

NDPERS BOARD MEETING

Agenda

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

February 21, 2013

Time: 8:30 AM

I. MINUTES

- A. January 17, 2013
- B. January 30, 2013

II. RETIREMENT

- A. Legislation Update – Sparb (Information)

III. GROUP INSURANCE

- A. Legislation Update – Sparb (Information)
- B. Vision Plan Report – Kathy (Information)
- C. Retiree Update – Kathy (Information)
- D. Specialty Pharmacy Program – BCBS (Information)
- E. Health Savings Account Agreement – Sparb (Board Action)

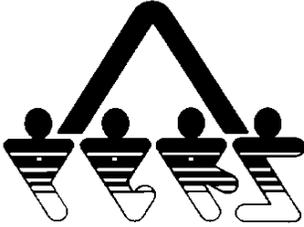
IV. DEFERRED COMP

- A. Provider Compliance Update – Deb/Srinivas (Board Action)

V. MISCELLANEOUS

- A. PERSLink Member Self-Service Update – Sharon (Information)
- B. Board Election – Kathy (Board Action)
- C. RIO Update – Mike (Information)

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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Memorandum

TO: PERS Board
FROM: Sparb
DATE: Feb 12, 2013
SUBJECT: Retirement Legislation Update

SB 2059 – Recovery Plan

The bill came out of the Senate GVA committee with a “Do Pass” recommendation. The vote was 4-3 (a close vote). The following amendment was added to the bill:

"SECTION 11. LEGISLATIVE MANAGEMENT STUDY - NORTH DAKOTA RETIREMENT PLANS. During the 2013-14 interim, the legislative management shall consider studying the feasibility and desirability of existing and possible state retirement plans. The study must include an analysis of both a defined benefit plan and a defined contribution plan with considerations and possible consequences for transitioning to a state defined contribution plan. The study may not be conducted by the employee benefits committee. The legislative management shall report its findings and recommendations, together with any legislation needed to implement the recommendations, to the sixty-fourth legislative assembly."

The Senate Appropriation hearing on the bill was February 14. However, as of this date the House was considering an amendment in HB 1015, the OMB bill, to take out the retirement increases of the agency budgets and add a statement of intent not to pay the increase for next biennium. The following is the language that was under consideration:

It is the intent of the legislative assembly that retirement contribution percentages provided by the state and the employee to the public employees retirement system not be changed during the 2013-15 biennium from the percentages in effect at the end of the 2011-13 biennium.

SB 2060 – PERS Administrative Bill

The bill passed the Senate and has been sent to the House for consideration after crossover.

HB 1452 – Optional DC Plan

We discussed this bill at our special Board meeting in January and it was decided to take a “neutral position” on the bill as long as it is funded. Attachment #1 is the review from Segal that we discussed at our special Board meeting and Attachment #2 is the fiscal note on the bill. The bill came out of the committee as amended with a 10-4 do pass recommendation.

The bill has been amended by the House GVA committee to take out the option for existing employees to transfer to the Defined Contribution Plan. This will reduce the cost of funding the bill from additional contributions by about 1/3. The following is the cost as originally proposed and as amended:

| State & Subs - Offered to both Existing Employees and New Employees | | | | | | | |
|--------------------------------------------------------------------------------|--------|-------------------------|---------|---------|-----------------------|------------------|------------------|
| | Req | New Actuarial Req Cont. | | | Contribution Increase | | |
| | Cont | 10%/5% | 15%/10% | 20%/15% | 10%/5% | 15%/10% | 20%/15% |
| Main | 12.24% | 13.19% | 13.90% | 14.66% | 0.95% | 1.66% | 2.42% |
| Judges | 16.33% | 17.29% | 17.97% | 18.76% | 0.96% | 1.64% | 2.43% |
| Law Enf | 10.69% | 11.10% | 11.45% | 11.81% | 0.41% | 0.76% | 1.12% |
| Nat Guard | 7.40% | 7.67% | 7.86% | 8.09% | 0.27% | 0.46% | 0.69% |
| Total cost | | | | | \$ 16,367,000.00 | \$ 28,599,000.00 | \$ 41,693,000.00 |
| General funds | | | | | \$ 5,403,000.00 | \$ 9,440,000.00 | \$ 13,762,000.00 |
| Other funds | | | | | \$ 10,964,000.00 | \$ 19,159,000.00 | \$ 27,931,000.00 |
| State & Subs - Offered to New Employees Only | | | | | | | |
| | Req | New Actuarial Req Cont. | | | Contribution Increase | | |
| | Cont | 5% | 10% | 15% | 5% | 10% | 15% |
| Main | 12.24% | 12.82% | 13.30% | 13.81% | 0.58% | 1.06% | 1.57% |
| Judges | 16.33% | 16.94% | 17.40% | 17.91% | 0.61% | 1.07% | 1.58% |
| Law Enf | 10.69% | 10.95% | 11.21% | 11.48% | 0.26% | 0.52% | 0.79% |
| Nat Guard | 7.40% | 7.59% | 7.74% | 7.90% | 0.19% | 0.34% | 0.50% |
| Total cost | | | | | \$ 9,993,000.00 | \$ 18,262,000.00 | \$ 27,049,000.00 |
| General funds | | | | | \$ 3,298,000.00 | \$ 6,028,000.00 | \$ 8,928,000.00 |
| Other funds | | | | | \$ 6,695,000.00 | \$ 12,234,000.00 | \$ 18,121,000.00 |

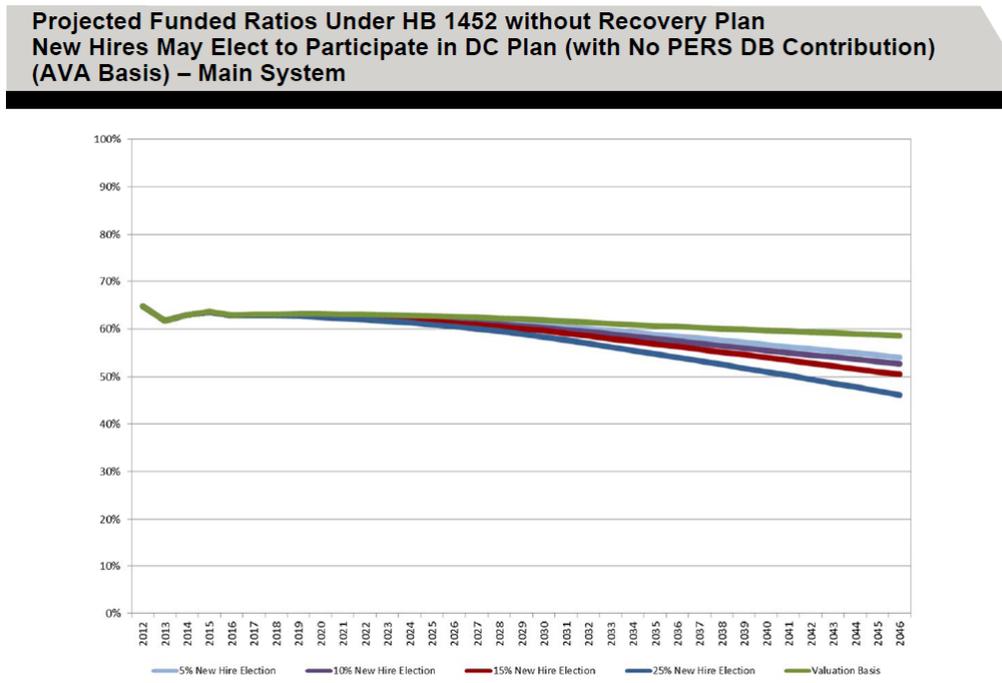
In the contribution increase section of the above, it shows the assumption used. In the top on it assumes three scenario's. The first assumes 10% of the existing members transfer and 5% of the new employees. The second assumes 15% of the existing members transfer and 10% of the new employees transfer and the third assumes 20% of the existing members transfer and 15% of the new employees transfer. The lower table assumes the same but without the transfers. You will note the total cost of funding this with additional contributions is an additional 1.66% with the transfers and 1.06% for just new employees using the middle

assumption. That is the one use in the fiscal note. If the election rate is higher or lower you can see what that does to cost.

At this point, the bill has been passed out of the House GVA Committee but it has not been funded. There are two ways to fund the bill. The first is the traditional way which is to pay for it with increased contributions and that is shown above and in the actuarial review. The second is to make the offer to join the DC plan actuarial neutral. I will discuss this later. First, let's discuss the effect of not funding the proposed bill which is offering a benefit to the DC members that is higher than can be paid with the existing contributions.

Effect on DB/Hybrid plan by not funding the proposed bill

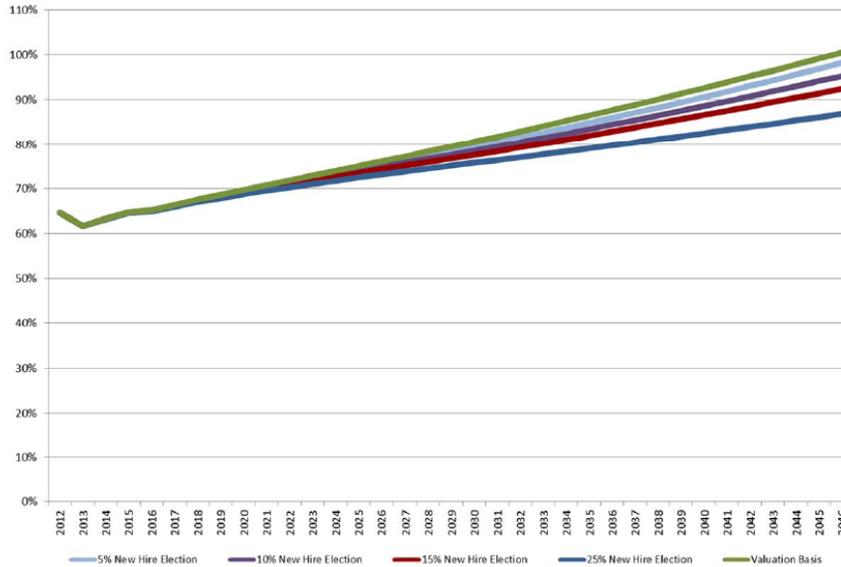
The following table shows what the effect of passing this bill without funding it would have on the long term funded status of the plan at various election rates (please note the one we are using is 10% in the fiscal note):



If passed without funding the plan, the long term status of the plan with a 10% election rate would deteriorate slightly over time. The other election rates we used in the actuarial review are 5% and 15% election rates and they are shown above as well. To show the sensitivity of the funded status to election rates we also added a 25% scenario (unlikely at this time).

If our funding bill was passed and this bill was passed without being funded you can see that it would take us longer to recover.

**Projected Funded Ratios Under HB 1452 with Recovery Plan
New Hires May Elect to Participate in DC Plan (with No PERS DB Contribution)
(AVA Basis) – Main System**



As the above long term projections show the funded status decreases if the bill is not funded with additional contributions and if the recovery bill is passed.

The above projections also show the sensitivity of the funding status based upon the election rate of members deciding to change from the DB/Hybrid to the DC.

Actuarial Neutral Offer

The second method is to make the offer to move to the DC plan actuarially neutral. The reason the bill as proposed has an effect on the retirement plan is that it allows the people electing the DC plan to take both the normal cost portion of the contribution and the unfunded liability contribution portion. The way to make it actuarially neutral is to make sure that the unfunded liability contribution portion associated with that position continues to make a payment to paying off the unfunded liability in the DB/Hybrid plan even though the person elects to move to the DC plan.

| DB plan contributions | | | | |
|-----------------------------------------|---------------------------------|-------|-------|-------|
| | | 2013 | 2014 | 2015 |
| Normal Cost | | 9.9 | | |
| | Employee Pd (Employer Pd) | 4 | 4 | 4 |
| | Employer pd | 3.9 | 2.9 | 1.9 |
| | Employee OOP | 2 | 3 | 4 |
| | Amortization Cost (employer pd) | 2.22 | 4.22 | 6.22 |
| | Total | 12.12 | 14.12 | 16.12 |
| DC Option Contributions - Neutral Plan* | | | | |
| Dc contribution | | 8 | 9 | 10 |
| | Employee Pd (Employer Pd) | 6 | 6 | 6 |
| | Employee OOP | 2 | 3 | 4 |
| | Amortization Payment (Emp Pd) | 4.12 | 5.12 | 6.12 |
| | Total | 12.12 | 14.12 | 16.12 |

The above shows the plan design for the DC plan that would accomplish this objective. As noted above the offer provides that those individuals that elect the DC plan would get a 6% employer contribution toward the plan plus the associated employee paid contribution which would be 3% in 2014 and 4% in 2015 if the recovery bill is past. In 1013 it would be a 2% employee contribution. You will note in the 2015 column that amount staying with the DB plan (the amortization payment) is 6.12% (blue) which is just about equal to the amount needed in the DB plan to pay off the unfunded liability (6.22%) for that position. The following shows the effect of this on the funded status of the plan:

Attachment #4 is from the Segal Company and reviews the actuarial effect of this option on the DB/Hybrid Plan. You will note in reviewing the information from Segal, that this option is actuarial neutral to the plan. In addition and equally important this option is neutral to the plan at whatever level of election rate by members moving to the DC plan. Consequently this significantly reduces or eliminates the risk to the DB/Hybrid plan of having such an option.

