NDPERS BOARD MEETING
Agenda

Bismarck Location:
ND Association of Counties
1661 Capitol Way
Fargo Location:
BCBS, 4510 13th Ave SW

August 26, 2010 **Time: 8:30 AM**

I. MINUTES
- A. July 15, 2010

II. RETIREMENT
- A. RIO Update – LeRoy Gilbertson (Information)
- B. Highway Patrol Indexing – Kathy (Board Action)
- C. IRS Letter Determination/Highway Patrol Plan – Deb (Information)

III. GROUP INSURANCE
- A. Quarterly Executive Summary/Tobacco Report – BCBS (Information)
- B. Health Reform – Sparb
  1. Grandfather Provision (Information)
  2. Legislative Report (Information)
  3. Retiree Subsidy (Information)
  4. Community Living Assistance Services and Supports (CLASS) Act (Board Action)
- C. Wellness Program – Rebecca
  1. Retiree Fair (Information)
  2. Logo (Board Action)
- D. Health Bid – Sparb (Board Action) (Executive Session)
- E. Vision Bid - Sparb (Board Action) (Executive Session)

IV. PERSLink
- A. Project Update – Sharon (Information)
- B. LR Wechsler Contract – Sparb/Sharon (Board Action)
- C. Performance Bond – Sparb/Sharon (Board Action)

V. MISCELLANEOUS
- A. Legislation Update – Sparb (Information)
- B. Board Meeting Schedule – Sparb (Information)
- C. Audit Committee Minutes – (Information)
- D. SIB Agenda

VI. FLEX COMP
- A. Appeal 2010-001F – Kathy (Board Action)

Any individual requiring an auxiliary aid or service must contact the NDPERS ADA Coordinator at 328-3900, at least 5 business days before the scheduled meeting.

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1-800-803-7377

FAX: (701) 328-3920 ● EMAIL: NDPERS-info@nd.gov ● www.nd.gov/ndpers

Memorandum

TO: PERS Board

FROM: Sparb

DATE: August 17, 2010

SUBJECT: RIO UPDATE

Mr. Gilbertson, RIO interim director, will be at the Board meeting to give an update.

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Memorandum

TO: **NDPERS Board**

FROM: **Kathy & Sparb**

DATE: **August 17, 2010**

SUBJECT: **Final Average Salary Indexing for Highway Patrol**

North Dakota Century Code 39-03.1-11(5) provides:

"...The final average salary used for calculating a deferred vested retirement benefit must be increased annually from the later of the date of termination of employment or July 1, 1991, until the date the contributor begins to receive retirement benefits from the fund, at a rate as determined by the board not to exceed a rate that would be approximately equal to annual salary increases provided state employees pursuant to action by the legislative assembly."

As indicated above, it is necessary for the NDPERS Board to determine the rate to be used in establishing the index factor for deferred members of the highway patrol. It has been PERS policy to solicit input and a recommendation from the Highway Patrol leadership.

The sixty-first assembly increased each agencies budget by 5% for the second year of the 2009-11 biennium. Employees are to receive a minimum monthly increase of $100 effective July 1, 2010 to be paid August 1, 2010. The North Dakota Highway Patrol leadership is recommending that deferred members in its system have their final average salary indexed by 5%. Currently there are six members in the system that are in a deferred status. Included for your information is the Highway Patrol's recommendation.

We requested that our consultant, The Segal Company, review this recommendation and provide any observations for the Board's consideration. Segal indicated that since the current assumption for indexing of deferred members is 5%, an increase of that amount will not result in an actuarial gain or loss to the plan. In other words, the plan's actuarially recommended contribution will not change as a result of this increase.

For your convenience, listed below are the legislative increases granted, as well as the increase percentages set for indexing purposes by the board since 1993 when it first became necessary to establish a factor.

	Legislative Increase %	**Board Approved Index %**
1993	3.00	3.57
1994	2.00	3.00
1995	2.00	2.00
1996	2.00+ 1.00 discretionary	2.00
1997	Average 3.00	3.00
1998	Average 3.00	1.80
1999	2.00 (min $35)	1.26
2000	2.00 (min $35)	2.00
2001	3.00 (min $35)	1.81
2002	3.00 (min $35)	1.73
2003	None authorized	-0-
2004	None authorized	-0-
2005	4.00	4.00
2006	4.00	4.00
2007	4.00	4.00
2008	4.00	4.00
2009	5.00	5.00

As illustrated above, the board has generally set an indexing percentage that is the same or slightly lower than the salary increases granted to state employees.

Board Action Requested:

Accept or reject the Highway Patrol's recommendation.

North Dakota Highway Patrol

Colonel James J. Prochniak, Superintendent
State Capitol, 600 E Boulevard Ave. Dept. 504
Bismarck, ND 58505-0240
Telephone: 701-328-2455

John Hoeven
Governor
State of North Dakota

RECEIVED
JUL 21 2010
ND PERS

July 16, 2010

Ms. Kathy Allen
North Dakota Public Employees Retirement System
P.O. Box 1657
Bismarck, ND 58502-1657

Dear Kathy:

We recommend that the members of the North Dakota Highway Patrol Retirement System who participate in the Deferred Vested Benefit provision have their final average salary indexed by five percent.

Sincerely,

Lori R Malafa

LORI R. MALAFA
Captain, NDHP
Administrative Services Commander

lrm/blc

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Memorandum

TO: PERS Board

FROM: Deb Knudsen

DATE: August 18, 2010

SUBJECT: Update on IRS Letter Ruling Request

We were recently contacted by the IRS with regard to the requested letter ruling that was submitted on behalf of the NDPERS Highway Patrol Retirement System some time back. Attached is the information that was requested and also attached is the response that was provided. Aaron indicated that he has since heard back from the contact person at the IRS and feels that things are moving along in a positive fashion. He did indicate that some draft legislation may be necessary but does not have the specifics as of the date of the memo.

As you will probably recall, we received some follow-up questions on the Main System back in March of this year and have not had further communication regarding that system since we submitted our responses. Staff continues to work with the Segal Company and Aaron Webb on this endeavor and will continue to update you whenever there is new information.

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Memorandum

TO: PERS Board

FROM: Sparb

DATE: August 18, 2010

SUBJECT: Quarterly Executive Summary and Tobacco Report

BCBS staff will be at the August Board meeting to give their quarterly update on financial trends in the plan, utilization, and plan administration. They will also review with the Board the program outcomes of the smoking cessation program.

NDPERS Tobacco Cessation: Program Outcomes

2005-2010 Outcomes of the NDPERS Tobacco Cessation Program

Division of Medical Management

Jon Rice, MD
Senior VP of Medical Mgmt

Jodi Carlisle
Director of Health Informatics

Cindy Gillund
Health Care Data Analyst

July 2010
Last Updated: 07.14.2010

Purpose

The NDPERS Smoking Cessation Program was designed to help State employees and their families to stop using tobacco. Members who participate in the program can enroll in tobacco cessation counseling at their local public health unit and receive reimbursement for medical office visits and medication to facilitate their smoking cessation. If successful, the program could result in a reduction of members who use tobacco, which could result in significant health care cost savings. The current report examines two Biennium of the program and the first half of a third Biennium: July 1, 2005 through June 30, 2007 (1st Biennium), July 1, 2007 through June 30, 2009 (2nd Biennium) and July 1, 2009 through June 30, 2010 (1st half of 3rd Biennium). Results presented herein examine members, start dates, and expenditures among NDPERS members.

Methodology

Data were submitted to Noridian Benefit Plan Administrators (NBPA). NBPA collected enrollment information and administered ID cards. Each ID card issued represents a new start date. Enrollment information and subsequent claims information for counseling, physician visits and medication were stored in the Noridian Mutual Insurance Company's (NMIC) data warehouse. Management Information Services (MIS) gathered the data and submitted it to Health Informatics (HI) for further analysis. Data were obtained from July 1, 2005 through June 30, 2010.

Findings

I. *Demographics :* Throughout the three biennium, there have been a total of 746 unique NDPERS members that have participated in a tobacco cessation program (962 program start dates). It was found that 47.5% of the participants were male; the average age of all participants was 45.8 years old (at time of program start).

Table 1 demonstrates the number of unique members that started a tobacco cessation program within each of the biennium periods, the number of start dates by those members and demographics within each biennium period.

