

# NDPERS BOARD MEETING

# Agenda

**Bismarck Location:**  
ND Association of Counties  
1661 Capitol Way  
**Fargo Location:**  
BCBS, 4510 13<sup>th</sup> Ave S

**August 21, 2014**

**Time: 8:30 AM**

## **I. MINUTES**

- A. July 17, 2014
- B. July 31, 2014

## **II. GROUP INSURANCE**

- A. US Healthiest – Dr. Nick Baird (Information)
- B. Group Health Insurance RFP Overview – Sparb and Deloitte (Information)
- C. BCBS Settlement – Sparb (Information)
- D. Affordable Care Act Update – Sparb (Information)
- E. Pretaxing Health Savings Account Contributions – Rebecca (Board Action)
- F. EAP Update – Bryan (Information)
- G. Medicare Blue Rx Rate Renewal – Kathy (Board Action)

## **III. RETIREMENT**

- A. Legislative Technical Actuarial Reviews – Sparb (Information)
- B. Government Finance Committee Study – Sparb and Segal (Information)
- C. Defined Contribution Plan Study – Sparb (Board Action)
- D. Windsor Decision – Sparb (Board Action)
- E. Retiree Health Insurance Credit Implementation – Sparb (Information)
- F. Highway Patrol Indexing – Kathy (Board Action)
- G. Mid Career Financial Educational Program Pilot – Kathy (Information)
- H. Defined Contribution Plan Update – Bryan (Information)
- I. Defined Contribution Plan Member Survey – Sparb (Board Action)
- J. IRS Cycle E Filing – Deb (Board Action)

## **IV. FLEX COMP**

- A. Flex Comp Member Survey – Sparb (Board Action)

## **V. MISCELLANEOUS**

- A. Quarterly Consultant Fees (Information)
- B. Audit Fees Relating to GASB – Sharon (Information)

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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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**Sparb Collins**  
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1-800-803-7377

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# Memorandum

**TO:** PERS Board  
**FROM:** Sparb  
**DATE:** August 12, 2014  
**SUBJECT:** US Healthiest

J. Nick Baird, MD, Chief Executive Officer, US Healthiest, and BriAnna Wanner Maternal & Child Health Nutrition Services Director, Division of Nutrition & Physical Activity ND Department of Health, will be at the August meeting to present information on the HealthLead workplace accreditation program.

In the past we have discussed where we might go with our worksite wellness program. Dr. Dwelle is familiar with this program and feels that it is one method that should be considered in our review of future directions.



# HealthLead™

US Healthiest Workplace Accreditation Program

## Setting a New Standard

US Healthiest

[www.ushealthiest.org](http://www.ushealthiest.org)

# Current Reality

broken

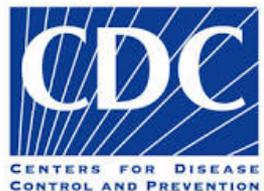
# What's Possible





# HealthLead™

US Healthiest Workplace Accreditation Program



# Leading the Charge



**NORTH DAKOTA**  
DEPARTMENT *of* HEALTH

# How Does Your Organization Measure Up?

- Become part of the movement
- Take the HealthLead Assessment

[www.ushealthiest.org](http://www.ushealthiest.org)



# Ready to Consider Accreditation?

## DOES YOUR ORGANIZATION MEASURE UP?

Below is a sampling from the *HealthLead™ Online Assessment* to help you gauge your organization's total engagement in leading health management/well-being practices. Answer either "yes" or "no" to the following statements by putting a check mark in the appropriate box.

	YES	NO
■ Our organization's overall health management/well-being strategy is aligned with our business goals and objectives.	<input type="checkbox"/>	<input type="checkbox"/>
■ Senior management is committed to employee health management/well-being as an important investment in our human capital.	<input type="checkbox"/>	<input type="checkbox"/>
■ Our organization collects a set of defined metrics that are reviewed regularly in a scorecard format and are aligned with our business goals and objectives.	<input type="checkbox"/>	<input type="checkbox"/>
■ Our organization provides a comprehensive employee benefits plan that addresses employee needs.	<input type="checkbox"/>	<input type="checkbox"/>
■ Our organization has implemented and enforces a tobacco-free policy at all work locations, including outdoor areas.	<input type="checkbox"/>	<input type="checkbox"/>
■ To encourage regular physical activity, our organization provides environmental supports, such as signage to encourage stairwell use, measured walking routes, and/or onsite fitness facilities.	<input type="checkbox"/>	<input type="checkbox"/>
■ To encourage healthful eating and weight management, our organization provides environmental supports such as offering healthy food/beverage options in all vending machines and during sponsored meetings/events.	<input type="checkbox"/>	<input type="checkbox"/>
■ Our organization has a communications plan that leverages our communications channels in order to optimize employee engagement.	<input type="checkbox"/>	<input type="checkbox"/>
■ Our organization has dedicated staff to administer our health management/well-being initiatives.	<input type="checkbox"/>	<input type="checkbox"/>
■ Our organization provides comprehensive prevention education and support.	<input type="checkbox"/>	<input type="checkbox"/>
■ Our organization provides a comprehensive risk intervention program that targets key risk areas, including overweight/obesity, inactivity, tobacco use, and alcohol abuse.	<input type="checkbox"/>	<input type="checkbox"/>
■ Our organization provides a dedicated disease/care management program.	<input type="checkbox"/>	<input type="checkbox"/>
■ Our organization provides dedicated work/life services and other personal well-being resources.	<input type="checkbox"/>	<input type="checkbox"/>
■ Our organization has taken a leadership role in addressing the specific health/well-being needs of the communities in which we operate.	<input type="checkbox"/>	<input type="checkbox"/>
■ Our organization has made a concerted effort, through policies, training, and education, to emphasize that job safety is a core value.	<input type="checkbox"/>	<input type="checkbox"/>
■ Based on our organization's health risk assessment (HRA) program, at least 70 percent of our eligible population is defined as low-risk.	<input type="checkbox"/>	<input type="checkbox"/>

