general fund authority each biennium for this program. HRMS has assisted a total of 20 state agencies in funding 109 internships; 18 of the interns have been able to transition into fulltime positions.

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During the 2013-15 biennium, HRMS received 62 requests for internship assistance and was able to provide funding assistance for 40 internships. Due to the increase in demand and the success of the ND State Government Student Internship Program, the funding has increased to \$250,000 for the 2015-17 biennium. This increase will allow HRMS to continue to assist in meeting the need for state government student internships. Requests are already coming in for funding for the new biennium!

# FACILITY MANAGEMENT

## NEW GOVERNOR'S RESIDENCE

The 64<sup>th</sup> Legislature approved SB 2304 providing up to \$5 million for the demolition of the current and the construction of a new governor's residence. The legislation provides for \$4 million to be appropriated out of the capitol building trust fund with \$1 million from private donations. Construction of the new building may not commence until \$500,000 in cash has been raised and deposited into the capitol building trust fund.

The Capitol Grounds Planning Commission discussed the request for qualification selection process and the tentative project schedule through the remainder of 2015. The Commission agreed the professional architect and consultants should be selected on or about July 15. The design team and selection committee should have at least three exterior and interior schematic designs to present at the publicly held December 1, 2015 Capitol Grounds Planning Commission meeting. Any legislator who attends this meeting will be reimbursed for their expenses.

# CENTRAL SERVICES DELTA

## DELTA AIRLINES DISCOUNT PROGRAM

The State of ND is participating in a discount program with Delta Airlines and you are eligible to receive a discount when booking business and personal travel. The initial discount for most classes of airfare is 2%; however, Delta will re-evaluate the overall State spend after six months and deeper discounts will be applied.

In order to receive the discount, you must access a special Delta link via PeopleSoft in order for them to recognize it is part of the State of ND discount program. If you access delta.com from your internet browser, you will NOT receive the discount.

Below are the steps to access the discount link:

1. Log in to [PeopleSoft](#)
2. Down in the bottom left-hand corner of the Employee Hub, under QuickLinks, you will see "Delta EDP Link"
3. Access the link and you can enter your Delta login or go straight to entering your trip details and click on "Find Flights"
4. Once the fares are displayed, you should see "EDP Negotiated Fare" below the price, which is the indicator that you are receiving the discount. You can then select the flight that best fits your need.

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If you have any questions related to the discount program or you receive an error message trying to access the link, refer to the Delta Program Overview document located on <https://apps.nd.gov/csd/spo/services/bidder/main.htm>. Click on List Contracts and then look for contract number 208. You can also contact Tricia Opp at 328-1721.

## SEE WHAT'S NEW AT SURPLUS PROPERTY!

If you haven't been out to Surplus Property lately, it's time! But if you don't have the time, see our online inventory at [www.nd.gov/surplus/property/](http://www.nd.gov/surplus/property/) and don't forget to "Like" us on Facebook for all the latest updates!

Surplus Property has been busy receiving Herman Miller pieces. *Please* take a picture of the finished product before it is disassembled. The pieces are very difficult to re-utilize when we do not know what it should look like. Such a shame to not put them back to use. And remember, when surplus from the Capitol, all property must be taken to the Capitol loading dock.

Did you know that you can create a Surplus Property Wish List? Let us do the looking for you! First, log in to Web Surplus, then search for the desired item and if no matches are found, click the "Add search to want list" button. When the item becomes available, you will be sent an email. So easy!

Surplus Property will be closed for annual inventory June 29 – July 3, 2015. We will have the usual Thursday pickup from the Capitol on July 3.

## CENTRAL SUPPLY NEWS

**End of Biennium Ordering** Central Supply delivers office supplies right to your door! Please place your end of biennium orders from Central Supply early. Central Supply will be closed for inventory on June 29 and 30. Thank you for your business!