Table 1. Demographics

Biennium	# Mems	# Start Dates	% Male	Avg Age
July 1, 2005 to June 30, 2007	239	243	45.2%	47.1
July 1, 2007 to June 30, 2009	448	516	48.2%	45.3
July 1, 2009 to June 30, 2010	186	203	48.9%	45.5
Total		962	47.5%	45.8

II. *Expenditures:* Tables 2 and 3 (below) examine the total expenditures incurred by biennium and was obtained through the Finance Department at BCBSND. Total costs of the program in the 2005 to 2007 biennium (July 1, 2005 to June 30, 2007) was $106,558; the 2007 to 2009 biennium was $129,288 and the first half of the 2009 to 2011 biennium was $38,770. In total, all three biennium have a total cost of $274,616.

Members in this analysis included only those who incurred expenses. There were 302 members that registered for a tobacco cessation program but did not incur any expenses. Table 3 (below) demonstrates expenditures for the members that used the services available during the specified biennium period.

Table 2. Biennium Claim Expenditures

Biennium	Benefit Description	Services	Total Paid	Avg Paid
2005-2007	CONSULTATION	226	$22,129.00	$113.48
	INELIGIBLE	3	$0.00	$0.00
	O.T.C. DRUGS	209	$8,769.01	$72.47
	OFFICE VISIT	58	$4,433.24	$80.60
	PPO PHARMACY	646	$48,812.24	$120.23
	Total		$84,143.49	
2007-2009	BUPROPION	1	$0.00	$0.00
	CHANTIX	272	$27,734.07	$119.03
	CONSULTATION	160	$15,127.00	$123.99
	NICOTINE GUM	35	$1,781.42	$65.98
	NICOTINE INHALER	1	$217.47	$217.47
	NICOTINE LOZENGE	26	$1,211.43	$80.76
	NICOTINE PATCH	25	$1,187.09	$62.48
	O.T.C. DRUGS	81	$3,497.66	$59.28
	OFFICE VISIT	47	$3,734.87	$81.19
	PPO PHARMACY	438	$46,263.15	$129.23
	Total		$100,754.16	
2009-2011	BUPROPION	8	$355.93	$44.49
	CHANTIX	143	$19,492.65	$137.27
	CONSULTATION	2	$200.00	$100.00
	NICOTINE GUM	122	$5,491.72	$46.15
	NICOTINE LOZENGE	27	$1,415.88	$52.44
	NICOTINE PATCH	50	$1,879.17	$37.58
	OFFICE VISIT	18	$1,849.00	$102.72
	Total		$30,684.35	

Table 3. Biennium Program Expenditures*

Biennium	# Mems	Total Dollars Paid	Average Dollars per Member
(07/01/05 - 06/30/07)	245	$106,558	$435
(07/01/07 - 06/30/09)	314	$129,288	$412
(07/01/09 - 06/30/10)	111	$38,770	$349
Total	670	$274,616	$410

* Expense data were received from the Finance Department at BCBSND and includes promotional costs, administrative costs and claims.

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Memorandum

TO: PERS Board

FROM: Sparb

DATE: August 18, 2010

SUBJECT: Health Reform

Grandfather Provision

In June of this year interim and temporary regulations explaining the grandfathering rules and how much plans can be changed before losing their grandfathered status were released. The following is a summary of some the provision based upon a newsletter from the Segal company:

CHANGES THAT WILL CAUSE LOSS OF GRANDFATHERED STATUS

A group health plan will lose grandfathered status if any one of the following changes is made after March 23, 2010:

- Changing insurance companies or health maintenance organizations, or entering into a new policy, certificate or contract with the current carrier,
- Eliminating or cutting back significantly on the coverage for a particular condition,
- Increasing an individual's coinsurance requirement,
- Increasing an individual's copayment, if the total increase is more than the greater of $5 (adjusted annually for medical inflation) or medical inflation plus 15 percentage points,
- Increasing deductibles or out-of-pocket limits, if the total percentage increase exceeds medical inflation plus 15 percentage points,
- Increasing the share of the cost of coverage that must be paid by employee contributions (pretax or post-tax) by more than five percentage points, or
- Making various changes in the plan's annual limits.

Segal also notes:

> Changes outside of these scenarios would not affect the plan's status as a grandfathered plan. This would include changes to the premium, changes to comply with any state or federal legal requirement, changes to voluntarily comply with provisions of the Affordable Care Act, and changing a third party administrator, provided these changes do not result in the cutbacks for participants set out above.
>
> All of the tests are based on a comparison with the benefit plan in place on March 23, 2010, regardless of when the change is made. The rules apply separately to each benefit package.

Of significance for us at this time is that if we were to select a new insurance company, we would lose our grandfathered status.

Legislative Report

On August 3rd I appeared before the Industry, Business and Labor Committee to give an update on how health care reform is affecting NDPERS. I noted that since my last meeting with the committee we had submitted our application for the retiree subsidy. Attachment #1, for your reference, is PERS last report to the Industry Business and Labor Committee as well as the IB&L Committee report on projected state costs for health care reform.

Retiree Subsidy

As noted at the last meeting, we have submitted our application for the Pre-Medicare Retiree subsidy. At this point we have not heard from HHS. Recently BCBS had received information that HHS will begin contacting sponsors about the status of their applications within the next few weeks. Hopefully, by the next Board meeting we will be able to provide an update.

CLASS ACT

The Community Assistance Services and Supports (CLASS) Act was part of the health care reform bill. Essentially this bill is designed to expand options for people who become functionally disabled and require long-term services and support. Attachment #2 is a summary of the program from GRS who has been retained to help us with our RFP for a long term care vendor. The CLASS program is offered to employees whose employers have selected to participate in the program. I asked Aaron if it was within the scope of NDPERS responsibilities in statute for long term care to make the determination if the state of North Dakota will participate in this federal program. Attachment #3 is his response. He concludes that it is not NDPERS responsibility to make this determination. The next question that arises is will the state's determination to participate or not affect our bid for a long term care vendor. I have asked GRS to assess this and be prepared to discuss this with you at the upcoming PERS Board meeting so you can determine if we should proceed with the Long Term Care RFP at this time or wait until a decision is made by the state on CLASS Act participation.

GRS Gabriel Roeder Smith & Company
Consultants & Actuaries

NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM

SUMMARY OF:

COMMUNITY LIVING ASSISTANCE SERVICES AND SUPPORT ACT (CLASS)

JULY 29, 2010

Gabriel, Roeder, Smith & Company ♦ 5605 North MacArthur Blvd. Suite 870♦ Irving/TX 75038
Contact: Jim Schaefer, Senior Consultant
Phone Number: 469-524-1808 ♦ Fax: 469-524-0003

On March 23, 2010, the President signed the Patient Protection and Affordable Care Act into law. This "Health Care Reform" legislation, as amended by the Health Care and Education Reconciliation Act of 2010, establishes a national, voluntary insurance program for purchasing community living services and supports known as the Community Living Assistance Services and Supports program (CLASS Act). The CLASS program is designed to expand options for people who become functionally disabled and require long-term services and support. The CLASS program is effective on January 1, 2011. In spite of this effective date, many regulations have yet to be created and issued, and because of this, the program will not be effective in 1/1/2011. At this time, the HHS Secretary is expected to issue CLASS Act regulations by October 2012 with enrollment to begin subsequently.

It should be noted that the CLASS Act continues to be the subject of much debate in the halls of Congress. In fact, on an article published on July 27 in the publication "National Underwriter" indicates that a bill has been introduced in the House of Representatives that would essentially repeal this program by blocking its implementation based on the notion that the program will be financially unsound. We expect more debate and change as the date the program is launched approaches.

CLASS Act Basics/Key Elements of the plan[1]

The CLASS Act (Community Living Assistance Services and Support Act) is a voluntary, federally administered, consumer-financed insurance plan. The CLASS plan provides those who participate with cash to help pay for needed assistance, if they become functionally limited, in a place they call home — from independent living to a nursing facility, if they choose.

The CLASS program gives working adults the opportunity to plan for future long-term care needs by providing a basic cash benefit to those who meet work requirements and have either functional or equivalent cognitive limitations. CLASS is designed to help individuals with functional and/or cognitive limitations remain in the community by purchasing non-medical services and supports such as home health care and adult day care. While the CLASS benefit is not designed to cover the entire costs associated with long-term care needs, it is structured to help offset the costs incurred by millions of adults with chronic and disabling conditions. CLASS has the potential to reduce reliance on Medicaid and provide relief for family caregivers. However, the payout of CLASS benefits will not take effect until 2017, leaving many current seniors and people with disabilities without affordable options to finance long-term care in the short-term. Going forward it will be important to monitor the affordability of premiums and the adequacy of benefits for CLASS enrollees as well as participation rates that will impact the solvency of the program.

How will the CLASS program work?

