A Review of the Exemption of the Mississippi Department of Child Protection Services from Mississippi State Personnel Board Oversight

PEER MISSISSIPPI

Joint Legislative Committee on Performance Evaluation and Expenditure Review

Issue Brief #670

June 14, 2022

PEER Committee

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The Mississippi Legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER Committee) by statute in 1973. A joint committee, the PEER Committee is composed of seven members of the House of Representatives appointed by the Speaker of the House and seven members of the Senate appointed by the Lieutenant Governor. Appointments are made for four-year terms, with one Senator and three at-large members appointed from each house. Committee officers are elected by the membership, with officers alternating annually between the two houses. All Committee actions by statute require a majority vote of four Representatives and four Senators voting in the affirmative.

Mississippi's constitution gives the Legislature broad power to conduct examinations and investigations. PEER is authorized by law to review any public entity, including contractors supported in whole or in part by public funds, and to address any issues that may require legislative action. PEER has statutory access to all state and local records and has subpoena power to compel testimony or the production of documents.

PEER provides a variety of services to the Legislature, including program evaluations, economy and efficiency reviews, financial audits, limited scope evaluations, fiscal notes, and other governmental research and assistance. The Committee identifies inefficiency or ineffectiveness or a failure to accomplish legislative objectives, and makes recommendations for redefinition, redirection, redistribution and/or restructuring of Mississippi government. As directed by and subject to the prior approval of the PEER Committee, the Committee's professional staff executes audit and evaluation projects obtaining information and developing options for consideration by the Committee. The PEER Committee releases reports to the Legislature, Governor, Lieutenant Governor, the agency examined, and the general public.

The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

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BACKGROUND

Mississippi State Personnel Board

In 1980, the Mississippi Legislature established a centralized personnel agency, the **Mississippi State Personnel Board** (MSPB), for the statewide coordination of public personnel administration.

In accordance with MISS. CODE ANN. Section 25-9-101 et seq. (1972), MSPB is a personnel agency responsible for maintaining a merit system, operating a classification and compensation system, tracking employee compensation expenditures, and providing for employee development, among other tasks.

MSPB exerts considerable control over state agency resources. State service positions are under the classification and selection controls of MSPB.

MSPB is charged by state law with the creation and maintenance of Mississippi's compensation plan, currently known as the **Colonel Guy Groff Variable Compensation Plan** (VCP), a set of policies and procedures created by MSPB to ensure that compensation of state service employees is done in accordance with state and federal laws. With input from state agencies, MSPB establishes the starting and ending salaries for job classes in state government and determines how much compensation agencies can give to state employees in those positions.

As a component of the state's VCP, MSPB is tasked with creating and maintaining a system of minimum qualifications for state service positions. These qualifications outline the lowest qualifications necessary in a candidate to complete the assigned duties of a specific employment position.

Mississippi Department of Child Protection Services

The **Mississippi Department of Child Protection Services** (MDCPS) is the entity responsible for the development, execution, and provision of Mississippi's child welfare services and for ensuring the safety, permanency, and well-being of the state's children and families.

In FY 2017, MDCPS was created by the Legislature and was provided a temporary, three-year exemption from the oversight of MSPB. The Legislature extended the exemption for FY 2020 but did not extend the exemption for FY 2021, thereby placing MDCPS under the oversight of MSPB effective July 1, 2020.

State agencies have expressed concerns that MSPB's centralized control limits their ability to dismiss employees who do not meet the expectations of their supervisors and impedes agency managers from rewarding the employees they count on to do the work of the agency. In 1988, the Mississippi Legislature began the practice of temporarily removing agencies from MSPB's purview on a case-by-case basis.

Purpose of Issue Brief

In PEER's December 2020 publication, *Issue Brief: Effect of Agencies Being Exempted from Mississippi State Personnel Board's Purview*, PEER reviewed the impact of legislation from the 2010 through 2020 Regular Sessions that granted four agencies temporary exemptions from MSPB oversight. The Committee authorized a second review to determine whether additional agencies had requested and received exemptions in FY 2021 or FY 2022, and the impacts of those exemptions. MSPB reported to PEER that no agency received a temporary legislative exemption from MSPB oversight in FY 2021 or FY 2022.