The last aspect of this second method is that it can be done with no increased contributions which reduces the fiscal note to almost "0" except for some minor PERS costs of about \$70,000

Board Action Requested:

If the bill moves to the Senate in its present form, staff would recommend that we continue to maintain our neutral position if the bill is funded but acknowledge that if it is not, we would oppose the bill. Secondly, that to help with the considerations in the Senate we prepare and submit amendments to the bill that would address its funding through both of the methods discussed above. I would further suggest that we indicate that we would prefer the second funding method since it reduces the long term risk to the plan.

Also as part of the hearing on the above it has been suggested that existing DC people should be given the opportunity to come back to the DB/Hybrid plan. Attachment #5 is a review of this option by the Segal Company. You will note that this would be actuarial neutral to the plan and in fact could have a slight positive effect assuming the recovery bill passes.

HB 1304

HB 1304 is the divestiture bill. Attachment #3 is my testimony on that bill. Our amendment was to insure that the process outlined in our investment policies was maintained as we discussed at our special Board meeting. The Committee approved our amendment and gave the bill a favorable recommendation.



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January 28, 2013

Mr. Sparb Collins
Executive Director
State of North Dakota Public Employees' Retirement System
400 East Broadway, Suite 505
P.O. Box 1657
Bismarck, ND 58502

Re: **Technical Comments – HB 1452**

Dear Sparb:

The following presents our analysis of the proposed changes found in draft HB 1452:

Systems Affected: North Dakota Public Employees Retirement System (PERS) Hybrid Plan and Defined Contribution Plan (DC Plan)

Summary: The proposed legislation would provide State employees, including judges, BCI law enforcement officers and National Guard employees, the opportunity to irrevocably elect to participate in the Defined Contribution Plan pursuant to rules adopted by the PERS board. Existing employees who elect to participate in the Defined Contribution Plan will have a lump sum transferred from the Hybrid Plan to an individual account in the Defined Contribution Plan. The lump sum amount shall be the actuarial value of the individual member's accumulated benefit obligation in the Hybrid Plan, based on the assumption that the member will retire at the earliest applicable normal retirement age. Such transfer will not affect the member's health benefits or retiree health benefits.

Actuarial Cost and Technical Analysis: This Bill would have a material actuarial impact on the assets and liabilities of the Hybrid Plan, as follows:

The Bill would allow current participants to elect to transfer the full amount of their Hybrid Plan Actuarial Accrued Liability to the Defined Contribution Plan. Since the Hybrid Plan is currently less than 100% funded, this would result in a transfer of assets greater than the assets that currently support the benefits. As a result, contribution requirements for those who remain in the Hybrid Plan will see an increase in costs, as they would pay for the unfunded portion of the benefits of the transferring participants.

It is difficult to predict which participants would elect to transfer under this Bill. Experience over the last ten years would indicate that 16% of those new hires eligible to choose between the Hybrid Plan and the Defined Contribution Plan at date of hire choose the Defined Contribution Plan. More recent election rates have been lower, around 7.8%. It is also difficult to predict what existing employees may do when offered this election. When offered to nonclassified employees in 1999, about 38% elected to transfer. However, the environment has changed substantially since then, so we expect the rate would be lower.

Our understanding is that the Bill would allow current participants a one-time election to transfer out of the Plan and new employees the option to choose between the Hybrid Plan and the Defined Contribution Plan at date of hire. Because it is difficult to predict the number of participants that would transfer, we have illustrated the effects of three scenarios on the employer cost rate as a percentage of projected payroll. In the first scenario, we have assumed that 10% of existing participants leave and 5% of the new employees elect the Defined Contribution Plan each year thereafter. In the second scenario, we have assumed that 15% of participants leave and 10% of the new employees elect the Defined Contribution Plan each year thereafter. In the third scenario, we have assumed that 20% of participants leave and 15% of the new employees elect the Defined Contribution Plan thereafter. These will increase the costs of funding the ongoing benefits and the unfunded liability as a percent of pay, as follows:

| Group | Employer Cost Rate – 2012 Actuarial Valuation | Statutory Employer Cost Rate – 2013 | (1) 10%/5% Assumption– Resulting Cost Rate | (2) 15%/10% Assumption– Resulting Cost Rate | (3) 20%/15% Assumption– Resulting Cost Rate |
|-----------------------------------|-----------------------------------------------|-------------------------------------|--------------------------------------------------------|---------------------------------------------------------|---------------------------------------------------------|
| PERS Main* | 12.24% | 6.12% | 13.19% | 13.90% | 14.66% |
| Judges | 16.33% | 16.52% | 17.29% | 17.97% | 18.76% |
| Law Enforcement w/Prior Service** | 10.69% | 9.31% | 11.10% | 11.45% | 11.81% |
| National Guard | 7.40% | 6.50% | 7.67% | 7.86% | 8.09% |

*Only Main State employees would be allowed to transfer under the Bill

**Only BCI employees would be allowed to transfer under the Bill

The Bill specifies that the Actuarial Accrued Liability be calculated assuming that the transferring participant will retire at the earliest unreduced retirement date. This is a slightly more conservative measure than the assumption used for funding the Hybrid Plan, and would result in a larger transfer of funds than if the Plan’s valuation assumptions were used. For participants with lower service, the benefits calculated under the Plan formula will likely have a smaller present value than the participant’s vested contributions. In this case, we calculated the amount of the transfer to simply be the balance of vested contributions with interest.

As mentioned above, the Bill provides that 100% of the liability be transferred for these participants. If the Bill were altered so that only the funded portion of the participants' Actuarial Accrued Liability is transferred to the Defined Contribution plan (64.7% for the PERS Main Plan as of July 1, 2012), the Resulting Employer Cost Rate for ongoing Hybrid Plan participants would be as follows:

As above, in the first scenario, we have assumed that 10% of participants leave and 5% of the new employees elect the Defined Contribution Plan each year thereafter. In the second scenario, we have assumed that 15% of participants leave and 10% of the new employees elect the Defined Contribution Plan each year thereafter. In the third scenario, we have assumed that 20% of participants leave and 15% of the new employees elect the Defined Contribution Plan thereafter. These will increase the costs of funding the ongoing benefits and the unfunded liability as a percent of pay, as follows:

| Group | Funded Percentage | Employer Cost Rate – 2012 Actuarial Valuation | Employer Cost Rate – Ultimate Statutory Rates | (1) 10%/5% Assumption– Resulting Cost Rate | (2) 15%/10% Assumption– Resulting Cost Rate | (3) 20%/15% Assumption– Resulting Cost Rate |
|-----------------------------------|-------------------|-----------------------------------------------|-----------------------------------------------|--------------------------------------------|---------------------------------------------|---------------------------------------------|
| PERS Main* | 64.7% | 12.24% | 6.12% | 12.82% | 13.30% | 13.81% |
| Judges | 89.8% | 16.33% | 16.52% | 16.94% | 17.40% | 17.91% |
| Law Enforcement w/Prior Service** | 64.9% | 10.69% | 9.31% | 10.95% | 11.21% | 11.48% |
| National Guard | 91.6% | 7.40% | 6.50% | 7.59% | 7.74% | 7.90% |

*Only Main State employees would be allowed to transfer under the Bill

**Only BCI employees would be allowed to transfer under the Bill

If the participants are given a choice of participation in either the current Hybrid Plan or the Defined Contribution Plan, the risk of antiselection will be introduced to the System. Antiselection risk is the tendency of participants to select the choice that benefits them the most. For example, participants who may be less healthy than average may be more likely to elect to transfer to the Defined Contribution Plan, which would allow for a faster payout of benefits than the lifetime payments offered by the Hybrid Plan. This effect could result in more costly benefits for the Hybrid Plan than otherwise would be expected, and will increase the volatility of contribution requirements. That is, if the election rates are higher than expected, it will increase required contributions for the Hybrid Plan. If lower, it could reduce requirements. This same situation would occur even if total election rates are lower, but those electing have higher than expected costs.

Technical Comments: Our comments on the Bill are as follows:

General

The Bill would provide a new opportunity for existing members to make a one-time irrevocable election as to whether they will participate in a defined benefit plan or defined contribution plan, including members who have not previously had an opportunity to participate in the Defined Contribution Plan, such as judges. In addition, the Bill could have an impact on PERS, to the extent a large number of employees elect to transfer into the DC Plan, in the following areas:

- Similarly situated employees would have different levels and forms of retirement benefits;
- The proposed changes could have an impact on the funding status of the defined benefit plans; and
- The role of the PERS in administering retirement benefits for State employees could shift as a result of a large increase in the number of DC Plan participants.

Benefits Policy Issues

> Adequacy of Retirement Benefits

- ◆ *Replacement Ratio:* In comparison to members in the current defined benefit plans, the replacement ratios of income by retirement benefits for new members in the DC Plan are expected to decrease from that which is currently provided for several reasons, including the following.
 - In practice, individually-managed accounts can expect lower investment returns than a longer time horizon, professionally-managed defined benefit fund.
 - Defined contribution accounts suffer from “leakage” as funds are used for purposes other than retirement.
 - There is a higher cost of annuitization at market annuity rates, or else members must assume longevity risk on top of investment risk.

In a letter dated December 7, 2011, we provided updated analysis of how benefits under the defined benefit plans compare to benefits under the DC Plan. It showed that the contribution rate for the DC Plan would need to be increased in order to provide a benefit that is comparable to the current defined benefit plans. Specifically the analysis shows the following for individuals who are presently in the DC Plan established in the late 1990’s:

1. DC Plan participants are projected to have a retirement benefit that is on average 50% less than what they would have had if they stayed in the applicable defined benefit plan.
2. DC Plan contributions will need to increase to 16.5% to 20% to provide a benefit similar to the current defined benefit plans (under the Hybrid Plan a 25-year employee would receive 50% of their final average salary).

3. The benefit provided in the existing DC Plan is not providing a benefit comparable to the defined benefit plans at the existing contribution levels.
4. The DC Plan does not provide the same level of spouse or disability benefits as the defined benefit plans.

◆ *Retirement Savings:* The nature of the DC Plan with lump sum benefit payments may decrease the amount of a member's retirement benefit that will be available for retirement to the extent it is used for current consumption. Employee Benefit Research Institute (EBRI) statistics indicate that because of this "leakage" effect, less than 100% of employer contributions will actually be used to provide retirement benefits. Based upon the EBRI study entitled "Reported Uses for Any Portion of Lump-sum Distributions", the average amount of distributed funds retained in retirement vehicles (tax-qualified financial savings) is 41.5%. Seventeen percent is saved, and the remainder (41.5%) is used for debt, education or consumption. Forty-six percent of these individuals rolled over at least some of the money into another retirement plan and 27% put some of the money into other savings investments. Because of this "leakage" effect, less than 100% of the employer contributions will actually be used to provide retirement benefits. Nationally, 58.5% of any lump sum distribution is not used for retirement purposes. The current defined benefit plans have minimal leakage of employer contributions.

On average, refund payments under the PERS are approximately 24% of the employee contributions. Of these refunds, 58.5% will be used for non-retirement purposes if the national statistics are applied. Thus, the leakage rate on employee contributions is estimated to be about 14% per year.

If these patterns of refunds and uses of lump sum distributions remain unchanged, the leakage rate on employer contributions under the DC Plan could be presumed to be 14%. For every \$1,000,000 of employer contributions accumulated, about \$140,000 will not be available for retirement purposes.

◆ *Personal savings:* Participation in a defined contribution plan may increase interest of members to save for retirement because of the participant directed investment feature and the awareness that it is important to save for their own early retirement or post-employment inflation protection. However, the State's DC Plan does not provide any separate monetary incentive or opportunity to increase personal savings. The PERS Main System added the Portability Enhancement Provision (PEP) in 1999. One aspect of this provision is to create an incentive for members to engage in supplemental retirement savings. Specifically, this feature provides that if a member participates in the State's deferred compensation plan, they will vest in the employer contribution in the Hybrid Plan. This provision has helped to encourage participation in the supplemental savings plan and has been successful at enhancing the overall retirement preparedness for those participants. The proposed DC Plan would not have a similar defined benefit incentive to encourage participation.