The CLASS program will provide individuals with functional and cognitive limitations a cash benefit to purchase non-medical long-term services and supports. CLASS is a national, voluntary insurance program that offers working individuals some protection against the cost of paying for long-term services and supports. Individuals who pay into the program for at least five years (and

[1] Kaiser Commission on Medicaid and the Uninsured (Publication Number: 8069).

work during at least three of those five years) and meet eligibility criteria will receive a daily cash benefit, for as long as they meet the eligibility criteria, to purchase services and supports necessary to remain independent and to maintain community residence. Examples of these services and supports can include home health care, adult day care, assistive technology, home modifications, personal assistance services, respite care, accessible transportation and homemaker services. Individuals who move into assisted living facilities or nursing homes can use CLASS benefits to offset the cost of those expenses. The CLASS benefit also includes voluntary counseling services for assistance in choosing care and care providers, and making decisions about accepting or rejecting care.

Financing and Administering CLASS

CLASS is financed through monthly premiums paid by voluntary payroll deductions or payments made directly from individuals. ***Adults who work for a participating employer will be automatically enrolled in the program, unless they choose to opt-out. Spouses of working adults must meet all requirements on their own. Self-employed people or those whose employers do not offer the CLASS program will be able to join CLASS through an alternative enrollment mechanism. Exceptions include institutionalized individuals***. Premium payments will be placed in a "Life Independence Account" on behalf of each eligible beneficiary and federally administered by the Department of Health and Human Services (HHS) as a new insurance program. HHS and the Treasury Department will work together to establish procedures to determine enrollment and payment systems to ensure that an individual is not automatically enrolled in the CLASS program by more than one employer.

CLASS benefits will be paid out of a trust fund consisting of enrollees' premiums and interest earned on accumulated fund balances. The law explicitly states that no taxpayer funds can be used for payment of benefits. This program is solely financed by premiums paid by individual enrollees. Monthly premium amounts will be determined by the HHS Secretary with respect to maintaining 75 year program solvency. Younger participants will pay less than older participants. Those with incomes below the federal poverty level and full-time students who are actively employed will pay nominal premiums, starting at $5 per month.

Eligibility for CLASS Benefits

Eligibility for CLASS benefits is limited to adults with functional limitations, and adults with equivalent cognitive impairments, as defined by the Secretary, who have paid monthly premiums to the program for at least five years and have worked during at least three of those five years. Eligibility for benefits will be determined by yet unspecified organizations and will be limited to individuals who are unable to perform two or more ADLs (e.g. eating, toileting, bathing, dressing, transferring), or individuals who have an equivalent cognitive disability that requires supervision or hands-on assistance to perform those activities (e.g. traumatic brain injury, Alzheimer's disease, multiple sclerosis, mental retardation). People receive benefits when they present a functional limitation of this type that is expected to last for a continuous period of more than 90 days, as certified by a licensed health care practitioner.

CLASS Benefits

Benefits will vary based on degree of disability or impairment averaging no less than $50 per day. The HHS Secretary will set the benefit amount based on the degree of impairment, which according to the Congressional Budget Office, is expected to average roughly $75 per day or more than $27,000 per year. No underwriting based on pre-existing conditions can be used to prevent an individual from enrolling in CLASS or to determine monthly premiums. The benefit may be paid on a daily or weekly basis. The cash benefit will be posted to a debit account available for withdrawals. Individuals who do not use the full monthly amount may roll it over from month to month, but not year to year. The benefit is not subject to any lifetime or aggregate limit. Once an individual becomes ineligible for CLASS benefits (by improvement in functional status or death), CLASS benefits end. Any balance of available services remaining on an individual's account will not be payable.

Impact of CLASS on Medicaid

CLASS will work in conjunction with other long-term services and support programs such as Medicaid. Eligibility for CLASS program benefits will have no effect on eligibility for Medicaid, Medicare, Social Security retirement, survivors, or disability benefits or Supplemental Security Income (SSI) benefits. If an individual is eligible for both CLASS program benefits and long-term services and supports under Medicaid, CLASS benefits will be used to offset the costs of Medicaid. For example, a Medicaid beneficiary who resides in an institution will be able to keep five percent of the daily or weekly cash benefit amount. That amount will be added to their personal needs allowance with the remainder of the benefit being applied to the facility's cost of providing their care.

Responsibilities of employers who choose to offer CLASS to their employees:

A. Program Set Up:

- Set up auto-enrollment process
- Set up payroll deductions for premium for employees who choose to participate (employer is then responsible for making the monthly payroll deduction for the premium applicable to each employee enrolled in CLASS)
- Remit those premiums to the federal government
- Coordinate the opt-out component for employees choosing not to participate in CLASS

B. Program Maintenance

- Separate classes of employees will need to be tracked by employers and HHS. There will be:
  - Enrollees
  - Dis-enrollees (those who have enrolled and have opted out after the fact)
  - Re-Enrollees (those who have dis-enrolled and have opted back in)
- Premiums, premium penalties and service credits will all need to be tracked.
- Employers will need to have a **strategy** in place to deal with a potential onslaught of questions regarding CLASS.
- If CLASS is offered, employers will need to alert employees that this is an opt-out program and may face misgivings if employees belatedly recognize the paycheck hit.

Summary Considerations for NDPERS:

- The CLASS program is voluntary and there is no requirement for employers to participate in this program.
- If an employer chooses to participate, HHS will issue regulations establishing rules for automatic enrollment in the program.
- It is important for employers to carefully consider their options in providing long term care coverage to offer their employees. Key considerations will include benefit adequacy, premium stability, and potential service capability. Employers should consider the potential benefits and uncertainties of the CLASS program relative to more traditional group long term care plans.
- Employers who are considering or currently offer group long term care ("GLTC") to their employees should review the benefits and features of the CLASS program – See comparison (Appendix A).
- It may be difficult for an employer to offer both a GLTC and the CLASS program. This is because the automatic enrollment feature of the CLASS plan may result in too low an enrollment in a GLTC plan for the GLTC plan to be viable. Furthermore, participating in long term care insurance is a complex decision, and offering employees two very different plans could make the decision even more so.
- Employers may (but are not required to) allow employees to make CLASS program contributions through payroll deduction with auto-enrollment. Moreover, employers may offer private long term care arrangements to employees in addition to the CLASS

program or instead of the CLASS program. Employees whose employers do not offer the CLASS program may participate in the CLASS program through alternative payment methods established by the Secretary (the "Secretary") of the Department of Health and Human Services ("HHS"). The CLASS program is required to be self-supportive and prohibits any use of taxpayer money to fund benefit payments. The President will appoint an advisory board (the "Board"), whose goal is to manage the program so that it is self-supporting over a 75-year time horizon. If the Board determines the program is not actuarially sound, it must submit alternative recommendations for legislative action, including whether or not to adjust monthly premiums or impose a temporary moratorium on new enrollments.

APPENDIX A

CLASS ACT[2]	Group Long Term Care Plans	Comment/Consideration
ENROLLMENT PROCESS		
Employers who offer CLASS auto-enroll employees through payroll deduction. This enrollment is a negative election and similar to how many 401(k) plans operate. The 401(k) experience has shown that a negative election feature is a very effective enrollment tool. Alternatively, individuals can enroll through procedures set up by HHS. If an individual does not enroll when first eligible, he/she must wait for the next open enrollment period. The Act states that the Secretary can declare periodic open enrollment periods, but they can occur no more frequently than every two years.	Employees usually enroll in the program (1) during the employer-established open enrollment period, (2) when the plan first goes into effect or (3) when the employee is hired. Employees may be permitted to enroll between open enrollment periods upon providing evidence of insurability.	The ability of employees to enroll when they are financially able to by submitting evidence of insurability may make a GLTC plan more flexible than the CLASS program from an enrollment perspective.
Participation Rate		
The CLASS program is expected to have a relatively high participation rate as a result of negative enrollment (e.g., employers auto-enroll employees and employees stay in the program unless they opt-out).	A positive enrollment feature for a private long-term care plan likely will result in a relatively low participation rate (e.g., employees need to opt in during the annual open enrollment period).	Negative enrollment has proven to be extremely effective in boosting 401(k) plan participation. Enrollment in the CLASS program should prove to be significantly greater than enrollment in a typical GLTC plan.
Underwriting and Vesting Period		
No underwriting beyond an actively at work test is required; however a five-year vesting period (including three working years) is mandatory for benefit eligibility.	There may be additional underwriting requirements (e.g., medical records and other evidence of insurability). There is often no vesting period (i.e., participants are covered immediately).	CLASS relies on both a five-year vesting period and an actively at work test in order to reduce anti-selection to an acceptable level, while GLTC plans typically offer coverage immediately upon employee enrollment.
Premium		
Premium rates will be determined by HHS with subsidies for low-income individuals and students. As a self-funded program, premiums may be rescaled for future solvency considerations, though some seniors (over age 65) are exempted. Premium rates vary by issue age. The CLASS program contains an implicit redistribution tax to subsidize lower income and full-time student participants. CLASS cannot be funded directly by taxpayer funds, but has a guaranteed rate provision for those over age 65	Premiums are priced according to benefit options (e.g., daily benefit amount) and other risk factors. There is no implicit premium subsidy for low-income individuals. Premium rates vary by issue age and marital status. GLTC plans are typically subject to commissions, profit charges and premium taxes.	There are numerous studies showing significantly lower long term care claim rates for married participants as opposed to singles. As some group and individual LTC plans sometimes offer discounts to married individuals, it is possible that married employees may find private long term care plans cheaper than the CLASS program, while singles may find the CLASS program more economical. The ability of private plans to attract lower cost policyholders may put upward pressure on premium rates in