MDCPS has been operating under MSPB oversight for nearly two years. PEER compared the staffing actions of MDCPS during its exemption period (FY 2017 through FY 2020) and any impacts on MDCPS's staffing and/or budget during the period in which it was under MSPB's oversight beginning in FY 2021. In particular, PEER reviewed MDCPS's filled and unfilled PINs, staffing expenditures, salary increases, staff separations, and staff terminations.

2020 PEER Issue Brief Findings

In PEER's 2020 issue brief, PEER reviewed the impact that legislatively granted exemptions had on the following agencies:

- Mississippi Department of Marine Resources (MDMR);
- Mississippi Department of Education (MDE);
- Mississippi Department of Corrections (MDOC); and,
- Mississippi Department of Human Services (MDHS).

PEER determined that exemptions had no consistent effects across all agencies in the areas of overall staffing costs or separation and termination rates. However, in the three agencies that were exempt from the VCP (i.e., MDMR, MDE, and MDOC), PEER determined that salary increases were not granted consistently within job classes while the departments were exempt from MSPB oversight. PEER identified examples of employees in the same job class within the departments being given salary increases of different amounts and percentages of increase, which is contrary to the state's compensation plan because it requires equitable treatment of all employees.

2021 Legislation on Reporting by Agencies Exempt from MSPB Oversight

As stated in PEER's 2020 issue brief, although MISS. CODE ANN. Section 25-9-127 (8) (1972) required agencies exempt from MSPB oversight to provide annual reports to certain legislative entities and individuals[1] detailing personnel actions taken while being exempted (e.g., number of employees dismissed), PEER determined that the four agencies exempted did not provide the required reports. Therefore, the Legislature had no metrics to assess the staffing actions of the agencies being exempted from MSPB oversight.

MISS. CODE ANN. Section 25-9-127 (8) establishes measures for evaluation of staffing actions taken by agencies during exemptions from MSPB oversight (e.g., number of terminations).

In response to PEER's report, in the 2021 Regular Session, the Legislature strengthened its oversight by requiring that each exempt agency submit annual reports to additional entities, including the Legislative Budget Office, the PEER Committee, and MSPB. Also, agencies must report quantifiable measures showing that the actions taken while under exemption have improved efficiency and/or effectiveness during the reporting period. This amendment took effect on July 1, 2021. Because no agencies have been granted an exemption since the amendment took effect, no reports have been submitted to the designated entities.

Staffing Actions of MDCPS During Exemption Period and Period Under MSPB Oversight

Creation of MDCPS with SPB Oversight Exemption

In response to a remedial order in a lawsuit involving Mississippi's foster care system, the Mississippi Legislature passed Senate Bill 2179 during its 2016 Regular Session to create MDCPS. The Governor signed the act, codified as MISS. CODE ANN. Section 43-26-1 (1972), into effect on May 13, 2016.

[1] The Lieutenant Governor, Speaker of the House of Representatives, and members of the Senate and House Accountability, Efficiency and Transparency Committees.

From FY 2017 (MDCPS's first year of operation) through FY 2020, MDCPS was exempt from:

- the provisions of MISS. CODE ANN. Section 25-9-127 (1972), which establish the personal property rights of employees in state service positions; and,
- minimum job qualifications established by MSPB for state service positions.

Unlike some agencies granted exemption from MSPB oversight (e.g., the Mississippi Department of Education in FYs 2015 and 2016), MDCPS was not exempt from MSPB's regulations regarding staff compensation; therefore, MDCPS was required to adjust salaries in accordance with MSPB's VCP.

Similar to the four agencies reviewed by PEER in 2020, MDCPS did not submit the required annual reports to show staffing and budgetary actions taken during MDCPS's exemption period. Therefore, PEER requested information related to staffing actions directly from MDCPS and MSPB.

The following sections describe staffing actions during the exemption period from FY 2017 through FY 2020, and since being under MSPB oversight in FY 2021 and FY 2022.

Recent Action Taken by MSPB

In May 2020, MSPB contracted with Kenning Consulting, Inc., to develop Mississippi's new classification and compensation system, SEC2. MSPB claims that the new system was developed with the knowledge of all branches of government and provides for increased flexibility to allow agencies to recruit, hire, and retain qualified individuals. This change could potentially limit the number of state agencies requesting exemptions from MPSB oversight in the future if agencies agree that the new system provides the flexibility they need. The system became effective on January 1, 2022.