> Benefits Equity and Group Integrity

- ◆ Since members of the Highway Patrolmen's Retirement System (HPRS) do not have the opportunity to elect between a defined benefit plan and a defined contribution plan, there is an inequity of benefits and choice of plans between HPRS and the PERS Main System.
- ◆ Allowing most State employees to elect between a defined benefit plan and a defined contribution plan alleviates the current benefits equity problem whereby two similarly situated State employees who perform similar services, one which must participate in the defined benefit plan and the other which may participate in a defined contribution plan or a defined benefit plan, have very different retirement benefits. However, this Bill does not create benefit equality because two employees with identical positions, age and service who elect different retirement plans may still have unequal retirement benefits.
- ◆ The benefits equity issue whereby different retirement plans are elected highlights the importance of the educating State employees on the different aspects of defined benefit versus defined contribution plans, as well as the various risks and rewards of each type of plan, and may lead to increased scrutiny of the PERS decisions with respect to both the investment of the defined benefit plan funds and the investment choices offered under the DC Plan.
- ◆ In addition, we note that nonvested defined benefit plan members who transfer to the DC Plan may be immediately increasing their vesting percentage in their pension benefits compared to similar employees who do not transfer.
- ◆ This Bill is providing all members who elected not to transfer to the DC plan back in 1999 a second election opportunity. However, those that elected to transfer are not similarly offered a second election opportunity.
- ◆ This PERS group is composed of state employees and political subdivision employees. This option is provided to state employees and not to political subdivision employees. This reduces the cost of offering this option, but since the cost is amortized over the entire group, political subdivisions are a prorated part of the cost for this option for State employees.

> Competitiveness

The DC Plan design increases the ability of shorter-term employees to earn and retain a valuable retirement benefit. The PERS Main System Portability Enhancement Provision (PEP) also offers similar benefits, which can be a valuable tool for attracting such employees. The DC Plan, however, may be less competitive for career employee positions compared to other public employee retirement plans. These changes could motivate job mobility and increase turnover. This may or may not be desirable depending on the workforce issues facing the employer.

In another sense, the Bill will be following the trend among smaller private sector employers and some larger private employers to use defined contribution plans instead of defined benefit arrangements as a primary vehicle for retirement benefits. However, other larger

private sector employers and most public sector employers have continued to maintain a combination plan structure - a core defined benefit plan with a supplemental set of defined contribution and/or profit sharing arrangements.

➤ Purchasing Power Retention

A defined contribution plan does not provide guaranteed purchasing power retention after benefits are distributed. The ability to maintain purchasing power will depend solely on the investment performance of the distributed assets. It is not possible under current federal tax laws to directly provide post-retirement increases for defined contribution plan retirees. Similarly, the existing plan does not guarantee purchasing power retention, and in a high inflation economy, may be subject to a significant reduction unless legislative action is taken to adjust the benefits.

➤ Preservation of Benefits

A defined contribution plan can work well to preserve the value of benefits for former members but actual preservation of such values will depend on the investment performance on the amounts distributed. To the extent benefits are not invested adequately or not saved at all for retirement purposes, then the ability to preserve the value of the retirement benefits is diminished.

In July 2009, the federal Government Accountability Office (GAO) published a report that found workers face a number of risks in both accumulating and preserving pension benefits. The GAO found, in relevant part, that workers that receive lump sum distributions, in particular, face several risks related to how they withdraw their benefits, including:

- ◆ *Longevity risk:* Retirees may draw down benefits too quickly and outlive their assets. Conversely, retirees may draw down their benefits too slowly, unnecessarily reduce their consumption, and leave more wealth than intended when they die.
- ◆ *Investment risk:* Assets in which retirement savings are invested may decline in value.
- ◆ *Inflation risk:* Inflation may diminish the purchasing power of a retiree's pension benefits.

➤ Portability

The Bill generally provides a high degree of portability of retirement benefits for State employees who participate in the DC Plan, since their entire benefit is available for distribution or rollover after termination of employment. Note that with the PEP the existing defined benefit plan also has a significant level of portability, but not to the same level.

➤ Transfer Methodology

On page six of the Bill, the transfer calculation is specified. This means the amount to be transferred will be the greater of employee contributions with interest and the lump sum value of the vested benefit calculated at the participant's earliest unreduced retirement age. For younger and lower service employees, this will generally be the contributions with interest.

Calculations will be required for existing participants considering a transfer. Staff will either need to request these calculations from the actuary, or establish an internal system to calculate these amounts.

➤ Ancillary Benefits

- ◆ Pre-retirement death benefits and disability benefits provided under a defined contribution plan would generally be less than similar benefits provided under a defined benefit plan structure because defined contribution plan benefits depend on the total amount of contributions made and investment performance of assets, while defined benefit plan benefits are not contingent upon such factors. Specifically:
 1. The Hybrid Plan provides for a disability retirement benefit of 25% of final average salary calculated at the date of disability. A member is eligible for this after six months of participation in the system. The DC Plan would offer no other disability benefits other than the account balance at the date of disability, which in most cases would be much less than the current Hybrid Plan disability benefit. Many employers provide disability insurance benefits to employees, which offsets the need for this in the retirement plan. It is our understanding the State does not currently provide employer paid disability insurance to its employees, meaning that under the Bill disability benefits would be less than State employees currently receive under the Hybrid Plan.
 2. The Hybrid Plan provides benefits for the surviving spouse whereby the spouse has three choices: 1) a lump sum payment of the member contributions with interest, 2) lifetime payment of monthly benefit equally to 50% of the deceased member's accrued single life benefit, or 3) if the member at death was eligible for a normal retirement benefit, the spouse can select a benefit equal to the member's 100% joint and survivor annuity benefit. In the DC Plan, the spouse would be eligible to receive a lump payment of the account balance only. Generally, the DC Plan benefit would be significantly less than the spouse benefits in the Hybrid Plan. Many employers do have employer paid life plans that offset the need for this benefit in the retirement plan. In the DC Plan, a death benefit could be added or the State could provide expanded life insurance coverage to provide for the surviving spouse; otherwise, the Bill would result in lower death benefits for State employees than are provided by the current Hybrid Plan.
- ◆ The defined benefit plans have from time to time, provided for retiree increases over time with ad hoc adjustments. This has occurred as a result of favorable plan experience and when the plan's funding situation has allowed. Given the present challenges it is unlikely that the fund will be able to support any ad hoc adjustments until the plan's funding challenges are overcome. If the proposed recovery plan is fully adopted, this will not occur until approximately 2040-2045. However, at some future date it is possible that the plans may reach a funded level that would allow it to again provide ad hoc adjustment to retirees.

The DC Plan does not provide for sharing of favorable plan experience among members, nor does it specifically provide for ad hoc adjustments to retirees. However, for any members in the DC Plan that realize favorable investment experience, they are able to benefit from what would generally be comparable to an ad hoc adjustment. If the State

has a wish to someday provide retiree adjustments, a new process would need to be identified.

- ◆ **Social Security: No impact.**

Funding Policy Issues

> Actuarial Impacts

As previously noted, the Bill will have an actuarial impact on the Hybrid Plan.

- ◆ The Bill will have an immediate effect on the actuarial contribution requirement.
- ◆ The Bill will not provide for a change in the statutory contribution rate.
- ◆ While the resulting Employer Cost Rate will be higher, the total contribution amount will be lower.

> Investment Impacts

- ◆ Depending on the performance of the capital markets and the investment choices made by members, new employees participating in the DC Plan may experience greater, or, more likely, lesser benefits than those provided under the current Hybrid Plan. The risk of loss or gain is borne by the member. No significant changes are required in the Hybrid investment practices as a result of this change. However, if a large portion of participants leave the plan, it may force a change in investment decisions.
- ◆ *Cash Flow:* In general, the Bill will cause cash flows under the defined benefit plans to be altered as membership decreases in the defined benefit plans as currently anticipated. This will impact cash flow needs for funding and benefit payments under the plan. These changes are projected to impact the overall funding of the plans for the future, as previously described. It may be desirable to conduct asset-liability and cash flow studies to better predict the outcomes for the defined benefit plans.
- ◆ *Asset Allocation:* The Bill should not create significant new investment asset allocation issues for the defined benefit plans under the PERS as the amount of new contributions to the plans decreases relative to the amount of benefit payments from the plans.

Administration Issues

> Implementation Issues

In order for this Bill to be implemented, Section 3 of HB 1452 amends NDCC 54-52.6-02 by deleting subsections 1 through 4 and introducing the following language:

“The board shall provide an opportunity for members of the public employees retirement system under chapter 54 - 52 to transfer to the defined contribution retirement plan under this chapter pursuant to rules adopted by the board.”

A strict reading of this sentence indicates that the Board is tasked with providing the opportunity to transfer and that such opportunity will be offered by rule. To place this "opportunity" in perspective, please note that subsections 1 through 4 contained very specific language that provided the procedure whereby prior eligible employees and new eligible employees were able to transfer to the DC plan from the Hybrid plan. Specifically, under subsection 1 new eligible employees were allowed to transfer to the DC plan within the first six months of employment. Having deleted the language describing the existing procedure, the new language suggests that this gap be filled by administrative rule. The reference to "an opportunity" is broad enough to apply to employees currently in the Hybrid plan for whom the opportunity to elect the transfer has previously expired and for new employees. Therefore, absent further clarifying language the Board must adopt administrative rules establishing a procedure for this transfer before it can transfer either new or existing employees into the DC plan.

Given the above requirement, PERS will need to go through the administrative rule making process, which will take to the spring of 2014. After this process is completed then PERS can begin implementation of the provisions of the proposed bill.

> Administrative Costs

The Bill will have an impact on the administrative resources needed for both the defined benefit plans and DC Plan because it is anticipated the Bill would add a relatively large number of new members to the DC Plan. Administrative costs may need to be reallocated from the defined benefit plans to the DC Plan over time, as membership numbers shift to the DC Plan. Initially, however, the Bill will require maintaining the administrative resources for the defined benefit plans, while increasing the administrative resources available to the DC Plan.

The board is also required to follow a specific method in offering this to new employees. This will require several mailings to members, printing the material, developing the information for the mailing (specific member transfer amounts and other specific member information), processing elections, modifications of the business system, and transferring the funds. Since the board already has a DC plan and many of the business processes in place, the estimated cost for mailings, printing, and system modifications is \$105,641. Additional appropriation will be needed for the 2013-15 biennium for these costs, or PERS will have to use its contingency line item to support these efforts.

> Needed Authority

The Bill appears to provide appropriate levels of administrative and governance authority to the PERS board to implement the changes made by the Bill.

> Integration

No impact.

> Employee Communications

The nature of defined contribution plans allowing participant directed investments will require additional employee education effort regarding retirement and investment planning. The need for this effort is supported by information found in a recent retirement portability study conducted by the federal Office of Management and Budget. A survey of employees indicated an overall low level of understanding of the how to invest moneys for retirement. The survey indicated a low level of understanding regarding investment categories and investment risk. Because the DC Plan will be the primary retirement vehicle for its members, it will be critical to provide these education services.

Consideration should be given to participant education, including requiring or allowing members to attend financial planning seminars and meeting with financial advisors in the work place and during working hours. Increasingly, sponsors of defined contribution plans are making available investment advisory services to assist members to invest their retirement assets prudently. There are a variety of methods for providing these education and advisory services that should be examined, including group meetings, individual counseling and technology based approaches. With a defined contribution plan, individual members are responsible for monitoring their own investment performance and making changes as appropriate. Their success or failure is a direct result of how they fulfill this responsibility.

> Miscellaneous and Drafting Issues

- ◆ Consideration should be given to examining the fiduciary issues surrounding defined contribution plans, including the nature of the risks associated with participant directed investments, provision of employee investment information and education, self-directed brokerage windows, financial and retirement planning and investment advisory services.
- ◆ Please note that determining the actuarial effect of this offering is dependent upon the assumed rate of acceptance. As noted earlier, it is very difficult to estimate election rates with a high level of confidence. Last biennium we estimated the cost of closing the plan when it was clear that new employees would not be joining the plan. Consequently, future participation did not need to be estimated. By contrast, future participation for purposes of this Bill need to be estimated and consequently, it needs to be understood that the actual rates could vary substantially from those estimated herein. Therefore, the actual cost could vary substantially as well. Since participation rates estimated herein are low, based upon the current environment and past experience, there is greater potential for actual costs to be higher than lower since there is more room to move higher than lower. Policy makers need to understand that future costs could be higher and would have to be addressed with additional contribution adjustments.

The projections were made using generally accepted actuarial practices and are based on demographic data as of July 1, 2012 and asset returns through July 1, 2012 and use assumptions adopted by the PERS board for the July 1, 2012 valuation, except the assumed retirement age. Calculations were completed under the supervision of Tammy Dixon, FSA, MAAA, EA.