[2] PricewaterhouseCoopers LLP

who have participated for twenty years and are not actively at work. If future enrollment is insufficient, this could result in larger premium increases for the under age 65 population.		the CLASS program because of the likelihood of higher claims rates from enrolled singles.
Benefit Amounts		
Benefits will vary by severity of functional limitation. However, the amount of benefits to be paid based on functional limitations is undefined, other than that the average (among all beneficiaries) will be no less than $50 per day. The benefit schedule can be adjusted in future years by the Secretary; accordingly, there is uncertainty about actual benefit amounts.	For NDPERS, Benefit Levels are $3,000 per month but maximum benefits vary based on policy purchased.	If CLASS benefits do average $50/day, then benefit amounts are very likely to be inadequate. This would require nominal payments to people with minor functional limitations in order to disburse higher payments to people with greater needs. Nursing home and home health care costs for individuals with two or more ADL impairments typically run from $150 to $300 per day, depending on where care is delivered. The limited CLASS benefit amount could cause employees to believe they are adequately protected by the CLASS program, and therefore not pursue supplemental coverage. There is the potential for insurance companies to design a new supplemental product to wrap around the CLASS benefits to reach adequate coverage levels. Future changes in the benefit levels and triggers can enable the Secretary to keep the CLASS program in balance.
Non-forfeiture Benefit		
As passed, the Act seems to provide that an individual whose premiums have lapsed for more than five years (even if the lapse is due to a rate increase) not only receives no credit for previously paid premiums, but must also pay a penalty to reenroll. **Note:** Congress may not have intended to impose a double penalty (i.e., forfeiture and increased premiums) on reenrolling participants. This provision may be clarified in subsequent legislation or by regulation.	For NDPERS, the Plan "B" options have a "Paid-Up" benefit where if the policy lapses due to non-payment of premium after it has been inforce for five (5) consecutive years, the participant may be eligible for a paid-up benefit in which their policy will continue inforce with a reduced Monthly Benefit Amount and Lifetime Maximum Amount.	N/A.
Administrative Expense		
The Act states that administrative expenses cannot exceed three percent of premium. Advocacy and assistance counseling services expenses are considered to be administrative expenses. However,	The administrative expense (including premium tax) is generally around 15 percent* of premiums. Acquisition costs (mainly commissions) are additional costs and will represent a significant	A plan with only a three percent expense ratio would represent a significant competitive advantage that should benefit program participants. However, given that even the largest long term care

the bill does not say if marketing, enrollment, and start-up expenses are part of this three percent.	portion of first year expenses. * This is an estimate based on the experience of several large US LTC carriers in 2009.	writers have an expense ratio closer to 15 percent of premiums, there is a question as to whether the CLASS program can deliver adequate services at this expense level without government subsidization. It appears the Act's prohibition against taxpayer funds applies only to the payment of benefits under the program and not to marketing or administrative costs; therefore, it is not clear whether or not taxpayer funds can be used to pay the administrative expense charges.
Tax Treatment		
Tax treatment is the same as for tax-qualified long-term care plans (i.e., benefits are non-taxable and premiums may be eligible for medical expense deduction).	A tax qualified long-term care plan (which requires two or three ADLs to trigger benefits) is the most common type of GLTC plan. Non-tax qualified LTC policies include a less strict benefit trigger, while their benefits are subject to income taxes.	N/A
Dependent Coverage		
The CLASS program does not extend coverage to an employee's family members. It is not clear how non-working spouses can enroll in the program or receive benefits under it due to the requirement that the beneficiary must have had sufficient earning to be credited with a quarter of coverage under the Social Security Act.	Subject to evidence of insurability, GLTC plans usually allow family members (e.g., spouses) to access the LTC policies through the employee.	The inability of a non-working spouse to enroll in the CLASS program appears to be a potential deficiency.

From: Collins, J. Sparb
Sent: Thursday, August 19, 2010 7:22 AM
To: Stockert, Cheryl L.
Subject: FW: CLASS plan - long-term care insurance

From: Webb, Aaron K.
Sent: Wednesday, August 18, 2010 3:22 PM
To: Collins, J. Sparb
Subject: CLASS plan - long-term care insurance

Sparb,

This email is in response to an issue that you brought to my attention last week. Specifically, you asked me to review whether PERS had the authority/responsibility to determine whether the State should participate in a federal program entitled the Community Living Assistance Services and Support Act (CLASS). The United States Department of Human Services and the President have described the CLASS plan as a "long-term care insurance choice". The CLASS plan is a long-term care insurance product that is voluntary, federally administered, and consumer-financed. The CLASS plan provides long-term care benefits to participants who have functional and cognitive limitations. The CLASS plan is financed through monthly premiums paid by voluntary payroll deductions or payments made directly from individuals. Employees who work for participating employers of the CLASS plan are automatically enrolled in the program, unless they choose to opt-out.

As for whether PERS has the authority to participate in the federal CLASS plan, there are two ways that PERS would have the authority to provide specific plan coverages to its membership, through a federally mandated program (Federal supremacy) or according to specific authorization under North Dakota law. Since the CLASS plan is not a federally mandated program, it is necessary that PERS find the authority under North Dakota law.

During the 1989 session, the North Dakota Legislature passed a bill modifying NDCC § 54-52-04(7) to allow the PERS board to administer, in addition to any programs existing in 1989, any "other optional employee benefit programs" that the board deemed to be appropriate, including a long-term care plan. In legislative testimony in favor of the legislation, Alan Person (executive Director of PERS) stated "With more and more "employee benefit" options being available, NDPERS would like to be able to pass economic group rates for long-term care, short-term disability, dental plans and other employee benefits to public employees should the employees wish to assume the cost for such benefit." A few years later, in 1995, PERS introduced legislation that expressly codified board authority to establish the employee funded long-term care plan (along with vision, dental and EAP plans). Additionally, the 1995 legislation included specific procedure in statute for securing providers/carriers for the long-term care plan. In legislative testimony from Sparb Collins in favor of the legislation, he stated that the purpose of the 1995 bill was to "establish a procedure in statute" for offering various optional programs. Later in his testimony, Mr. Collins explained that the bill required that "…the same procedure be utilized in developing a long-term care plan as is utilized with the health insurance plan". The resulting statute addressing the employee funded long-term care plan is found under NDCC § 54-52.1-04.8, providing:

> The board may establish a long-term care plan for eligible employees. <u>The board shall receive bids for the plan under section 54-52.1-04.</u>
> The board may reject any or all bids and provide a plan of self-insurance. Premiums for this plan must be paid by the eligible employee. Any
> refund, rebate, dividend, experience rating allowance, discount, or other reduction of premium must be credited as provided by section
> 54-52.1-06. (emphasis added)

As is the procedure utilized with the health insurance plan, NDCC § 54-52.1-04.8 explicitly states that PERS shall receive bids for the long-term care plan in accordance with 54-52.1-04. Currently, PERS follows the NDCC § 54-52.1-04 bidding requirements for the long-term care plan. It is my understanding that the CLASS plan, as a federal program, is not set-up in such a way that it actively completes with private industry plans by responding to requests for proposals. Instead, the CLASS plan is passive and offered by the Federal government to all employers who elect to participate. Additionally, the CLASS plan is not necessarily a plan that is offered in place of a private industry plan, but can be offered in tandem with private industry plans. Based on the foregoing, the CLASS plan does not appear to be a program that is set up to provide competitive bids as contemplated under North Dakota law. Whether based on a specific reason, or merely because this type of plan was never anticipated, PERS does not currently have the express authorization from the legislature to participate in a voluntary federally administered long-term care program, either in place of the bidding process (replacement), or in addition to it (supplementation). Therefore, unless the federal government provides a process by which it will actively bid against private insurers for employer business, I do not see how the PERS board would have the authority to participate in the CLASS plan, absent legislative action.