**Online Ordering Discontinued.** The current blue screen Mainframe ordering system will be discontinued later this summer. We are implementing a new inventory system. You can place orders by completing an online fillable form. <http://www.nd.gov/eforms/Doc/sfn02567.pdf>

**Calendar Orders** It is time to order your 2016 calendars, planners, and refills! Orders are due June 12. If you need a calendar order form, please call Steve at 328-3346 or email: [infocensupply@nd.gov](mailto:infocensupply@nd.gov)

# RISK MANAGEMENT



## OCCUPATIONAL LICENSING BOARD ACTIONS SUBJECT TO CHALLENGE UNDER FEDERAL ANTI-TRUST LAWS

Like most states, North Dakota regulates many professional and occupational groups. For many of these groups, members of the regulated community are appointed to serve on boards that carry out the licensure and practice requirements established in statute. Although members of the regulated community bring expertise to the task of regulating their respective occupation or profession, they also economically compete with other members and even other occupational groups. This potential of having a personal economic interest in the activities of a regulatory board was paramount in a recent Supreme Court decision.

In *North Carolina Board of Dental Examiners v Federal Trade Commission*, handed down on February 25, 2015, the United States Supreme Court held that State licensing boards that are dominated by market participants do not automatically enjoy state immunity from actions brought under federal anti-trust laws. Although such boards

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are state agencies, where the board is dominated by market participants, the Supreme Court indicated, the actions of the agency would not automatically be considered sovereign actions of the State itself. Therefore, the actions of the agency could potentially be challenged under federal anti-trust laws.

Of course, state imposed licensure requirements naturally operate to restrain otherwise unfettered competition. But nothing in federal anti-trust law was designed to override state sovereignty and the States' traditional role of protecting its citizens through the exercise of its police powers. As such, the exercise of sovereign power such as through a legislative enactment is completely exempt from the operation of federal anti-trust laws as the enactment of law is quintessentially an exercise of sovereign power. However, the Supreme Court held that state agencies by virtue of their governmental character alone are not sovereign actors for purposes of anti-trust immunity. Rather, it is only when the State maintains full political accountability for the actions of the agency and the anticompetitive conduct it permits that the actions of the agency can be considered sovereign actions of the State itself.

Political accountability requires that any restraint be clearly expressed as state policy, such as contained in statutorily imposed licensure requirements, and the pursuit of that policy by market participant regulators must be actively supervised by the State. State supervision must include an actual review of the substance of the action not just the process or procedures that were followed. Supervision cannot come from market participants and must be more than a mere potential for further review. In addition, the supervision must include an ability to override or modify an action to ensure that the agency action is truly in furtherance of clearly articulated state policy.

The specific nature of the active supervision required will depend on the context of the action at issue. The Supreme Court explained that active supervision need not involve day-to-day involvement or micromanagement of the agency's every decision. Rather, the ultimate question is whether the State's review mechanisms provide a realistic assurance that a market dominated agency's anticompetitive actions are truly in furtherance of articulated state policy and not self-interest.

The full import of the *North Carolina Board of Dental Examiners v Federal Trade Commission* decision will depend on how lower courts apply the decision to challenges to occupational board actions and the different review and control structures states have in place for these types of administrative agencies. However, all North Dakota occupational boards should be cognizant of this decision, and carefully review their practices that have anticompetitive consequences to make sure they are clearly grounded in statute and administrative rule. Statutory and rule interpretations over which there is strong public disagreement or significant impacts on competition and consumer choice should be brought to the Legislature for clear articulation of state policy in statute. The Supreme Court decision in *North Carolina Board of Dental Examiners v Federal Trade Commission* is available on the Court web site: [www.supremecourt.gov/opinions/14pdf/13-534\\_19m2.pdf](http://www.supremecourt.gov/opinions/14pdf/13-534_19m2.pdf). Boards and board members should direct questions to assigned legal counsel and the Attorney General's Office.

# FISCAL MANAGEMENT

## PURCHASING CARD REBATE

The state's purchasing card program had over \$117,100,000 of total spend put on the card for 2014-15 contract year. The state received over \$1,877,000 in rebate with the General Fund receiving \$634,620 for the state agencies share. The rest of the rebate was allocated between our Colleges and Universities, 10 counties and 43 school districts.