Mr. Sparb Collins
January 28, 2013
Page 12

Projections, by their nature, are not a guarantee of future results. The projections are intended to serve as estimates of future financial outcomes that are based on the information available to us at the time the projection is undertaken and completed, and the agreed-upon assumptions and methodologies described herein. Emerging results may differ significantly if the actual experience proves to be different from these assumptions or if alternative methodologies are used. Actual experience may differ due to such variables as demographic experience, the economy, stock market performance and the regulatory environment.

The information contained in this letter is provided within our role as the plan's actuary and benefits consultant and is not intended to provide tax or legal advice. We recommend that you address all issues described herein with your legal counsel. Please call if you have any questions or comments.

Sincerely,



Brad Ramirez, FSA, MAAA, FCA, EA
Consulting Actuary

cc: Tammy Dixon
Laura Mitchell
Melanie Walker

5232026v3/01640.004

Attachment 2

FISCAL NOTE Requested by Legislative Council 01/22/2013

Bill/Resolution No.: HB 1452

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

| | 2011-2013 Biennium | | 2013-2015 Biennium | | 2015-2017 Biennium | |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Expenditures | \$0 | \$0 | \$9,440,000 | \$8,352,000 | \$9,440,000 | \$8,352,000 |
| Appropriations | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| | 2011-2013 Biennium | 2013-2015 Biennium | 2015-2017 Biennium |
|------------------|--------------------|--------------------|--------------------|
| Counties | \$0 | \$4,368,000 | \$4,368,000 |
| Cities | \$0 | \$1,873,000 | \$1,873,000 |
| School Districts | \$0 | \$4,672,000 | \$4,672,000 |
| Townships | \$0 | \$0 | \$0 |

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The proposed legislation would provide State employees, including judges, BCI law enforcement officers and National Guard employees, the opportunity to irrevocably elect to participate in the Defined Contribution Plan pursuant to rules adopted by the PERS board.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The increase is due to having fewer members in the various retirement plans to pay off the unfunded liability. This bill would allow existing and new state employees the opportunity to elect out of the existing retirement plan and join the defined contribution retirement plan. The above assumes that 15% of the existing members would elect to transfer and 10% of newly hired employees annually thereafter (these estimates assume the recovery plan will be adopted and therefore these amounts would be in addition to recovery plan estimates). At this level, contributions would need to increase by 1.66% of payroll to support this option for the Main/hybrid plan. This would have a total biennium cost of \$28.6 million. When this option was originally offered to non-classified state employees in 1999, 38% elected to transfer. Over the last 10 years about 16% of newly hired employees elected to transfer to the DC plan and over the last 5 years this fell to about 7.8%. The above projections use a lower election rate for existing employees due to the current economic conditions. Assuming these election rates, the number of members in the existing defined benefit/hybrid plans would decrease, while the unfunded liability would not go down proportionately. Consequently there would be fewer members to pay off the remaining unfunded liability. Therefore, the contribution amount required from those remaining is higher in order to generate approximately the same amount of revenue to make the necessary payments to pay off the unfunded liability. The second area contributing to the actuarial effect is that existing employees are allowed to transfer the full present value of their accrued benefit. This would result in a transfer of assets greater than the assets that currently support the benefit, causing the plan to take a loss for each member transferring that would need to be paid by increased contributions from those remaining. If this provision was modified to make its present value less unfunded liability it would reduce the cost for the main hybrid plan. If we assumed that the number making this election to transfer was annually 10% of the existing members and 5% of the new hires, then the main hybrid plan contributions would need to increase by .95% to support this option at the level for the Main/hybrid plan. This would have a total biennium cost of \$16.4 million. Alternatively, if we assume that 20% of the existing members elect to transfer and 15% of the new hires then contributions would need to increase by 2.42% in the Main/Hybrid Plan. This would have a total biennium cost of \$41.7 million. As illustrated, the cost varies

substantially depending on the number electing to transfer. This transfer risk will be an ongoing risk for the plan if this bill is adopted and may cause contribution requirements to vary substantially.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The effective date of the bill is 8/1/2013 and its provisions would be implemented when administrative rules are promulgated pursuant to the bill. From this date forward the number of state employees in the existing defined benefit/hybrid plan will start to decrease. The actuary has determined that this declining membership will mean the remaining members will need a higher contribution to raise approximately the same amount of funds to pay off the unfunded liability. These actuarial effects will start to take place with the implementation of the bill. If contributions are not increased, funds are not appropriated, and the actuarial assumptions are not met, the additional contribution for the remaining members will continue to accrue and roll over into future bienniums for additional payment. In addition, NDPERS estimates additional administration expenses for printing, mailings, meetings, etc. of \$106,000.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The bill as proposed does not appropriate funds to pay the additional cost identified above. If appropriated, retirement contributions would need to be increased for the state and political subdivisions by 1.66%, assuming 15% of the existing members transfer and 10% of the new hires, or .95%, assuming 10% of the existing members transfer and 5% of the new hires, or 2.42% if 20% of the existing members transfer and 15% of the new hires. Contribution requirements for the other smaller system would need to change as well. At the level of 15% of the existing members and 10% of the new hires, the Judges contribution would need to go up by 1.64%, the law enforcement contribution would need to go up .76% and National Guard would need to go up .46%.

Name: Sparb Collins

Agency: NDPERS

Telephone: 701-328-3900

Date Prepared: 01/28/2013

TESTIMONY OF SPARB COLLINS

HOUSE BILL 1304

Mr. Chairman, members of the committee, good morning my name is Sparb Collins and I am the Executive Director of the North Dakota Public Employees Retirement System (PERS). Today I appear before you in opposition to this bill because it supersedes the existing requirements in state statute relating to retirement plan investing and the existing process for consideration of the provisions in this bill. State law presently sets the standard for investing retirement funds in NDCC 54-52-14.3 and consideration of proposals such as that in HB 1304:

*All moneys from any source paid into any public employees retirement system fund created by the laws of this state must be used and invested only for the **exclusive benefit** of the members, retirees and beneficiaries of that system....*

The "exclusive benefit rule" is the generally accepted standard for retirement plan investing and guides plan fiduciaries. Specifically, this provision instructs fiduciaries that the interests they represent are exclusively those of the funds' members and not other non-retirement interests which may relate to broader social or economic considerations separate from the retirement interests of the members. If the exclusive benefit rule is overridden as proposed in this bill, the list of other possible exceptions is long and each has its own merits embraced by those who propose them. The following are only a few examples:

1. Tobacco free investing – It has been suggested that, due to the documented health implications of addiction, funds should not invest in any firm that engages in the manufacture and sale of tobacco products. Several years ago it was suggested that PERS should not allow our managers to invest in these companies because it was in conflict with our responsibilities to promote wellness and other cost effective efforts for the health plan.
2. Economically-targeted investments – Around the country there have been discussions about requiring that funds be invested in-state. Periodically this has come up in North Dakota.
3. Sudan Free – No investment in companies that aid the government of Sudan.
4. South Africa Free – Several years ago there were discussions around the country about having a South Africa Free provision. It was discussed here as well but was not adopted.
5. Gun manufacturers – Recently the Mayor of Chicago and other supporters have encouraged funds not to invest in companies that manufacture guns.

6. Other provisions – Other interest groups have advocated nationally for restrictions related to companies that produce alcohol or have interests related to gambling companies.

The dilemma is that once we introduce social or economic investing criteria that override the “exclusive benefit rule” for retirement fund investing, the potential list becomes long; the decisions difficult since they are made based upon the merits of each proposal not necessarily the needs of the fund and the overall cost implications are not considered. If the list expands significantly over time, the exclusive benefit provisions could become secondary as could the retirement interests of the members.

Consequently, we believe that retirement funds should be guided primarily by the historical legislative standard of the “exclusive benefit rule” since it provides a sound framework for consideration of these proposals. Therefore, we would respectfully offer the attached amendment that would maintain the “exclusive benefit rule” standard for retirement fund investing and allow the provisions of this bill if that standard is met. According to our investment policies, the “exclusive benefit rule” is met if the following four conditions are satisfied:

- (1) The cost does not exceed the fair market value at the time of investment.
- (2) The investment provides the Fund with an equivalent or superior rate of return for similar investments with similar time horizons and risk.
- (3) Sufficient liquidity is maintained in the Fund to permit distributions in accordance with the terms of the plan.
- (4) The safeguards and diversity that a prudent investor would adhere to are present.

Mr. Chairman, members of the committee, the NDPERS Board and I agree with the concerns this bill represents and to insure that all its implications are considered fully, we would request the attached amendment be added to the bill. Thank you.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1304

Page 4, after line 19, insert:

"21-13-10. Divestment of public employee retirement funds.

Notwithstanding any other law to the contrary, the state investment board shall apply the exclusive benefit rule in investing any public employee retirement system fund created by the laws of this state. The state investment board need not engage a scrutinized company under section 21-13-02 or proceed with divestment under section 21-13-03 if the board determines doing so would violate the exclusive benefit rule."

Renumber accordingly



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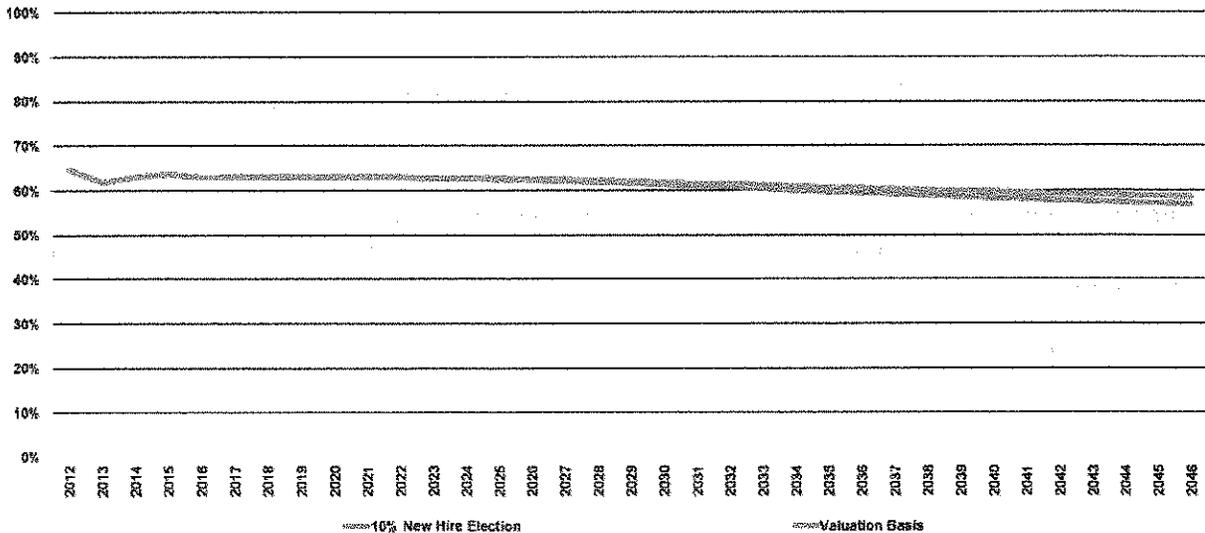
MEMORANDUM

To: Sparb Collins
From: Brad Ramirez
Date: February 13, 2013
Re: North Dakota PERS – Cost Neutral Bill (Revised)

We have projected the financial impact of modifying HB 1452 as follows:

1. For current PERS participants, no transfers will be allowed.
2. The PERS employer contribution requirement for new hires who elect to participate in the defined contribution retirement plan shall be 4.12% of salary beginning July 1, 2013 and thereafter. These employer contributions shall be allocated to payment of the PERS unfunded actuarial accrued liability and shall continue until the unfunded amount is zero as reported by the plan actuary in the annual actuarial valuation report.