A second notable issue that exists with this particular CLASS plan is the automatic enrolment or "opt-out" feature. In accordance with the federal law, once an employer has elected to participate in the program, each employee will be automatically enrolled in the plan. This is not an element of the plan that the employer can change, it is a federal requirement for participating in the plan. This means that unless the individual employee makes a formal election to "opt-out" of such coverage, the employer must automatically begin collecting a premium from each employee. This type of element was previously seen by the PERS board in 2006-2007, when the federal law was changed to permit employers to automatically enroll their new employees within 457 plans, such as the State's Deferred Compensation Plan under NDCC ch. 54-52. I do not specifically recall the discussions at the board level, but I do remember that it was the decision of the board to defer to the legislature to make the ultimate decision as to whether to include an automatic enrolment within the State's Deferred Compensation Plan. During the 2007 session, the PERS board drafted legislation that proposed a change within the plan design creating an automatic enrolment into the Deferred Compensation plan for all new state employees, with a 30 day opt-out period. This proposed legislative change allowed for a wage deduction without prior authorization from the employee ($25.00/month). Although the bill passed the legislature, it was vetoed by the Governor.

If you need anything else, just let me know.

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From: Collins, J. Sparb
Sent: Thursday, August 19, 2010 7:21 AM
To: Stockert, Cheryl L.
Subject: FW: NDCC 54-52.1-08.2

From: Webb, Aaron K.
Sent: Wednesday, August 18, 2010 3:23 PM
To: Collins, J. Sparb
Subject: NDCC 54-52.1-08.2

Sparb,

This email is in follow-up to a discussion we had last week about whether 54-52.1-08.2 would affect the assessment regarding PERS authority to participate in the federal CLASS long-term care plan. NDCC § 54-52.1-08.2 provides in part: "The board may assume responsibility for group purchasing arrangements as provided by federal law". Since there is not currently a definition of "group purchasing arrangements" under chapter 54-52.1, I found the following definition from a variety of other sources:

> **Group purchasing arrangement** – Any of a wide array of arrangements in which two or more small employers purchase health insurance collectively, often through a common intermediary who acts on their collective behalf. Such arrangements may go by many different names, including cooperatives, alliances, or business groups on health. They differ from one another along a number of dimensions, including governance, functions and status under federal and State laws. Some are set up or chartered by States while others are entirely private enterprises. Some centralize more of the purchasing functions than others, including functions such as risk pooling, price negotiation, choice of health plans offered to employees, and various administrative tasks. Depending on their functions, they may be subject to different State and/or federal rules. For example, they may be regulated as Multiple Employer Welfare Arrangements (MEWAs).

There are a number of forms of group purchasing arrangements, including association health plans (AHP), employer alliances or health insurance purchasing cooperatives (HIPC), and multiple employer welfare arrangements (MEWA).

The group purchasing arrangement is a vehicle by which parties can try to reduce costs by joining other parties with similar needs, whereas the CLASS plan is a specific long-term care product being offered by the federal government. To date, PERS has not assumed a position of being responsible for a group purchasing arrangement as allowed under NDCC § 54-52.1-08.2, and therefore, does not currently act under this capacity. However, even if the PERS board was to assume responsibility for group purchasing arrangements under NDCC § 54-52.1-08.2, I do not see how the PERS board acting in this capacity would exempt the board from abiding by the competitive bidding process (expressly required under NDCC § 54-52.1-04.8) when purchasing specific types of long-term care insurance products (including the CLASS plan).

If you need anything else, just let me know.

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Memorandum

TO: **PERS Board**

FROM: **Rebecca Fricke & Marissa Parmer**

DATE: **August 15, 2010**

SUBJECT: **Retiree Wellness Fair**

Staffs from NDPERS and BCBSND are planning a wellness fair for retirees on Thursday, October 7th, at Bismarck State College. The fair will feature various speakers promoting health and wellness topics, screenings and vendors.

The fair is a "pilot" and therefore, we are inviting retirees in Burleigh and Morton counties only. We hope the fair will help us to determine if there is interest by retirees to attend this type of function. If it is successful, it is our plan to offer more retiree fairs of this nature in various locations across the state. These retiree wellness fairs will fall under the scope of the NDPERS/BCBSND Wellness Specialist position responsibilities.

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Memorandum

TO: **PERS Board**

FROM: **Rebecca Fricke & Marissa Parmer**

DATE: **August 2, 2010**

SUBJECT: **Wellness Program Logo**

Based upon input received from wellness coordinators, staff has been working with BCBSND on the development of a logo that worksites could utilize to promote their employer based wellness program activities.

Four logos were developed by BCBSND for review by the coordinators. In addition, various "taglines" were also provided to coordinators for input. The logos are attached for your review. The taglines were:

1) Building Healthy Members
2) Worksite Wellness Works
3) JOIN US

Based upon input received from the coordinators, Logo # 4 with the tagline "Building Healthy Members" received the most votes by the wellness coordinators.

At this time, staff would like the Board to consider if a logo specific to the wellness program is appropriate and if so, approve the use of Logo # 4 with the "Building Healthy Members" tagline as the logo to be used. If approved, the logo will be utilized by wellness coordinators for their worksite activity promotion, as well as, NDPERS and BCBSND staff when providing information related to the employer based wellness program. In addition, the logo can be used when promoting wellness to our retiree population.

Board Action Requested:
Determine if use of a logo specifically related to wellness is appropriate and if so, approve the logo and tagline to be used.

Staff Recommendation:
Approve the use of Logo # 4 with the "Building Healthy Members" tagline as the logo to be used for the employer based wellness program and when promoting wellness to the retiree population.

NDPERS Wellness

this is where the tagline will go

NDPERS Wellness

this is where the tagline placement is

NDPERS Wellness

this is where the tagline placement is

NDPERS Wellness

this is where the tagline placement is

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Memorandum

TO: PERS Board

FROM: Sharon Schiermeister

DATE: August 17, 2010

SUBJECT: PERSLink Project Update

This is the third of four updates scheduled to provide the Board with information on the status of the PERSLink Project as we approach our go-live date.

The presentation today will focus on the current status of the project, employer self service, employer and employee training, and deployment activities**.**

North Dakota Public Employees Retirement System

NDPERS PERSLink

Board Presentation
August 26, 2010

"We commit to successfully implement a robust, reliable, secure web-enabled, integrated benefit administration system that improves NDPERS' business operations and service."

Project Status

- Project Status: Green
- No major issues found in parallel testing so far
- Anticipated Go Live: October 4, 2010

Employer Self Service

- Live on 10/4/2010
- Employer will enter member record on-line
- Employer reporting will be done through file upload or entered on-line – paper reporting will go away
- View member/plan information on-line

Employer Self Service

- Maintain employer contact information
- Schedule appointments
- Submit contact tickets and view status
- End-user support
  - ND Login issues – ITD
  - PERSLink issues – NDPERS staff

Training

- Employer Training
  - 450+ Registered Participants
  - Encouraging all employers to attend
  - Training covers new business processes and features of PERSLink
  - Sessions held in Minot, Dickinson & Bismarck so far

Training

- Staff Training
  - September 9/13-9/29
  - 19 Modules, Role Specific
  - Overtime will be approved so daily work can be maintained
  - Time off is being limited
  - Response time to members may slow down due to reduced availability of staff

Deployment Plan

- Coordinate transition with PeopleSoft, employers and insurance carriers
- Mainframe will be available for inquiry only starting September 28
- Processing of incoming documents will be on hold between September 28 – October 4, 2010
- Efforts are being made to keep workload up to date, since PERSLink will start with a 4 day backlog of work
- Expectation is that productivity will drop initially

Summary

- Project is progressing as scheduled
- User acceptance testing is winding up
- Parallel testing is in it's final phase
- No major problems/issues identified

Questions and Comments

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Memorandum

TO: PERS Board

FROM: Sparb

DATE: August 17, 2010

SUBJECT: Wechsler Contract

LR Wechsler is the firm that PERS has contracted with over the last five years to help us do the initial feasibility study on doing a business system replacement project, to help us develop the RFP and during the project to assist us with project management and quality control. In this later phase they have had one of their staff on-site to provide this assistance. Our contract with them concludes at the end of September. The contract was for $1,000,000 and is projected to come in at $876,000 at the end of September.