Exemption of MDCPS Staff from Meeting Minimum Qualifications

MDCPS was granted an exemption from minimum qualifications, which allowed MDCPS to hire and promote staff who did not meet minimum qualifications. MSPB officials stated the authorization of such an exemption is highly unusual. Similar to PEER's evaluation of MDHS's minimum qualifications exemption in 2020, PEER was unable to directly assess how the exemption of minimum qualifications impacted MDCPS's staffing and operations. MDCPS's Deputy Administrator of Human Capital reported that, to her knowledge, MDCPS did not hire anyone who did not meet the qualifications for his or her position. In PEER's 2020 issue brief, MSPB staff highlighted some potential issues that could arise subsequent to the conclusion of this type of exemption. For example, upon return to MSPB oversight, employees hired during the exemption period who lack the qualifications for the positions they hold could lose access to educational benchmarks, career ladder advancements, and the levels of protection and property rights afforded to employees who did satisfy the minimum job requirements.

MDCPS Staffing

During its exemption period from FY 2017 through FY 2020, MDCPS underwent major staffing changes. Specifically, MDHS transferred 1,607 PINs to MDCPS, the Legislature authorized MDCPS an additional 347 PINs (78% of which MDCPS allocated for front-line staff and supervisors), and MDCPS exchanged 50 PINs with MDHS.

During its first year of operation in FY 2017 (within the exemption period), MDCPS was staffed by a transfer of 1,607 PINs from MDHS. Also, in MDHS's FY 2017 appropriation bill, the Legislature authorized an additional 347 PINs that MDCPS allocated to decrease workloads for caseworkers, build a better-resourced field operations team within the county offices, and assist in the efforts of the transition. Of the

346 PINs that MDCPS allocated,[2] 271 (78%) were allocated by MDCPS for front-line workers, including child and family protection specialists and area and regional social work supervisors.

Also, during its exemption from MSPB, MDCPS reported exchanging 50 PINS with MDHS. MDCPS received 50 vacant PINs from MDHS. In exchange, MDCPS reported transferring 50 PINs to MDHS, 24 of which were vacant. The majority of PINs transferred to MDHS by MDCPS (73%) were for support staff (e.g., IT support). According to MDCPS, this transfer was completed in an effort to share services between the two agencies to maximize state resources (e.g., fund positions with access to federal funds).

Unfilled PINs

Neither MDCPS's operation during the exemption period, nor its operation under MSPB oversight in FY 2021 resulted in a notable increase in the number of filled PINs. As of March 31, 2022, 27% of MDCPS's PINs were unfilled.

Even with the additional flexibility of the exemption in place from FY 2017 through FY 2020, MDCPS struggled to fill its PINs; 29% of MDCPS's 1,954 PINs were unfilled at the end of the exemption period on June 30, 2020. Since moving under MSPB oversight in FY 2021, the high number of unfilled PINs at MDCPS continues to be an issue.

MDCPS struggled to fill its PINs during the exemption period; of its 1,954 PINs, 71% were filled and 29% were unfilled as of June 30, 2020. In regard to front-line staff, 75% of PINs were filled, while 25% were unfilled. After moving under MSPB oversight in FY 2021, the number of filled PINs remains an issue, as 27% of PINs were unfilled as of March 31, 2022.

Based on MDCPS budget narratives and information received from agency officials, MDCPS has taken steps to alleviate the issue of unfilled PINs. For example, in FY 2021, MDCPS requested $7.1 million to fund two career ladders[3] affecting 1,115 PINs, and $10.3 million to fill 475 vacant positions. See page 5 for more information regarding MDPCS's career ladders.

MDCPS Staffing Expenditures

During the exemption period, MDCPS's salary expenditures averaged approximately $77.3 million. For FY 2021 and FY 2022 projections, MDCPS's staffing expenditures remained relatively stable, averaging approximately $75.8 million. While this figure represents a slight decrease of approximately 2% from the exemption period, there are various plausible reasons for this decrease (e.g., staff's length of employment).

MDCPS Salary Increases

During its exemption period, MDCPS granted $6.3 million in salary increases to 1,388 employees, primarily for realignments and intra-agencies promotions. After moving under MSPB oversight in FY 2021, MDCPS granted $6.6 million in salary increases to 937 employees, primarily for reclassifications within new career ladders that foster upward movement for caseworkers and support staff.