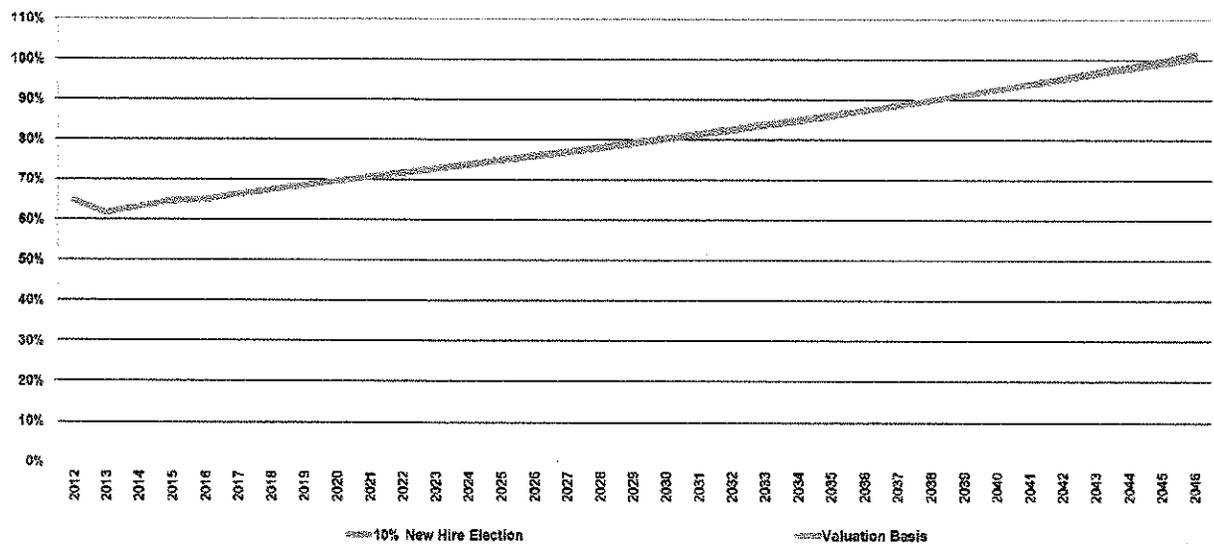
Projected Funded Ratios Under Amended HB 1452 (AVA Basis) – Main System



The graph compares the Projected Funded Ratios (on the AVA Basis) of the PERS Main System from the July 1, 2012 actuarial valuation as if the modified HB 1452 as described above were approved. The projection assumes that 10% of new employees will elect to participate in the defined contribution retirement plan. As demonstrated in the graph, on this basis, the modified HB 1452 would have an immaterial actuarial impact on the projected funded ratios of the PERS Main System. It is difficult to predict the election rate, but with the parameters specified above, we believe the financial impact should be similar regardless of the election rates.

We have also projected the impact of changing item 2. to reflect continued increases in contributions under the proposed recovery plan. The PERS employer contribution requirement for new hires that elect to participate in the defined contribution retirement plan shall be 4.12% of salary beginning July 1, 2013, increasing to 5.12% of salary as of July 1, 2014, and increasing to 6.12% of salary as of July 1, 2015.

Projected Funded Ratios Under Amended HB 1452 and Recovery Plan (AVA Basis) – Main System



The projections were made using generally accepted actuarial practices and are based on the assumptions and methodology used for the July 1, 2012 actuarial valuation under the supervision of Tammy Dixon, FSA, MAAA, EA. We will call you to review these results.

cc: Tammy Dixon
 Laura Mitchell
 Melanie Walker



THE SEGAL COMPANY
5670 Greenwood Plaza Boulevard Suite 425 Greenwood Village, CO 80111-2499
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Brad Ramirez, FSA, MAAA, FCA, EA
Consulting Actuary
bramirez@segalco.com

January 17, 2013

Mr. Sparb Collins
Executive Director
North Dakota Public Employees Retirement System
400 East Broadway, Suite 505
Bismarck, ND 58502

**RE: North Dakota Public Employees Retirement System (PERS)
Actuarial Cost Study for Defined Contribution Participants**

Dear Sparb:

At your request, The Segal Company has performed an analysis of the cost of granting participants of the PERS Defined Contribution Plan benefits under the PERS Main System Plan.

Background

As of January 1, 2013, the North Dakota Public Employees Retirement System Defined Contribution Plan (DC Plan) requires participants to contribute 6.00% of compensation to the DC Plan. Employers contribute 6.12% of compensation on each participant's behalf. Benefits grow with investment earnings and are distributed upon termination. The North Dakota PERS Main System Plan provides a defined benefit to participants based upon years of service and salary at termination or retirement.

Methodology/Assumptions

This analysis was based upon individual data for the 225 active members of the DC Plan as of and their account balances as of January 1, 2013. The assumptions used were those adopted by the Board for Main members in the July 1, 2012 valuation of the PERS Plan.



Results

Under these assumptions, the Unfunded Actuarial Accrued Liability (UAAL) for the current members as of July 1, 2012 would be \$32,477,397 offset by assets from the existing DC Plan of \$20,938,418. If this were to be amortized using the current 20 year policy of the PERS Plan for Main members, the required annual contribution would be \$805,308. In addition to this amortization amount, the annual employer Normal Cost (total Normal Cost less member contributions) would be \$554,534. This would result in an annual required employer contribution of \$1,359,842 on behalf of the DC Plan participants, which is approximately 8.6% of DC Plan participant payroll (a total of 14.6% of payroll including employee contributions). This is based on the projected annual payroll of \$15,570,862 for DC Plan members.

If these participants were allowed to enter the PERS plan and were subject to the same contributions as current PERS Main members, the resulting 12.12% of pay contribution would not be sufficient to pay for the benefits under the PERS plan.

If only the 44 DC Plan participants at ages 55 and above were granted benefits under the PERS Plan, the annual required employer contribution would be \$455,931, or 11.6% of the projected annual payroll (a total of 17.6% of payroll including employee contributions) for those participants. If DC Plan participants at ages 55 and above were allowed to enter the PERS plan and were subject to the same contributions as current PERS Main members, the resulting 12.12% of pay contribution would not be sufficient to pay for the benefits under the PERS plan.

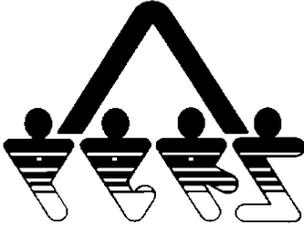
These calculations were completed under the supervision of Tammy F. Dixon, FSA, MAAA, Enrolled Actuary.

Sincerely,



Brad Ramirez, FSA, MAAA, EA, FCA
Consulting Actuary

cc: Tammy F. Dixon, FSA, MAAA, EA



**North Dakota
Public Employees Retirement System**
400 East Broadway, Suite 505 • Box 1657
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Sparb Collins
Executive Director
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FAX: (701) 328-3920 • EMAIL: NDPERS-info@nd.gov • www.nd.gov/ndpers

Memorandum

TO: PERS Board
FROM: Sparb
DATE: February 12, 2013
SUBJECT: Health Legislation

HB 1058 – Retiree Health

Passed the House 93-0 and is awaiting consideration in the Senate after crossover.

HB 1059 – ACA Compliance/HSA for Political Subdivisions

The bill passed the House GVA committee 13-1. It was referred to Appropriations and a hearing was held on February 6. We were asked to provide additional explanation and information on the changes relating to the fiscal note. The following is what we provided:

Section 1 - Compliance with the Affordable Care Act (ACA)

Section 1 of the bill would amend Section 54-52.1-03.4 of the North Dakota Century Code to modify the uniform group insurance program's eligibility rules for temporary employees first employed after December 31, 2013, and to limit the amount any temporary employee can be required to contribute towards the cost of coverage. The purpose of the proposed changes is to prevent the State of North Dakota from being subjected to the Employer Shared Responsibility penalties with respect to its temporary employees who are "full-time employees" under the Affordable Care Act provisions effective January 1, 2014. There are two ways Shared Responsibility penalties may be imposed. The first is if health coverage is not offered to at least 95% of an employer's "full-time employees" and their children who are less than 26 years old. This "No Coverage" penalty is \$2,000 per full-time employee per year.

The second is if health coverage is offered to 95% or more of an employer's "full-time employees," but that coverage is "unaffordable" to certain "full-time employees." Coverage is "unaffordable" if the full-time employee's required contribution to self-only coverage exceeds 9.5% of his or her household income. This "Unaffordable Coverage" penalty is \$3,000 for each "full-time employee" who purchases coverage in a state-based Health Insurance Exchange and qualifies for a premium tax credit. For purposes of these rules, "full-time employee" generally means any employee who averages more than 30 hours of service per week during a month.

Section 1 of the bill would make the following two amendments to Section 54.52.1-03.4 of the North Dakota Century Code:

1. The first amendment would make any temporary employee “first employed after December 31, 2013 ... eligible to participate in the uniform group insurance program only if the employee meets the definition of a full-time employee under section 4980H(c)(4) of the Internal Revenue Code [26 U.S.C. 4980H(c)(4)].”
2. The second amendment would preclude any temporary employee’s contribution for coverage from exceeding “... the maximum employee required contribution specified under section 36B(c)(2)(C) of the Internal Revenue Code [26 U.S.C. 36B(c)(2)(C)],”

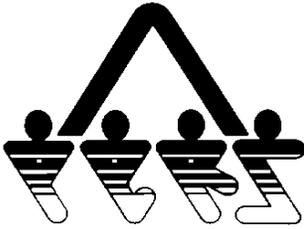
The first amendment would ensure that temporary employees first employed after December 31, 2013 could not cause the State to be exposed to the No Coverage penalty. This is so because these temporary employees would be eligible to participate in the uniform group insurance program if they are full-time employees for purposes of the Employer Shared Responsibility rules. The first amendment does not alter the eligibility requirements for temporary employees first employed on or before December 31, 2013. If any of these temporary employees are full-time employees for purposes of IRC § 4980H(c)(4) at any time after January 1, 2014, but are not eligible to participate in the uniform group insurance program, they technically could expose the State to Employer Shared Responsibility penalties. However, the IRS has prescribed certain safe harbors for determining full-time employee status that will allow the State to avoid this problem.

Under the IRS’s safe harbors, employers can designate look back periods of as many as 12 consecutive calendar months to determine who is a full-time employee during a subsequent stability period, also of 12 months. Only those employees who work an average of 30 hours or more per week – or 130 hours per calendar month – during the look back period are considered full-time employees during the corresponding stability period for purposes of the Shared Responsibility rules.

The second amendment would ensure that any temporary employee who is eligible to participate in the uniform group insurance program could not expose the State to the Unaffordable Coverage penalty based on the temporary employee’s cost of coverage. This is so because it would prevent any temporary employee from paying more than 9.5% of his or her household income to obtain coverage. The proposed change is done so that the State will minimally comply with the new federal law. That is the existing definition of full time employee presently in state statute is not changed, if it was changed to the ACA definition then the additional newly eligible employee would get 100% of their premium paid. To avoid this financial effect the definition of temporary employee was changed and the payment was limited to only that required in the federal law, 9.5% of household income. Using this method limits the cost to the state as the employer.

The above changes should insure that the state complies with the Shared Responsibility rules without changing our definition of full time employees that are eligible for 100% payment of their health insurance premium. With this change though comes the expanded number of individuals who now will get some of their premium paid by the employer. Consequently, the fiscal note on this indicates the estimated cost of this change is \$2,000,000 with 50% coming from the general fund and 50% coming from other funds. This also assumes that the State, as the employer will use a 12 month look-back period for determining eligibility. This cost estimate was developed by the Office of Management and Budget and Higher Education by looking back over their payrolls for a 12 month period to determine the number of temp employees that may be eligible. The 12 month look back period is used to again limit the cost to the state. If we used a shorter look back period more employees would become eligible especially seasonal employees who work 30 or more hours per week for 3 to 5 months. Using the 12 month period sorts out those individuals. After completing this assessment it was determined that approximately 200 additional employees would qualify for single plan coverage at an estimated premium of approximately \$482 per month ($482 \times 200 \times 24 = \$2,313,600$). Employees can be charged up to 9.5% of their household income for this coverage which will reduce this amount by whatever can be charged based on an individual income. Looking forward, it cannot be clearly predicted which agencies will have these eligible employees and so funds are included in the OMB budget to support the payments for new employees that are deemed eligible.

This bill is awaiting action by the House Appropriations Committee.



**North Dakota
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Memorandum

TO: NDPERS Board
FROM: Kathy
DATE: February 12, 2013
SUBJECT: Vision Plan Annual Report

Superior Vision has provided us with our 2012 annual report. They provided us with a services utilization summary, beginning and year end enrollment, and a list of the most utilized providers within the network. Following are some of the report highlights:

A. Member Utilization

- 85% of the services provided were in-network and 15% were out of network. Superior's national average for in-network utilization is approximately 96%.
- Total number of claims in 2012 was 10,920. Total amount paid was \$865,263.38. Following is a breakdown of these number by group:

| | Amt Paid | # of Claims |
|----------|-----------------|--------------------|
| Actives | \$798,601.30 | 10,015 |
| Retirees | \$ 62,500.14 | 825 |
| COBRA | \$ 4,161.94 | 80 |

- The loss ratio (claims paid/premium paid) is 110.6%. Therefore, Superior is experiencing a loss which would affect rates at renewal. However, because we have a four-year rate guarantee that doesn't expire until December 31, 2014, our rates will not be affected at this time. Generally insurers prefer the ratio be around the 90% range.