Starting in October, we are scheduled to go live with our system. We expect that during the first few months we will have special issues that will arise. It would be beneficial for us to maintain the expertise of the Wechsler firm through December to provide us assistance in dealing with these special issues. Since the contract is coming in under budget, we do have the flexibility to continue it through December without having to increase the amount. Specifically, if we continue the contract through the end of the year, we expect the total payments would be less than $960,000. In recognition of the need for this assistance and the ability to extend the contract until the end of the year without an increase, staff is asking for your approval to extend the contract with LR Wechsler through December.

<u>Board Action Requested</u>

To approve extending the contract with LR Wechsler through December of 2010.

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Memorandum

TO: PERS Board

FROM: Sparb

DATE: August 17, 2010

SUBJECT: Performance Bond

One of our contract requirements for our business system replacement project was for the successful vendor (which was Sagitec) to maintain a performance bond. Specifically Section 20.19 of the contract provides that the performance bond should be "…in effect at the Project Start Date and continuing until the date of the Certification of Completion for the System…". Section 8.6 talks about Completion of the project. It states: During the testing period **after a Live Date** referred to in Section 8.5 above, and **for a period of sixty (60) days** thereafter, as applicable, NDPERS shall promptly provide VENDOR with written notice of any Defect in the Phase or the entire System. Vendor shall correct all such Defects, demonstrate to NDPERS that correction of such Defects has been made, and after so demonstrating correction, shall issue to NDPERS a **written Certificate of Completion...** Note that our anticipated "live date" is October 4th and so the 60 days would run through December 3rd. Sagitec's existing performance bond expires at the end of September and they have requested our consideration of not requiring them to execute a new bond through December 3rd. If we were not to require the extension they would be willing to provide either of the following:

1. Delay the timing of the 60 Day Holdback release from January 2011 to March 2011. Under our contract we withheld 20% percent of payments subject to successful completion of the project. The contract provides for the release of half of this holdback at the end of the 60 day acceptance period. The amount of this payment is $423,870.
2. Sagitec would be willing to provide 200-400 hours of additional hours to the project for us to use for modifications or enhancements at no cost.

Specifically what is the risk we face after October 1 for the project? After go live there is some risk that all the pieces and parts don't work together properly. We've tested much of the system's functionality but until we turn on workflow, security, and add 30+ internal users and 400+ external users, we have not replicated what is happening on a day to day basis. In considering Sagitec's request, we asked Aaron to review what discretion we had. Attachment #1 is his response. His conclusion is that we do have the flexibility.

Second, we asked LR Wechsler to discuss the value of the performance bond. The following is their observations:

> *Because Sagitec has substantially performed under the contract (developed the software to NDPERS specifications) it is questionable as to the amount of funds that could be collected on the bond. The project is over 90% complete. NDPERS owns the code under the agreement with Sagitec and if they were able to get their copy of the code, the harm to NDPERS would be the cost of having another vendor come in and install the software and make any fixes to the code that are needed. The circumstances of the non-performance would dictate the amount of restitution that could be sought.*
>
> *It is unlikely that Sagitec will not complete the project as they have a reputation to protect with several contracts under way. They have used NDPERS numerous times as a reference and have a business interest to protect that reference.*
>
> *The performance bond requirement would only cover an additional 60 days - the acceptance period. NDPERS would likely not go live with the project if it wasn't ready for operational use. You may want to consider extending the performance bond* ***IF*** *the go live date changes from 10/4.*
>
> *Given the minimal value of extending the performance bond for a short period of time and the cost for the additional bond, NDPERS should consider requesting additional hours for enhancement work from Sagitec or an extension of the warranty period. The former is more desirable since enhancements have a cost associated with them.*

Third, we note that even without the performance bond, PERS still maintains leverage under the contract. Specifically we have:

1. 60 Day Holdback release - $423,870
2. Warranty Holdback release - $423,870

Fourth, we asked what the coverage PERS has under the existing performance bond after it expires and the following is the answer we received:

> Based on the current bond and assuming that Sagitec performed the work and delivered the software within the scheduled time (OCT 4, 2010) NDPERS will have one year from 9/30/2010 to file a clam if they find that the system does not perform and Sagitec cannot fix the problems as specified in letter F, pg 2/3 of Bond.

We also asked how such a claim would be handled:

> NDPERS would file a claim and then the Surety Company would assess the situation and conditions of the non-performance to find who is at fault and assess a cost to fix it. If they find that Sagitec is at fault they will pay NDPERS (up to $ 1.4 million) and will come after Sagitec to recoup the money.

In recognition of the above, it is staff's conclusion that:

1. The likelihood of an event that could trigger the performance bond is minimal, and if we do have an event, we could leverage the withholds.
2. However, if such an event did occur, we would be able to file a claim under the performance bond for up to one year after go live which is sufficient time to determine if there are any significant problems
3. That, in addition to the performance bond, PERS has additional leverage under the contract with the withholds.
4. The value of the additional hours is greater to us since it provides us with up to $40,000 more effort while still maintaining protections for PERS. The additional hours is also the better of the two alternatives offered by Sagitec because if we are having problems with the system in December (we feel if significant problems do develop they will be identified in the first two months of implementation). We would not release the January withhold anyway, therefore, having the additional months of maintaining the holdback is not as valuable.

Board Action Requested

Approve amending the Sagitec contract to not require maintaining the performance bond after September 30, 2010.

From: Collins, J. Sparb
Sent: Wednesday, August 18, 2010 3:01 PM
To: Stockert, Cheryl L.
Subject: FW: Performance Bond Memo - August 12, 2010.

From: Webb, Aaron K.
Sent: Thursday, August 12, 2010 11:14 AM
To: Collins, J. Sparb
Subject: Performance Bond Memo - August 12, 2010.

Sparb,

As you stated, we reviewed the performance bond requirement at the beginning of the contracting process with Sagitec. At that time, there was an issue as to whether the performance bond was a substantive requirement within the original contract. I indicated that because the RFP required a performance bond to be maintained in the amount of 20%, the PERS board was obligated to provide for the performance bond within the contract with the winning bidder. This was based on the fact that all other bidders competed for the contract with this substantive requirement in mind. To allow the winning bidder to forego the performance bond requirement would have been to invite an action by another bidding party that the process was inequitable. Based on this advice, the performance bond was built into the original contract with Sagitec.

Currently, PERS is nearing the end of the contract term with Sagitec, and is scheduled to "go live" on October 1, 2010. It is my understanding that the "Certificate of Completion" is only scheduled to be issued 60 days after the "go live" date. Finally, it is my understanding that the current annual performance bond maintained by Sagitec will be expiring on September 30, 2010, 60 days prior to the anticipated date that PERS would accept the "certificate of completion".

It should first be noted that PERS would be well within its rights to enforce the terms of the contract and force Sagitec to provide the performance bond through the acceptance of the "certificate of completion". This being said, your question was based on whether PERS would have the legal right to modify the existing contract provisions in order to allow PERS to accept an offer from Sagitec that would operate to shorten the overall length of the performance bond (by 60 days) in exchange for additional benefits to the state.

N.D.A.C. § 4-12-13-01(3) provides "Unanticipated contract amendments must be within the scope of the original contract, authorized by the terms of the contract, and due to legitimate, unforeseen circumstances.". However, contract amendments cannot be used to avoid any requirements to obtain competition. <u>See</u> N.D.A.C. § 4-12-13-01(5). Since this issue has only arisen near the end of the contract term, it is unlikely that the board could be accused of attempting to avoid any requirements to obtain competition. In addition, it is unlikely that any parties involved in the original bidding process would make a claim that they were unfairly disadvantaged in the bidding process. Therefore, the question becomes whether this is an "unanticipated contract amendment" as contemplated by subsection 3?

In answering whether this is an unanticipated contract amendment, the first questions address whether the amendment is within the scope of the original contract and whether the amendment is authorized by the terms of the contract? The scope of the original contract is for the construction and implementation of this IT system, and thus, any amendment to the performance bond would be within the scope of the contract. As for whether an amendment would be authorized under the terms of the contract, although there is no specific language indicating that the parties may amend the contract upon mutual agreement (which is usually part of these contracts), the parties would have the statutory authority to enter into a written contract to modify the terms of their first written contract (amendment). See NDCC § 9-09-06.