MDCPS granted more modest salary increases to staff (25% or less over 4 years) during the exemption period, while MDPCS granted more moderate salary increases (11-50% over 1.5 years) while under MSPB oversight.

Because MDCPS was not exempt from compliance with the VCP, all salary increases granted by MDCPS from FY 2017 through FY 2022 were subject to the same level of scrutiny by MSPB as other agencies under MSPB oversight.

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[2] In FY 2017, MDCPS allocated 346 PINs of the 347 authorized by the Legislature. In FY 2019, MDCPS allocated one additional PIN.

[3] *Merriam-Webster* defines a "career ladder" as the series of progressively higher positions that can be attained in one's working career conceived of as a ladder to be climbed toward greater responsibility and financial success.

During the exemption period, MDCPS granted 1,727 salary increases to 1,388 people totaling $6,313,743. Of those increases, 954 (55%) were granted for realignments,[4] and 303 (17.5%) were granted for intra-agency promotions (i.e., promotions to new jobs within MDCPS). Additionally, of the 1,388 employees who received increases, 1,114 (80%) received only one increase.

As shown in Exhibit 1 to the right, the majority of employees with salary increases (84%) were granted an increase of 25% or less of their salaries over the four-year exemption period. Also, MDCPS granted salary increases totaling more than 50% to 49 employees with an average salary of $47,226. The total salary increases for those employees ranged from $9,593 to $49,050. Some employees were granted more than one increase during this four-year period. For example, one employee was granted eight salary increases, totaling $47,539, which raised this employee's salary by 81.3%. During the same period, MDCPS granted salary increases of less than $1,000 to 514 employees. The average salary for these 514 employees was $30,478.

Exhibit 1: Total Salary Increases Granted During Exemption Period, FY 2017 through FY 2020

Salary Increase Percentage (over 4 years)	Average Increase	Number of Employees	Percentage of Employees
10% or less	$1,472	711	51%
11-25%	$5,188	452	33%
26-50%	$11,795	176	13%
More than 50%	$18,046	49	3%
TOTAL		**1,388**	**100%**

A total of 84%

SOURCE: PEER analysis of data provided by MSPB.

As shown in Exhibit 2 below, from FY 2021 to the first half of FY 2022 under MSPB oversight, the majority of employees granted salary increases (72%) received higher percentage increases (between 11% and 50%) than employees granted increases during the exemption period. These results are primarily due to MDCPS's efforts to develop new career ladders in FYs 2021 and 2022 that foster upward movement for caseworkers and support staff positions (e.g., child and family protection specialists and administrative assistants). These new career ladders have resulted in a significantly higher number of reclassifications, and thus higher percentage salary increases.

Exhibit 2: Total Salary Increases Granted While Under MSPB Oversight, FY 2021 through FY 2022*

Salary Increase Percentage (over 1.5 years)	Average Increase	Number of Employees	Percentage of Employees
10% or less	$2,970	256	27%
11-25%	$6,234	277	30%
26-50%	$9,544	390	42%
More than 50%	$26,193	14	1%
TOTAL		**937**	**100%**

A total of 72%

*July 1, 2020, through December 31, 2021.

SOURCE: PEER analysis of data provided by MSPB.

Under MSPB oversight, MDCPS granted 1,118 salary increases to 937 employees totaling $6,579,286. MDCPS granted salary increases totaling 50% or more to 14 employees, with an average total salary of $64,877. The range of total salary increases was between $12,498 and $66,269. Conversely, MDCPS granted 4 salary increases under $1,000 during this period, with these employees having an average salary of $47,071.

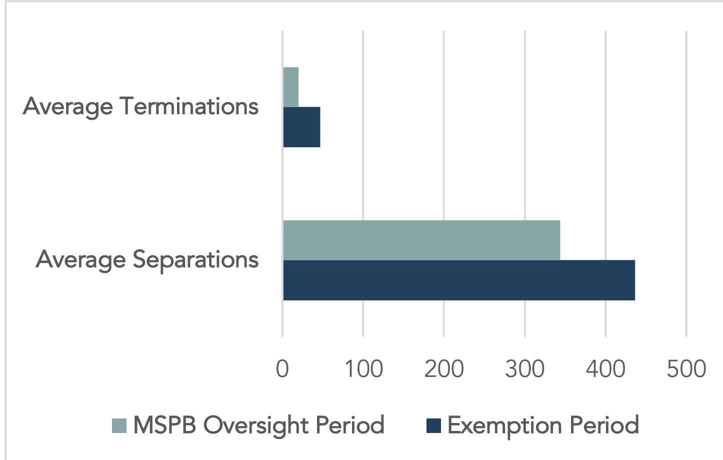
[4] Realignments are increases in salary due to a change in salary market conditions for a position. These increases adjust the effective range for a position and affect all employees within that job class.