B. Top 5 Providers (most utilized within the network):

1. Dakota Eye Institute with 13% of the claims.
2. Wal-Mart with 10% of the claims.

3. Lenscrafters and Eyes on Parkway each with 7% of the claims.
4. Lifetime Vision Center with 6% of the claims.

Covered lives by Tier as of December 31, 2012:

| | Employees | Dependents |
|--------------------|------------------|-------------------|
| Emp Only | 2,906 | 0 |
| Emp + Child | 574 | 1,101 |
| Emp + Spouse | 2,071 | 2,054 |
| Emp + Family | 2,004 | 6,231 |
| | 7,555 | 9,386 |
| Total Lives | | 16,941 |

The total covered lives on January 1, 2012 were 15,785. Covered lives increased by 1,156 or by 7.3% during 2012.



**North Dakota
Public Employees Retirement System**
400 East Broadway, Suite 505 • Box 1657
Bismarck, North Dakota 58502-1657

Sparb Collins
Executive Director
(701) 328-3900
1-800-803-7377

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

Memorandum

TO: NDPERS Board

FROM: Kathy

DATE: February 13, 2013

SUBJECT: Retiree Update

At the January meeting, staff reported the participation in the group insurance plans prior to and following the annual enrollment conducted last fall. The volume of group life coverage for active employees was reported at that time. The Board requested that information regarding retiree participation be provided at a future meeting.

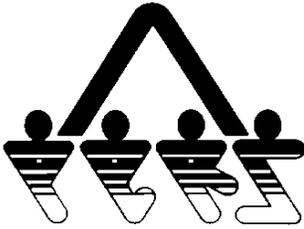
Upon retirement and prior to age 65, retired members can continue their life coverage at the same level and premium as they had as an active employee. At age 65, any employee, dependent, or spouse supplemental coverage terminates and the retiree may continue basic coverage for life at the \$1,300 level. Following is the breakdown of the volume and number of participants by coverage level as of February 2013:

| Coverage Level | Number | Volume |
|-----------------------------------|---------------|---------------|
| Retiree Basic Coverage of \$1,300 | 3,135 | \$ 4,075,000 |
| Supplemental Life | 393 | \$24,939,100 |
| Dependent Life | 199 | \$ 650,000 |
| Spouse Supplemental | 144 | \$ 4,460,000 |

For your information, following are some additional administrative updates:

- 1099Rs were mailed out by January 15, 2013 which was ahead of schedule.
- Retiree annual summary statements for 2012 were sent out the week of January 21, 2013.

We are available to answer any questions.



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Memorandum

TO: PERS Board
FROM: Sparb
DATE: February 13, 2013
SUBJECT: Specialty Pharmacy Program Update

In 2010 the Board approved a specialty pharmacy program. The following is the information reviewed by the board at that time:

Option 2: Triessent Specialty Pharmacy Program

Triessent is Prime Therapeutics' specialty pharmacy program. The program is designed to help improve the health of members with specialty conditions (like rheumatoid arthritis, hepatitis C, and multiple sclerosis). Triessent offers safe and efficient medication delivery, member education, and guidance from pharmacists and nurses experienced with specialty conditions. Triessent offers modestly deeper discounts on specialty medication than retail pharmacy networks.

Cost Impact: Prime Therapeutics estimates that exclusive use of Triessent Specialty Pharmacy Program services would yield approximately \$100,000 in annual savings

Member Impact: In 2009, approximately 310 NDPERS members filed claims for a specialty medication. Under an exclusive specialty pharmacy program, these members would be required to obtain their medications through Triessent. Currently, most NDPERS members use retail pharmacies for their specialty medication needs, so the use of a specialty pharmacy involves a different member experience. Some employer groups have experienced member disruption implementing the Triessent program (transferring prescriptions, arranging delivery schedules) when they entered into an exclusive, fixed start date with Triessent. Member disruption issues may be avoided initially in a voluntary program.

Administrative Considerations: Specialty medications are the fastest growing segment of the pharmaceutical market, both in terms of new products and inflationary pricing. While specialty medications account for only a very small number of claims filed by a very small number of members, the specialty class of drugs is driving the overall pharmacy cost trend. In 2009, NDPERS' specialty medication PMPM trend was 17%. The non-specialty medication PMPM trend was a deflationary -0.7%. It appears that managing these products apart from the general drug benefit would be beneficial. **Benefit changes may be needed to support this arrangement.**

BCBSND recommends we enter into an exclusive arrangement through Triessent on behalf of NDPERS membership. Doing so now minimizes member impact and establishes the program to better manage the increased utilization of specialty medications in the future.

As approved, the program was voluntary and now the specialty pharmacy provider is Prime and not Triessent. BCBS and Prime are about to mail out another letter to those not using the program (attached).

The following is information from BCBS about the program:

- A recent check of membership shows around 360 Specialty utilizers for NDPERS using retail pharmacies, while about 25 are using Prime Specialty Pharmacy.
- NDPERS spent \$8.7M on Specialty claims in 2012.

Specialty drug use is one of the fastest growing costs in the PERS program. After this mailing we may want to again review this program, other options and decide if we want to enhance our efforts in this area. If you agree, I will ask BCBS to report on this effort and other options this summer for your consideration.



**News about your specialty
pharmacy benefit.**

c/o Prime Therapeutics
P.O. Box 64813
Saint Paul, MN 55164-0813

«date»

<PatientFirstName> <PatientLastName>
<MemberAddress1>
<MemberAddress2>
<MemberCity> <MemberState> <MemberZip> <Plus4>

Dear <PatientFirstName> <PatientLastName>,

We noticed that you recently filled a prescription for <drug name>. This is a specialty medicine.

Specialty medicines are usually prescribed to treat long-term or rare conditions. Since these conditions can be complex, your Blue Cross Blue Shield of North Dakota (BCBSND) benefit plan with <company name> offers a program to fill these prescriptions: Prime Therapeutics Specialty Pharmacy (Prime Specialty Pharmacy).

You won't need to make a special trip to the pharmacy. Prime Specialty Pharmacy delivers your medicine where and when you need it. Injection supplies (syringes, disposal containers, etc.), if you need them, are included at no extra cost.

We want you to get the best results from your drug therapy. Prime Specialty Pharmacy includes:

- Confidential support and answers to medication questions
- 24/7/365 access to a pharmacist for urgent issues about your medicine
- Information about managing potential side effects
- Educational materials about your condition

Prime Specialty Pharmacy may call you to help you sign up and answer any questions about the program.

Or, you can start using Prime Specialty Pharmacy now. **Just call 877.627.MEDS [6337]** Monday through Friday, 7 a.m. to 6 p.m. CT. Have the following information handy:

- Your BCBSND member ID number
- Name and phone number of the pharmacy you are using now
- Your prescription number and name of your medicine
- Your doctor's name, phone and fax numbers

See the enclosed brochure for more information about Prime Specialty Pharmacy.

If you have questions, please give us a call at 877.627.MEDS [6337]. We're happy to help.

Sincerely,

Tom Christensen
Pharmacy Manager

Blue Cross Blue Shield of North Dakota is an independent licensee of the Blue Cross & Blue Shield Association

Noridian Mutual Insurance Company

Prime Therapeutics Specialty Pharmacy LLC (Prime Specialty Pharmacy) is a wholly owned subsidiary of Prime Therapeutics LLC (Prime). Prime is an independent company that assists in the administration of Blue Cross Blue Shield of North Dakota's pharmacy benefits management on behalf of Blue Cross Blue Shield of North Dakota.



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Memorandum

TO: PERS Board
FROM: Sparb
DATE: February 12, 2013
SUBJECT: HSA Agreement

Attached please find the HSA agreement for the 2015-2017 biennium. You will note it has been reviewed by Jan and she has suggested a few changes.

Board Action Requested

To approve the attached agreement for the HSA for 2015-2017 as modified by Jan.

Health Savings Account Administrative Services Agreement

This Health Savings Account Administrative Services Agreement ("Agreement") is entered into by **North Dakota Public Employees Retirement System** ("Employer") and Blue Cross Blue Shield of North Dakota ("BCBSND") as of **January 1, 20123** ("Effective Date").

WHEREAS, Employer desires to establish Health Savings Accounts ("HSAs") for or on behalf of its members ("Employees").

WHEREAS, BCBSND has a contractual relationship with Discovery Benefits, Inc. ("DBI") whereby DBI performs administrative services related to the establishment and maintenance of HSAs using Healthcare Bank as the HSA custodian.

WHEREAS, BCBSND, in conjunction with services available from DBI, will perform certain recordkeeping and nondiscretionary administrative services, and will facilitate contributions made by or on behalf of Employees to HSAs. Healthcare Bank will serve as custodian of these accounts.

NOW THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, the parties agree as follows:

1. Scope and Purpose

This Agreement is limited in scope and purpose to establishing the terms and conditions for the transfer of payroll deductions and Employer contributions (if applicable) to HSAs of Employees. As described in Exhibit A, this Agreement also provides for the payment of HSA fees by Employer on behalf of Employees. Nothing in this Agreement shall modify or amend the terms of any HSA trust agreement entered into between Healthcare Bank and Employees. Employer acknowledges and agrees that each Employee, and not BCBSND and/or DBI, will be responsible for (i) determining that he or she is eligible to maintain an HSA and make contributions under applicable tax laws; (ii) ensuring that all distributions he or she makes are permitted under said laws; (iii) the tax consequences of any contributions (including rollover contributions) and distributions; (iv) paying any fees applicable to the HSA; and (v) complying with all requirements and terms and conditions in connection with the HSA imposed or established by BCBSND, DBI or Healthcare Bank.

2. Opening of Accounts

In accordance with procedures to be agreed upon by the parties, Employer will (i) advise Employees who wish to participate in Employer's HSA program that they will be required to complete and send to DBI a signed application form or otherwise enroll for an HSA account through alternate electronic procedures established by DBI, (ii) provide each such Employee with any applicable notices, forms and disclosures provided by DBI; and (iii) send to DBI at such time and in such format as DBI requires information with respect to the Employees who are participating in the Employer's HSA program. Employer represents and warrants to BCBSND that information it provides to BCBSND and/or DBI under this Agreement will be true and complete, and that it will not request BCBSND and/or DBI to open an HSA account for any Employee who has not indicated an intent to open such account. Neither BCBSND nor DBI shall be responsible for the accuracy of such information or for its HSA account opening or maintenance activities based on information received from the Employer. BCBSND reserves all rights to decline to open or activate any HSA account or to close any HSA account insofar as its practices and procedures have not been properly observed by the Employer or the Employee.

3. Funding of Accounts

On a schedule and in the form to be agreed upon by the parties, Employer shall remit to DBI the funds to be deposited into the HSA account of each Employee, and shall provide accompanying data which accurately indicates each HSA account and the dollar amount to be credited to each such HSA account. Neither BCBSND nor DBI shall be responsible for any funds not received by DBI, or for any data errors provided by Employer. As soon as administratively practicable, Healthcare Bank will sweep the Employer's contributions into the HSA accounts of the Employees. As applicable, Employer contributions shall be allocated first, to pay applicable administrative and account maintenance fees attributable to HSA accounts of the Employees, and next, directly to the HSA accounts of the Employees. Once deposited, funds may be withdrawn or transferred from an HSA account solely upon the instructions of the respective Employee. In no event shall BCBSND and/or DBI be obligated to return any HSA account funds to Employer.

4. Account Maintenance

In order to administer and maintain the HSA accounts, from time-to-time in accordance with procedures to be agreed upon, Employer will submit to DBI certain information concerning the status of Employees and HSA contributions and DBI may provide certain information about the HSA accounts to Employer and BCBSND. Employer acknowledges that BCBSND and DBI may rely upon all information provided by Employer in maintaining and administering the HSA accounts. Employer shall be responsible for all costs and expenses incurred by BCBSND and/or DBI for error correction or other activities undertaken by BCBSND and/or DBI at Employer's request or as a result of erroneous information provided by Employer to BCBSND and/or DBI. If requested, Employer will certify to BCBSND the personnel authorized by Employer to receive and furnish information under this Agreement.

5. Account Closures

BCBSND and/or DBI will close an HSA account only upon the instructions of the respective Employee. Notwithstanding anything to the contrary herein, at its discretion, BCBSND and/or DBI may refuse to open, or may close any previously established HSA account, as to which the Employee is unable or unwilling to sign DBI forms or otherwise agree to the terms and conditions related to such HSA account, or otherwise violates any terms thereof. Employer acknowledges that upon any such closure, funds in the HSA account will be returned to the Employee, or forwarded to another financial institution upon instructions of the Employee.

Health Savings Account Administrative Services Agreement

Employer further acknowledges that such closure may result in tax consequences for which the Employee shall solely be responsible.