The final remaining question is whether this change is due to legitimate, unforeseen circumstances? This is a factual question. Although the contract provides that the performance bond was to remain in effect until the certificate of completion is accepted by PERS, the current circumstances may not have been contemplated. First of all, PERS can argue that they were not originally aware of the final timing relating to the project or the performance bond. It was only after the award of the contract that PERS became aware that Sagitec was unable to secure a performance bond for the full term of the contract, but instead was forced to secure multiple annual performance bonds. As for the term of the contract, the board was unaware, at the time of contracting, whether the contract would be ahead of time, on time, or delayed. When you combine these two timing factors, PERS can argue that they could not have anticipated the timing for the acceptance of the certificate of completion in relation to the performance bond, whether it would have occured within: a full-term bond (if Sagitec could have originally secured one), the final year of the existing annual performance bond, or would have required Sagitec to produce a short term performance bond (such as the 60-day performance bond at issue). Another argument, supporting the fact that the current circumstances were unanticipated, can be found in the cost/hardship associated with securing the final performance bond renewal (60-days). It can be argued that the board was unaware of the monetary cost for Sagitec to obtain a final 60 day performance bond, as well as other factors negatively affecting Sagitec (eg. credit rating). Finally, PERS can argue that it was unanticipated that Sagitec would, based on the circumstances (cost/hardship associated with Sagtitec securing the 60-day performance bond), offer an opportunity to substitute an alternative benefit/protection that would be in the best interests of the State. Based on the foregoing, I think that PERS would have a good argument that an amendment would be based on legitimate, unforeseen circumstances.

Although the amendment may be legally defensible, the other side of the coin is whether it would be advisable. There is definitely a cost/risk analysis for the board to address. If the PERS board decides to amend the contract and remove Sagitec's obligation to provide the performance bond until the certificate of completion is accepted, it will lose its ability to make a claim based on failures occurring within this period of time. It appears that this would be a sizable detriment. It would be up to the board to determine whether the detriment could be offset by a more significant benefit for the State. Some issues that the board will want to address include: the cost of such a renewal of the performance bond to the vendor, benefits of such a renewal of the performance bond to the state, the financial stability of the vendor, the value of the replacement benefit being offered, and the current status of the system (testing that has already been performed – comfort level with the functionality of the system).

If you need anything else, just let me know.

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North Dakota
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Memorandum

TO: PERS Board

FROM: Sparb

DATE: August 17, 2010

SUBJECT: Legislation

Proposed Legislation

Attached is an updated 2011 legislative matrix. Bill 10103.0100 has been added since the last Employee Benefits Committee meeting as well as an update on Bill 10080The Committee accepted PERS amendments to Bill 10060 relating to the bidding process and for self-funding the PERS group insurance plan. . Bill 10103 was submitted by Rep Carlson and provides for establishing a High Deductible Health Plan in PERS.

The bills are available on the PERS website at http://www.nd.gov/ndpers/news/proposed-legislation.html

Additional Legislative consideration

Segal has reviewed with us that our contribution structure is presently insufficient to make scheduled payments on our unfunded liability and even our normal cost. In discussing this with them further this means that when a political subdivision joins the plan today they increase our funding dilemma since the contributions are not sufficient to pay their costs. In time this should be corrected and will return to normal as the legislature addresses this situation. Until then the problem exists. In recognition of this situation we may want to propose an amendment to our administrative bill repealing the provision allowing new political subdivisions to join the plan. Once our funding situation is corrected in a few years we could then reestablish the provision.

Board Action Requested

Determine if PERS should remove the provision allowing new political subdivisions to join the main plan

2011 Legislative Session
North Dakota Public Employees Retirement System

LC Bill Number	Sponsor	Bill Summary
10001.0200	Senator Mathern	A BILL for an Act to amend and reenact sections 54-52.1-03.2 and 54-52.1-03.3 of the North Dakota Century Code, relating to retiree health benefits for members of the legislative assembly.
10009.0100	Senators Nelson, Wardner	A BILL for an Act to require health insurance coverage for autism spectrum disorders; and to create and enact a new section to chapter 54-52.1 of the North Dakota Century Code, relating to public employees retirement system medical benefits coverage for autism spectrum disorders.
10036.0200	Senator Mathern	A BILL for an Act to create and enact a new subsection to section 54-52-04, five new sections to chapter 54-52.1, and a new subsection to section 54-52.1-01 of the North Dakota Century Code, relating to the expansion of the uniform group insurance program to allow participation by permanent and temporary employees of private sector employers and by certain other individuals who are otherwise without health insurance coverage; to amend and reenact section 54-52.1-02 of the North Dakota Century Code, relating to subgroups under the uniform group insurance program; to provide an appropriation; to provide a continuing appropriation; and to provide an effective date.
10038.0100	Senator Mathern	A BILL for an Act to create and enact a new subsection to section 50-06-05.1 of the North Dakota Century Code, relating to the powers and duties of the department of human services.
10051.0100	PERS	A BILL for an Act to amend and reenact sections 39-03.1-09, 54-52-02.9, 54-52-05, 54-52-06.1, and 54-52-06.3, subsection 6 of section 54-52.6-02, and section 54-52.6-09 of the North Dakota Century Code, relating to increased employee contributions under the highway patrolmen’s retirement plan and public employees retirement system.
10052.0100	PERS	A BILL for an Act to amend and reenact sections 39-03.1-10, 54-52-02.9, 54-52-06, and 54-52-06.1, subsection 6 of section 54-52.6-02, and section 54-52.6-09 of the North Dakota Century Code, relating to increased employer and temporary employee contributions under the highway patrolmen’s retirement plan and public employees retirement system.
10053.0100	PERS	A BILL for an Act to amend and reenact sections 39-03.1-09, 39-03.1-10, 54-52-02.9, 54-52-05, 54-52-06, 54-52-06.1, and 54-52-06.3, subsection 6 of section 54-52.6-02, and section 54-52.6-09 of the North Dakota Century Code, relating to increased employer and employee contributions under the highway patrolmen’s retirement plan and public employees retirement system.

LC Bill Number	Sponsor	Bill Summary
10059.0100	PERS	A BILL for an Act to amend and reenact section 15-10-17, Subsection 6 of Section 39-03.1-11, Subsection 1 of Section 39-03.1-11.2, 39-03.1-14.1, 54-52-03, Subsections 3 and 6 of Section 54-52-17, 54-52-27, 54-52-28, Subsection 3 of Section 54-52.1-03 and Subsection 3 of Section 54-52.6-09 of the North Dakota Century Code, relating to special annuity purchases in the alternate retirement program for university system employees, surviving spouse payment options under the highway patrolmen's retirement plan, calculation of member service credit under the highway patrolmen's retirement plan, election of members to public employees retirement system board, calculation of normal retirement date for a peace officer or correctional officer under the public employees retirement system, payment of member account balance under the public employees retirement system, purchase of sick leave credit under public employees retirement system, spousal election to participate in uniform group insurance program, reporting of employer pick-ups under the defined contribution retirement plan, and Internal Revenue Code compliance under the highway patrolmen's retirement plan and public employees retirement system.
10060.0200	PERS	A BILL for an Act to amend and reenact section 54-52.1-02 of the North Dakota Century Code, relating to subgroups under the uniform group insurance program.
10068.0100	Senator Mathern	A BILL for an Act to enable the establishment and operation of member-run nonprofit health insurance issuers.
10080.0200	Rep. Wald	A BILL for an Act to amend and reenact sections 39-03.1-02 and 39-03.1-07, subsection 4 of section 54-52-01, and sections 54-52-02.3, 54-52-02.5, 54-52-02.9, 54-52.6-01, 54-52.6-02, and 54-52.6-09 of the North Dakota Century Code, relating to a defined contribution retirement plan for state employees; and to provide a penalty.
10103.0100	Rep. Carlson	A BILL for an Act to create and enact a new section to chapter 54-52.1 of the North Dakota Century Code, relating to health savings accounts under the uniform group insurance program.

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Memorandum

TO: PERS Board

FROM: Sparb

DATE: August 18, 2010

SUBJECT: NDPERS BOARD MEETING SCHEDULE

Just as an update regarding the regularly scheduled Board meetings for the remainder of 2010:

> August 26, September 8 (special meeting to interview finalists for group insurance), September 16, October 21, November 18, December 16.

You should have these on your Outlook calendar, but you may want to verify that.

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MEMORANDUM

TO: NDPERS Board

FROM: Jamie Kinsella Jamie

DATE: August 18, 2010

SUBJECT: **February 17, 2010 PERS Audit Committee Minutes**
March 12, 2010 Special Audit Committee Minutes

Attached are the approved minutes from the February 17, 2010 and March 12, 2010 meetings. Those who attended the meeting are available to answer any questions you may have.

The minutes may also be viewed on the NDPERS web site at www.nd.gov/ndpers.