Staff Separations and Terminations

MDCPS averaged more separations and terminations during its exemption period than it did during the period under MSPB oversight.

PEER calculated MDCPS's average number of separations (i.e., instances of employees leaving their positions, whether leaving the agency or moving to another position within the agency) and terminations (i.e., involuntary dismissals from the agency) for both the exemption period and the time during which MDCPS has been under MSPB oversight.

Figure 1: Average Terminations and Separations during MDCPS's Exemption Period and MSPB Oversight Period



As shown in Figure 1, during its exemption period, MDCPS experienced an average of 437 separations and 47 terminations per year. While under MSPB oversight, MDCPS experienced an average of only 344 separations per year and 20 terminations per year.

MDCPS experienced a rate of total separations that was approximately 21% lower while under MSPB oversight. The majority of the difference in total separations was due to resignations and intra-agency transfers. During its period of exemption, MDCPS experienced an average of approximately 101 intra-agency transfers per year, while experiencing no intra-agency transfers while under MSPB oversight. Separations of this type, like the transfer of PINs described on page 3, reflect MDCPS's efforts to organize its staff when it first transitioned from being housed within MDHS to being its own agency.

> MDCPS averaged more separations and terminations during its exemption period than it did during the period under MSPB oversight. This suggests that MDCPS used its exemption period to organize its staff as a newly created agency and to terminate employees who did not meet the expectations of their supervisors.

MDCPS experienced a 57% decrease in its rate of terminations when it moved under MSPB oversight. This suggests that MDCPS used its exemption period to terminate employees who did not meet the expectations of their supervisors, which has historically been one of the reasons agencies seek exemptions from MSPB oversight.

Legislative Considerations for Agencies Requesting an Exemption and Reporting Requirements of Exempt Agencies

1) *The Legislature should consider requiring agencies to create a written plan describing the justification for the exemption and the actions they plan to implement if granted an exemption. This plan would provide more complete information by which legislative committee members could make informed decisions regarding exemptions and provide for greater accountability for results.*

The written plan should include:

- Justification for the requested exemption, including the identification of issues the agency intends to address, such as:
    - high turnover;
    - high vacancy rates;
    - inability to recruit and/or retain staff;
    - under-performing staff; and/or,
    - inability to accomplish agency's goals.
- Actions to be taken during the exemption period, including the reasons for such actions, such as:
    - efforts to reorganize staff and job duties (e.g., reclassifications); and/or,
    - efforts to recruit and/or retain high-performing staff (e.g., realignments, development of a career ladder).
- The number of affected positions, associated costs, and the source of funds to pay for each action.

While MISS. CODE ANN. Section 25-9-127 (8) (1972) requires regular reporting of exempt agencies, it does not require agencies to provide written justification when requesting an exemption, nor does it require agencies to describe the actions they plan to implement if granted an exemption.

2) *For agencies granted exemptions from hiring and promoting staff with minimum qualifications, the Legislature should consider requiring these agencies to report information related to the impact of such hiring decisions. This information would provide decision-makers with the information needed to ensure competency of agency staff.*

For agencies exempt from minimum qualification requirements in the future, the Legislature should consider requesting additional information to assess the potential impacts (e.g., an increase in the number of underperforming employees). This information should be included in the annual report required by MISS. CODE ANN. Section 25-9-127 (8) (1972) and should contain:

- number of staff hired or promoted without the minimum qualifications for their positions during the exemption period. This reporting requirement could provide useful information for decision-makers. For example, information on the number of staff hired without the minimum qualifications within the exemption period could be compared with data on staff turnover or terminations to determine whether a correlation exists; and,
- evidence to demonstrate that staff hired without minimum qualifications are competent to perform their job duties (e.g., performance appraisal results).

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