6. Fees Paid by Employer

As set forth in Exhibit A, Employer shall be responsible for the payment of fees to DBI (outside of the HSA accounts) within sixty (60) days following the Employer's receipt of the statement of Service Fees. BCBSND shall, as directed and authorized by Employer, remit payment on behalf of Employer to DBI from Employer's cash reserve account maintained by BCBSND. Interest may be charged on the amount of all past due fees at the rate of 1 1/2% per month, or, if lower, the maximum allowable rate under applicable law. If Employer fails to pay fees within ninety (90) days following the Employer's receipt of the statement of Service Fees, and upon written request of DBI to Healthcare Bank, fees (including interest on past due fees) may be deducted directly from the HSA accounts to which they relate; provided, no amount may be deducted from an HSA account to cover unpaid fees from other HSA accounts.

7. Employee Data

Employer represents that all Employees for whom data is provided by the Employer have been positively identified through either (1) Internal Revenue Service I-9 forms completed by Employees if hired after November 6, 1986, or (2) for Employees hired before that date, review by Employer of the Employees' driver's licenses or other government-issued identifying documentation evidencing nationality or residence and bearing a photograph or similar safeguard. The Employer also represents that the Employees have certified their authorization to work in the United States and have furnished their social security or other taxpayer identification numbers which the Employer will provide to DBI for the purposes of establishing HSAs.

8. Employer Requirements

Employer represents and warrants that it does not (1) limit the ability of eligible individuals to move their funds to another HSA account beyond restrictions imposed by the Internal Revenue Code of 1986, as amended (the "Code"); (ii) impose conditions on uses of HSA funds beyond those permitted under the Code; (iii) make or influence the investment decisions with respect to funds contributed to an HSA account; (iv) represent that HSAs are an employee welfare benefit plan established or maintained by Employer; or (v) receive any payment or compensation from BCBSND and/or DBI in connection with an HSA.

9. Activities Outside the Scope of BCBSND, DBI and Healthcare Bank Responsibility

BCBSND, DBI and Healthcare Bank shall not assume any responsibility or authority under this Agreement for (1) the design, funding or operation of any Employer-sponsored health and welfare benefit plan or for compliance of any such plan with ERISA, including any aspect of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"); (2) duties incumbent upon a "plan sponsor" or "covered entity" under the HIPAA privacy and security rules; (3) funding of claims for benefits under any HSA or employee benefit plan or the payment of fees to third parties providing services or products to Employer or its Employees; or (4) insuring or underwriting any liability to provide benefits under any employee benefit plan.

10. Term of Agreement.

a. Duration.

The term of this Agreement shall commence as of the Effective Date and shall continue for a period of ~~eighteen~~twenty-four months (the "Initial Term").

b. Termination Without Cause

This Agreement may be terminated by either the Employer or BCBSND without cause, by written notice of intention to terminate given to the other party, to be effective as of a date certain set forth in the written notice, which shall not be less than sixty (60) days from the date of such notice.

c. Automatic Termination and Termination With Cause

The Agreement shall automatically terminate:

- a. If any law is enacted or interpreted to prohibit the continuance of this Agreement, upon the effective date of such law or interpretation;
- b. If any monthly administrative fee remains unpaid to DBI beyond thirty (30) days past the due date, upon notification by BCBSND and/or DBI to the Employer in writing that BCBSND intends to exercise its option to enforce this provision;
- c. If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities and term; or
- d. If any license, permit, or certificate required by law or rule, or by the terms of this Agreement, is for any reason denied, revoked, suspended, or not renewed.

If either party is in default under any provision of this Agreement, the other party may give written notice to the other party of such default. If the defaulting party has not used good faith efforts to cure such breach or default within thirty (30) days after it receives such notice, or if good faith efforts to cure have begun within thirty (30) days but such cure is not completed within sixty (60) days after receipt of the notice, the other party shall have the right by further written notice (the "Termination Notice") to terminate the Agreement as of any future date designated in the Termination Notice. In addition, if termination is due to default under any provision of this Agreement by BCBSND, the termination fees applicable to the initial term will not apply.

Health Savings Account Administrative Services Agreement

d. Charges.

Employer shall pay all charges or Service Fees that have accrued up to the date of the termination within thirty (30) days after the date of the termination.

11. Confidentiality

BCBSND shall not use or disclose any information it receives from Employer under this Agreement that Employer has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by Employer. Employer shall not disclose any information it receives from BCBSND and/or DBI that BCBSND and/or DBI has previously identified as confidential and that the Employer determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law. The duty of Employer and BCBSND to maintain confidentiality of information under this section continues beyond the term of this Agreement.

BCBSND understands that, except for disclosures prohibited in this Agreement or permitted exemptions under the North Dakota open records law, Employer must disclose to the public upon request any records it receives from BCBSND. BCBSND further understands that any records that are obtained or generated by BCBSND under this Agreement, except for records that are confidential under this Agreement, may, under certain circumstances, be open to the public upon request under the North Dakota open records law. BCBSND agrees to contact Employer immediately upon receiving a request for information under the open records law and to comply with Employer's instructions on how to respond to the request. In the event that the Employer is requested or required to disclose any confidential information subject to this Agreement pursuant to a judicial, regulatory or other governmental proceeding or act, the Employer will provide BCBSND with prompt written notice of any such requirement so that BCBSND may seek an appropriate protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement.

12. Reliance by BCBSND

Employer has authorized and instructed BCBSND in this Agreement to implement its and DBI's standard administrative procedures to provide services in accordance with this Agreement. BCBSND and DBI shall be fully protected in relying upon representations by Employer set forth in this Agreement and communications made by or on behalf of Employer in effecting obligations under this Agreement. Employer and BCBSND agree that if Employer provides BCBSND and/or DBI with specific written instructions (in a form acceptable to BCBSND and/or DBI) to provide services in a manner other than in accordance with BCBSND's and/or DBI's standard procedures, BCBSND and/or DBI may (but need not) comply with Employer's written instructions, provided that, to the extent that BCBSND and/or DBI complies with such instructions, Employer and not BCBSND and/or DBI shall be solely responsible for BCBSND's and/or DBI's actions so taken.

13. Responsibility of the Parties and Indemnification

Employer and BCBSND each agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this Agreement. BCBSND shall secure and keep in force during the term of this Agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Professional errors and omissions with minimum liability limits of \$1,000,000 per occurrence and in the aggregate, Contractor shall continuously maintain such coverage during the contact period and for three years thereafter. In the event of a change or cancellation of coverage, Contractor shall purchase an extended reporting period to meet the time periods required in this section.
- 3) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$500,000 per occurrence.
- 4) Workers compensation coverage meeting all statutory requirements.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of BCBSND. The amount of any deductible or self retention is subject to approval by Employer, upon request.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by Employer. The policies shall be in form and terms approved by Employer, upon request.
- 3) BCBSND shall furnish a certificate of insurance to the undersigned Employer representative, upon request.
- 4) Failure to provide insurance as required in this Agreement is a material breach of contract entitling Employer to terminate this Agreement immediately.

Health Savings Account Administrative Services Agreement

BCBSND shall not cancel or modify the insurance coverage required by this Agreement without thirty (30) days' prior written notice to the undersigned Employer representative.

14. Red Flag Rule Compliance.

To the extent applicable, BCBSND and/or DBI shall comply with the Red Flag Rules with respect to the Covered Services. For purposes of this provision, (a) "Red Flag Rules" mean the regulations adopted by various federal agencies, including the Federal Trade Commission, in connection with the detection, prevention and mitigation of identity theft, and located at 72 Fed. Reg. 63718 (November 9, 2007), as amended, and (b) "Covered Services" mean the services provided by BCBSND and/or DBI (if any) with respect to the Plan, as designated in Exhibit B, that allow Plan participants to pay for eligible expenses under the Plan with a debit or other stored-value card, and any other services provided by BCBSND and/or DBI under this Agreement that are covered by the Red Flag Rules, as determined by BCBSND and/or DBI in their discretion, provided that any services to HSAs shall not be Covered Services.

As a part of the Red Flag Rule compliance, BCBSND and/or DBI shall adopt, maintain and use appropriate and commercially reasonable rules, procedures and safeguards to detect and identify red flags and to prevent and mitigate identity theft, as required by the Red Flag Rules. Such rules, procedures and safeguards shall be set forth in a written program that complies with the Red Flag Rules (the "Red Flag Program"). BCBSND shall, upon request, make available to Employer a copy of the Red Flag Program. The parties agree that if a Breach of Unsecured PHI (as defined in the Business Associate Agreement between the parties) and a violation of the Red Flag Rules occur with respect to the same incident, both the Red Flag Rules and the Business Associate Agreement provisions shall apply, except that the notice requirements of the Business Associate Agreement shall satisfy any notice obligations of this section. This section shall be effective January 1, 2011 or such later date on which the FTC shall begin enforcement of the provisions of the Red Flag Rules applicable to the Covered Services; provided, however, this section shall be null and void to the extent action is taken by Congress or a federal agency to exempt the Covered Services (or third party administrators that provide Covered Services) from the Red Flag Rules.

15. Limitation of Remedies

[This Section 15 has been intentionally omitted from this Agreement.]

16. General

- (a) This Agreement contains the entire agreement of the parties with respect to its subject matter and supersedes all existing agreements and all other oral, written or other communications between them concerning its subject matter. This Agreement shall not be modified in any way except by a writing signed by both parties. If any provision of this Agreement (or any portion thereof) shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder of this Agreement shall not in any way be affected or impaired thereby. Neither party shall be deemed to have waived any of its rights, powers or remedies hereunder unless such waiver is approved in writing by the other party.
- (b) The parties shall cooperate in good faith to resolve any and all disputes (each, a "Dispute") that may arise under or in connection with this Agreement. The existence or resolution of any Dispute as to a matter shall not reduce or otherwise affect the payment or performance by Employer its obligations under this Agreement as to any other matter, unless pursuant to the terms of any such resolution. Employer and BCBSND shall attempt in good faith to resolve any Dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Either party may give the other party written notice of any Dispute not resolved in the normal course of business. Within fifteen (15) days after delivery of the notice, the receiving party shall submit to the other party a written response. The notice(s) and the response(s) shall each include (i) a statement of each party's position and a summary of arguments supporting that position, and (ii) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within thirty (30) days after delivery of the disputing party's notice(s), the executives of the parties subject to the dispute shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to attempt to resolve the Dispute. All reasonable requests for information made by one party to the other will be honored. The parties compliance with this provision is voluntary and in no event is this provision in any way intended to limit either party's ability to have any disputes resolved by a court.
- (c) From time-to-time and in compliance with applicable federal and state laws, BCBSND and/or DBI may monitor and/or record calls which are made to and from the customer service line for quality assurance and training purposes, and/or to ensure that BCBSND's and/or DBI's services fully comply with the terms of this Agreement.
- (d) This Agreement may not be assigned by either party, in whole or in part, without the prior written consent of the other which consent shall not be unreasonably withheld; provided, however, that any legal successor in interest to either party shall continue to be bound by this Agreement until modified or terminated in accordance herewith.
- (e) Neither BCBSND nor Employer, as applicable under the circumstances, shall be liable or deemed to be in default for failure to perform or delay in performance of any of their respective obligations under this Agreement to the extent that such failure or delay results from any act of God; military operation; terrorist attack; national emergency or government restrictions.

Health Savings Account Administrative Services Agreement

- (f) The individuals executing this Agreement on behalf of BCBSND and Employer do each hereby represent and warrant that they are duly authorized by all necessary action to execute this Agreement on behalf of their respective principals.
- (g) Neither Employer nor BCBSND will restrict the ability of HSA owners to move funds to another HSA beyond those restrictions imposed by the Code.
- (h) This Agreement shall be governed and interpreted by the laws of the State of North Dakota. In the event of any conflict of laws, the laws of the State of North Dakota shall prevail.
- (i) By executing this Agreement, the parties agree to extend the term of any ACH Agreement associated herewith to be coterminous with the term of this Agreement and to have such agreement be covered by the terms and provisions hereof.
- (j) The parties agree that in performing their responsibilities under this Agreement, they are in the position of independent contractors. This Agreement is not intended to create, nor does it create and shall not be construed to create, a relationship of partner or joint venturer or any association for profit between Employer and BCBSND.
- (k) All notices or other communications required under this Agreement must be given by registered or certified mail and are complete on the date mailed when addressed to the parties at the following address: BCBSND: 4510 13th Avenue S, Fargo, ND 58121 or at such other address as it has specified to the Employer. Employer: PO Box 1657, Bismarck, ND 58502 or such other address as it has specified to BCBSND. Notice provided under this provision does not meet the notice requirements for monetary claims against the state found at N.D.C.C. §32-12.2-04.

(l) Sections 7, 11, 12, 13 and 14 and this subsection shall survive the expiration or termination of this Agreement.

(m) All records, regardless of physical form, and the accounting practices and procedures of BCBSND relevant to this contract are subject to examination by the North Dakota State Auditor or the Auditor's designee. BCBSND shall maintain all such records for at least three years following completion of this contract.