The May meeting was push back to August 18, 2010 due to time constraints and lack of urgent issues to attend to, therefore there will be no May minutes to approve.

The next audit committee meeting is tentatively scheduled for November 17, 2010, 10:00 a.m., in the NDPERS Conference Room.

Attachment

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MEMORANDUM

TO: Audit Committee
Jon Strinden
Ron Leingang

FROM: Jamie Kinsella, Internal Auditor Jamie

DATE: March 5, 2010

SUBJECT: **February 17, 2010 Audit Committee Meeting**

In Attendance:
Jon Strinden, via conference call
Arvy Smith
Rebecca Dorwart
Jamie Kinsella
Leon Heick

The meeting was called to order at 10:00 a.m.

I. August 19, 2009 Audit Committee Minutes

The audit committee minutes were examined and approved by the Audit Committee.

II. Internal Audit Quarterly Report

A. Internal Audit Quarterly Report – The Internal Audit quarterly report listed all of the projects that are in active status as of October 31, 2009 and January 31, 2010. Discussion followed regarding the accounting staff being timely with their reconciliation projects. Ms. Kinsella indicated that two areas were not being done so the internal audit staff helped bring this up to date. Staff will discuss this with the accounting supervisor. Also, this is addressed in the one external audit recommendation which will require management action.

B. Quarterly Audit Recommendation Status Report – As stated in the Audit Policy #103, the Internal Audit Division is to report quarterly to management and the audit committee the status of the audit recommendations of the external auditors, as well as any found by the internal auditor. For the quarter ending October 31, 2009, 3 recommendations were completed, progress made on two, and no change for two recommendations. The last recommendation was added from the FY 2009 external audit. For the quarter ending January 31, 2010, 3 recommendations were completed, and no change on 2 recommendations. The audit committee recognized that significant progress was made over the years to address and complete the recommendations.

C. Audit Committee Charter Activity Review – The Audit Committee Charter states that it will "17. Confirm annually that all responsibilities outlined in this charter have been carried out. Report annually to the Board, members, retirees and beneficiaries, describing the committee's composition, responsibilities and how they were discharged, and any other information required by rule, including approval of non-audit services." To meet this requirement a matrix was developed to review against current practices to ensure that the audit committee is meeting its responsibilities. Included with the audit committee materials was a matrix for review. Discussion followed. A few items will be restated before the report goes to the Board.

D. Annual Audit Plan for 2010/2011 – Included with the audit committee materials was a copy of the annual Internal Audit Plan for 2010/2011 for review and approval. The final copy will be signed by Mr. Strinden and Ms. Kinsella. This copy will be available to anyone who would like to see or want a copy. The audit committee approved conditionally that wording should be added to allow for flexibility for internal audit to evaluate risk and prioritize projects accordingly.

E. Internal Audit Annual Report for 2009 - Included with the audit committee materials was a copy of the annual Internal Audit Report for 2010 for review. The final copy will be signed by Mr. Strinden and Ms. Kinsella. This copy will be available to anyone who would like to see or want a copy.

III. Administrative

A. Audit Committee Meeting Date & Time – Ms. Kinsella compiled a schedule of the proposed 2010 audit committee meeting dates and times. The audit committee approved the 2010 meeting schedule.

B. Performance Evaluation – It is time for Ms. Kinsella's performance evaluation. The due date for having these completed is March 15. Mr. Collins will be discussing the format for Ms. Kinsella's evaluation with the audit committee.

C. Confidential Meeting between Internal Audit and Audit Committee – The meeting between the audit committee and the internal audit division is scheduled to take place in February of each year and was held at the close of the audit committee meeting.

IV. Miscellaneous

A. Brady Martz & Associates' Audit Report Presentation - Brady Martz presented their FY 2009 audit report to the audit committee member who attended the November meeting. Since there wasn't a quorum a full meeting was not held. The final audit report will be presented to the Board at the February board meeting.

B. Pharmacy Benefits Manager (PBM) Project – The PBM audit RFP was mailed to 30 vendors. The proposals were due by November 20, 2009. A total of 14 proposals were received. After the review team completed their assessment, it was recommended by the team that TriCast would be the best choice to conduct the audit. TriCast agreed to do the work required in the RFP and also proposed expanding their audit to include 12 months of all pharmacy claims at no additional cost instead of the fourth quarter as stated in the RFP. Staff completed the contract negotiations, and as of this date, staff will be meeting with the TriCast team soon to disucss the details. Included with the audit committee materials was a copy of the RFP.

C. Final Average Salary Review – At the August meeting staff reviewed the results of the final average salary review. A copy of the memo was included for reference. This review found employees with unusual salary fluctuations in their final average salary calculations. After staff reviewed this information, the audit committee was informed that no later than the February meeting a determination would need to be made whether action would need to be recommended on this issue to the PERS board. Any action on this issue would likely require a change in statues which requires legislation to be submitted for the board's approval no later than March 2010. The November meeting was cancelled and since Mr. Collins was unable to attend the February meeting, a separate meeting via conference call will have to be conducted. A conference call will be scheduled with the audit committee upon Mr. Collins return.

D. Risk Management Report – At the May audit committee meeting, it was determined that a Risk Management Policy for PERS would not be necessary since a Loss Control Committee is in place to manage risk for the agency. At that time It was suggested that the Loss Control Committee provide a copy of the last meeting agenda and the approved minutes. Deb Knudsen, who oversees the Loss Control Committee, presented an overview of the committee's activities from the past year. Included with the audit committee materials was a copy of the approved meeting minutes from the September 2009 meeting and the agenda for the December 2009 meeting.

E. PERSLink Quarterly Report – Included with the audit committee minutes was the PERSLink quarterly status report. NDPERS is required to file this report with ITD throughout the duration of the system replacement project. This was for information only.

F. Report on Consultant Fees - According to the Audit Committee Charter, the audit committee should "Periodically review a report of all costs of and payments to the external financial statement auditor. The listing should separately disclose the costs of the financial statement audit, other attest projects, agreed-upon-procedures and any non-audit services provided." Included with the audit committee materials was a copy of the report showing the consulting, investment and administrative fees paid during the quarter ended September 30, 2009 and December 31, 2009.

G. Continuing Professional Education – Ms. Kinsella indicated she attended the semi-annual conference sponsored by the Association of Public Pension Fund Auditors in Sacramento, CA. This conference provided 19.5 continuing professional education credits..

H. Publications – Included with the materials were articles from the Institute of Internal Auditors for the audit committee's education.

The meeting adjourned at 11:00 a.m.

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MEMORANDUM

TO: Audit Committee
Jon Strinden
Arvy Smith
Rebecca Dorwart

FROM: Jamie Kinsella, Internal Auditor Jamie

DATE: March 23, 2010

SUBJECT: **March 12, 2010 Special Audit Committee Meeting**

In Attendance:
Jon Strinden, via conference call
Arvy Smith
Rebecca Dorwart
Sparb Collins
Jamie Kinsella
Leon Heick

The special meeting was called to order at 11:00 a.m. to discuss final average salaries and whether a bill should be submitted to address the irregular salaries that were found in an audit.

Staff provided an overview of what was found during the audit. There are employees in our system who are paid biweekly, resulting in 2 months per year of higher salaries. Also, temporary employees and employees who are hourly also have fluctuating salaries. Per Segal's email in response to our query regarding the effect of these salary spikes on the retirement system, a copy of which was provided to the audit committee, these atypical salaries "...increase the rate by 0.09... This increases the NC from 8.38 to 8.43. There's some leverage here, because it doesn't change the employee contributions. The whole .05 goes to increase the employer rate. Then it increases the AAL by a small percent but there is leverage again, so the UAAL goes up by 2.8%, which gives the other .04."

Internal audit staff conducted a survey of public pension funds of how final average salary is calculated in their systems and provided this information to the audit committee. A spreadsheet was also provided to the audit committee showing a representation of employees on our system and how different final average salary methods affect their final average salary.

The internal audit staff made the following recommendations internally:

1) Submit no changes for this session (continue research).

2) Propose changing final average salary calculations for all active and new members.

3) Propose changing final average salary calculation for new members only (current members will be under existing law).

4) Adjust contribution rate for specific employers.

Increasing the contribution rate is difficult given that PERS is submitting bills in 2011 to increase the rates for all employers.

Staff recommended deferring this issue for the 2011 session and studying the issue more thoroughly with the possible submission of a bill in 2013. Discussion followed.

ARVY MOVED TO STUDY FOR THE 2013 SESSION. BECKY SECONDED THE MOTION.

MOTION PASSED.

The meeting adjourned at 11:30 a.m.