Authorization

This Agreement, including any attachments or other exhibits, is accepted and agreed to by the parties as of the Effective Date of this Agreement.

Signed for Employer by:

Signed for BCBSND by:

By _____

By _____

Title _____

Title President & CEO

Health Savings Account Administrative Services Agreement

Exhibit A HSA Service Fees/Charges

Payment shall be due sixty (60) days following the Employer's receipt of the statement of Service Fees. Interest may be charged on the amount of all past due fees at the rate of 1 1/2% per month, or, if lower, the maximum allowable rate under applicable law. BCBSND will have the right to adjust its Service Fees upon thirty (30) days advance written notice to Employer.

BCBSND may charge Employer reasonable fees for the reproduction or return of records or reports requested by Employer or governmental agencies if the governmental agency has made the request on behalf of the Employer or for reasonable fees charged by other parties for information reasonably required by BCBSND and/or DBI to perform services under this Agreement.

Employer Service Fees

| | |
|---------------------------------------------------------|------------------------------------|
| Monthly Administrative Fee (includes debit card) | \$1.50 per HSA Accountholder |
| Employee Enrollment Meetings | \$350 per day plus travel expenses |
| Direct Deposit | Included |
| Online Distribution Request | Included |
| Emailed Quarterly Account Summary | Included |
| Rate Guarantee | Three Year |
| Postage and Handling | Charges Apply |

Participant Charges

| | |
|-----------------------------------------------------|----------------------------------------------|
| Additional Debit Cards for Spouse/Dependents | No additional charge |
| Replacement of Lost/Stolen Debit Card | \$10 per card deducted from HSA balance |
| Paper checks and statements | \$1.50/ charged to the participant's account |
| Custodial Management Fee | 25 basis points |

The Custodial Management Fee is calculated quarterly and offset by the 12b1 and STA fund credits annually. If at the end of the year the 12b1 and STA fund credits exceed the participant fee the remaining credits will be allocated to the participant.

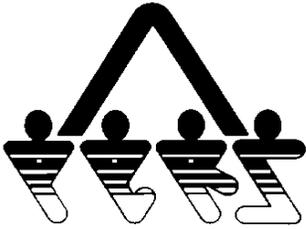
BCBSND and DBI will not charge set up fees, renewal fees, or implementation fees.

Fees are quoted net of commission.

Health Savings Account Administrative Services Agreement

Exhibit B Summary of Features

| Feature | Cash Account (1) | Interest Bearing Account (2) | Investment Account (3) |
|------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Minimum deposit to open HSA account | No Minimum | No Minimum | No Minimum |
| Minimum Threshold | \$1,500 cash account minimum balance. | \$1,500 cash account minimum balance. | \$1,500 cash account minimum balance. |
| Automated Sweep | Amounts over minimum threshold automatically sweep into the interest bearing account starting at \$100 above the threshold. | Amounts over minimum threshold automatically sweep into the interest bearing account starting at \$100 above the threshold. | Funds will automatically sweep back to the cash account if the balance is insufficient in the interest bearing account to cover the minimum threshold or to cover requested withdrawals. |
| Interest Rate | Variable Rate | Variable Money Market Rate | Based on Mutual Fund Selected |
| Interest Payable | None | Accrued Daily, Paid Monthly | Based on Mutual Fund Selected |
| Brokerage Fees | None | None | Yes |
| Transaction Fees | None | None | None |
| On-Line Enrollment | Yes | Yes | Yes |
| On-line Account Access | Yes | Yes | Yes |
| On-line Mutual Fund Purchases and Redemptions | Yes | Yes | Yes |
| Daily Mutual Fund Trade Processing | Not Applicable | Not Applicable | Yes |
| On-line Distribution Requests | Yes | Yes | Yes |
| Quarterly Emailed Account Summary | Yes | Yes | Yes |
| Daily Processing of Distribution Requests | Yes | Yes | Yes |
| Debit Card | Yes | No | No |
| HSA to HSA Transfer | Yes | Yes | Yes |
| HSA Fund Rollover | Yes | Yes | Yes |
| One Time IRA to HSA Transfer | Yes | Yes | Yes |
| One Time FSA/HRA to HSA Rollover | Yes | Yes | Yes |
| Mistaken/Excess Contribution or Distribution | Yes | Yes | Yes |
| Ad Hoc Contributions - outside employee payroll deductions | Yes | Yes | Yes |
| Employer Contributions (lump sum or per pay period) | Yes | Yes | Yes |



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Memorandum

TO: PERS Board

FROM: Deb & Srinivas

DATE: February 13, 2013

SUBJECT: Provider Compliance Update

As previously reported, staff conducted several on-site training meetings for 457 providers as well as several “Go To Meetings”. We also provided the option of attending via a webinar which was viewable online at the provider representative’s convenience and sent a reminder in early November to those who had not attended a meeting. The deadline for attending these meetings, that are required per our contracts with all of the provider companies, was December 31, 2012 and the webinar was removed from the NDPERS website around 1/11/2013. During this annual process, it is then staff’s normal process to notify the provider companies of any individuals who have not complied with the training requirements, making them ineligible to work with NDPERS members unless the company provides alternate training that has been previously approved by NDPERS. As part of this process, we ask the company to remove the representative from their approved status and then we remove them from our website as well. Once this step has been taken, the rep can only be reinstated by attending an approved training and the provider company reappointing them.

This last year was unusual for a couple of reasons. First, the provider trainings resumed after they had been suspended for a couple of years while PERSLink development was taking place. Secondly, we have an unusually large number of non-compliant provider company representatives. Where there is usually three or four at year-end, there was over 80 this last year. It is possible that our records are not entirely up to date, as we have not done mailings to our provider reps for a few years. In addition, the Hartford sale was not finalized until the first week of the new year, which could have added uncertainty for Hartford provider reps. Given the uncertainty, staff sent another reminder to the delinquent reps and provided an “amnesty” week for them to complete the training online (Attachment 1). They will need to complete this training any time during the week of February 25 – March 1 and must notify NDPERS no later than March 15th to be considered in compliance. We have also notified the provider company of the amnesty week (Attachment 2) and will follow up with the companies to notify them if any reps remain out of compliance. Srinivas will be at the meeting if you have any questions.

This went out as a mail merge on letterhead

Date:

To; Name of Provider Rep

From: NDPERS Staff

Subject: Contractual Training Requirement Reminder – Amnesty Week

As you know, the administrative provider contract NDPERS holds with the company you represent requires that you attend a NDPERS sponsored training session or one approved by the NDPERS Board within one year of beginning services and once every two years thereafter, in order to retain your eligibility to provide services under the 457 program. Our records indicate that it will be necessary for you to attend this training by the end of 2012 to fulfill your company's contractual requirements.

NDPERS has provided seventeen sessions of Deferred Compensation Provider Training during the fall of 2012. Although you were invited and a reminder sent, our records indicate that you have not yet attended a training session. Therefore NDPERS will be notifying the company you represent that you are not in compliance with the administrative provider contract. However, there is still an option available that will allow you to complete this requirement. The web version of the training will again be made available **for a limited time only on the week of February 25th through March 1st, 2013.** This will be the final chance for you to complete the training that was required for 2012. Please note, continuing education credits will not be provided for the web version of the training. **Certification of your attendance must be provided to the NDPERS office by 5:00 p.m. on March 15, 2013.** If you do not complete the training and certify to NDPERS by the above date, your provider company will be notified that you are not in compliance and are no longer eligible to provide service to NDPERS 457 participants.

For your convenience, the instructions for attending the website training are provided below.

457 Provider Website Training Instructions:

Go to the NDPERS Website at www.nd.gov/ndpers and look for the "2012 Deferred Compensation Provider Training" icon on the homepage. Click on this icon to begin watching the web-based training.

Note: At the end of the webcast you will need to go down to the "Contact Us" link at the bottom of the homepage to inform us that you have completed the web based training. You will then click on the email address provided (ndpers-info@nd.gov) and send an email to the NDPERS general mailbox confirming your attendance. Be sure to include your contact information, including name, business address, phone and email address.

As indicated in the webcast, the NDPERS Board will be considering the optional Retirement Investment Advisor program in the near future. More information will follow after a decision has been made. Thank you.

February 14, 2013

«Name»
«Company»
«Address1»
«Address2»
«CityStateZip»

Dear «Salutation»:

I am writing to follow up with you on the outcome of the NDPERS training orientation meetings conducted by NDPERS in the fall of 2012. For the benefit of your registered representatives, we conducted 17 sessions to provide them the opportunity to utilize this training program to meet the compliance requirements of Section II-A of your Provider Administrative Agreement with the North Dakota Section 457 Deferred Compensation Plan.

We are pleased to inform you that we had a good response and attendance at our meetings. However, the attached list of representatives affiliated with your company did not attend a training session and are out of compliance with the agreement requirements. As you are aware, it is your responsibility to insure that all your representatives are current on the training requirements and that such non-compliance is cause for your firm to lose its status as a provider in North Dakota's program.

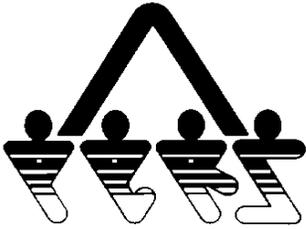
In order to ensure adequate opportunity was provided for agents to meet their training requirement, NDPERS is conducting an Amnesty Week. The web version of the training will be made available during the week of February 25 through March 1, 2013. This will be the final chance for your representatives to complete the training that was required for 2012. They must certify their completion to the NDPERS office by 5:00 p.m. on March 15, 2013. If they do not complete the training and provide certification to NDPERS by the requested date, you will receive another notice with a list of any remaining representatives that are not in compliance and will be asked to provide us with direction regarding their continued participation with the NDPERS 457 deferred compensation plan.

Please feel free to contact me with any questions or concerns.

Sincerely,

Kathy M. Allen
Benefit Programs Manager

Attachment



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Memorandum

TO: NDPERS Board

FROM: Sharon Schiermeister

DATE: February 12, 2013

SUBJECT: PERSLink Member Self Service Deployment

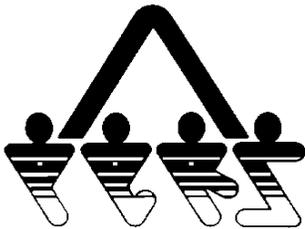
Last month, we provided you with a report on the Member Self Service (MSS) pilot and annual enrollment process. We are now in the process of making improvements to MSS based on what we learned from the pilot. These improvements are scheduled to be in place by the end of March 2013. At that time, we will start rolling out the full version of MSS to all active employees (approximately 20,000). Our goal is to have MSS available to all active employees before annual enrollment starts in October 2013.

We are planning to use an incremental approach over a 6-month period from April through September. We have divided up the employees into 6 groups based on employer type (i.e. state, higher education, cities, counties, school districts and other political subdivisions). Each month, we will deploy to one of these groups. We feel that by spreading out the deployment over a 6 month period, we should be able to provide timely responses to requests for assistance.

We will start communicating the deployment plan to both employers and employees starting in March, through email notifications and on the NDPERS website. We will also be publishing articles in the next issue of the PERSpectives newsletter for active employees and the quarterly PERSonnel Update newsletter for employers. We also plan to include a session on MSS at the NDPERS Payroll Conference scheduled for June of this year.

To assist employers, we will be providing training materials that will provide them with an overview of MSS and also explain how their role will change when employees make the switch from paper enrollments to MSS. There will also be information available for employees to provide them with an overview of MSS functionality and navigation.

This item is informational only and does not require Board action. I will be available at the Board meeting to answer any questions on the deployment plan.



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Memorandum

TO: NDPERS Board

FROM: Kathy

DATE: February 11, 2013

SUBJECT: Board Election

The term of board member Levi Erdmann will expire on June 30, 2013. Pursuant to Section 71-01-02-01 of the election rules, the Retirement Board must appoint a committee of three from its membership, one of whom must be designated as chair, to oversee the election process.

The following is the 2013 election schedule developed in compliance with the rules:

May 3, 2013 – Deadline to file nomination petitions

May 27, 2013 (week of) – Ballots sent to membership

June 14, 2013 – Deadline to return ballots

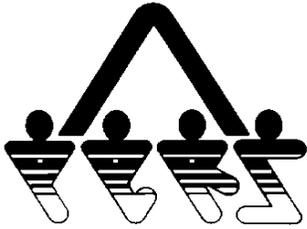
June 17, 2013 – Ballot canvassing

June 20, 2013 – Present election results to Board membership

June 21, 2013 – Notify candidates of election results

BOARD ACTION REQUESTED:

Appoint a committee of three from the Board and designate one as committee chair.



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Memorandum

TO: NDPERS Board

FROM: Sparb

DATE: February 13, 2013

SUBJECT: RIO Update

Mike Sandal will provide an update to the Board on the recruitment efforts for the RIO Executive Director.