## How Did You Do?

If you checked "yes" for most of these practices, your organization may be a strong candidate for *HealthLead* accreditation. To learn more, contact: [www.ushealthiest.org](http://www.ushealthiest.org) or contact:

George Pfeiffer, *HealthLead* Consultant  
 healthlead@ushealthiest.org  
 571.522.2301

# Taking Employee Health and Well-Being to a New Level



# HealthLead™

US Healthiest Workplace Accreditation Program



# HealthLead™: Setting a New Standard

Because research has demonstrated that employee health and productivity are inextricably linked, US Healthiest, a 501(c)3 public/private collaboration, is committed to building a connection between a healthy workplace and the agenda to improve the well-being of our nation, its workers, and the organizations they serve.

Recognizing that America must build a culture and environment that focuses on wellness, rather than on health care, US Healthiest has created its signature initiative, the *HealthLead™: US Healthiest Workplace Accreditation Program*.

Through the *HealthLead* accreditation process, US Healthiest not only recognizes organizations that demonstrate best practices in employee health management and well-being, but also helps them better align these practices with business sustainability, health, productivity, and financial outcomes. As such, *HealthLead* provides an ongoing continuous quality improvement process, irrespective of an organization's size and experience in worksite health management.



*“The HealthLead accreditation process provides your organization with an objective lens that examines your current health management/well-being practices and provides new insights into making value-based investment decisions that can favorably impact your bottom line, while protecting, supporting, and engaging your number one asset—your people.”*

—Nick Baird, MD, CEO, US Healthiest

# The HealthLead™ Accreditation Process

The *HealthLead: US Healthiest Workplace Accreditation Program* measures organizations' health management and well-being practices in three key areas: 1) organizational engagement and alignment, 2) population health management and well-being, and 3) outcomes reporting. The *HealthLead Accreditation Process* is comprised of three steps:

<p>Step 1: <i>HealthLead Online Assessment</i></p>	<p>After your organization registers and pays an application fee, you can access the <i>HealthLead Online Assessment</i>.</p> <ul style="list-style-type: none"> <li>■ The assessment measures the maturity of your organization's health management/well-being practices and readiness (a minimum score of 70 points) to proceed with the full accreditation process (Step 2).</li> </ul>
<p>Step 2: <i>Onsite Audit</i></p>	<p>If your organization is eligible, based on your <i>HealthLead</i> score and payment of the accreditation fee, a one-day onsite visit by a <i>HealthLead</i> team is scheduled. (For companies under 1,000 employees, a teleconference is an option for a physical visit.) The onsite visit includes:</p> <ul style="list-style-type: none"> <li>■ your presentation. As an accreditation candidate, you will respond to a set of questions and requests for information in the form of a 90-minute presentation.</li> <li>■ a tour of your facility to assess your environment.</li> <li>■ review and validation of your organization's online assessment results.</li> <li>■ extensive discussion and feedback on your company's plans, strategies, and areas of improvement.</li> </ul>
<p>Step 3: <i>Accreditation Confirmation and Blueprint for Action</i></p>	<p>Based on information received during the onsite visit, the <i>HealthLead</i> team will adjust your final score. Accreditation is awarded based on the total adjusted score and according to a medal criteria.</p> <p style="text-align: center;">Gold: &gt;92 points      Silver: 84-92      Bronze: 75-83</p> <ul style="list-style-type: none"> <li>■ You will receive a detailed <i>HealthLead Blueprint for Action</i> and your accreditation status.</li> <li>■ As a <i>HealthLead</i> accredited organization, you will receive formal recognition and promotional materials for use in public relations and corporate communications.</li> <li>■ If your organization does not meet the minimum accreditation criteria, you may qualify to receive a provisional status with a designated timeline for improvement.</li> </ul>
<p>Learn more about <i>HealthLead</i></p>	<p>To receive additional information about the <i>HealthLead Workplace Accreditation Program</i>, go to <a href="http://www.ushealthiest.org">www.ushealthiest.org</a>, or contact:</p> <p style="text-align: center;">George Pfeiffer, <i>HealthLead</i> Consultant  <a href="mailto:healthlead@ushealthiest.org">healthlead@ushealthiest.org</a>          571.522.2301</p>



# Common Questions About HealthLead™

Q. How does *HealthLead* differ from other health management scorecard and award programs?

A. The aim of *HealthLead* is to be similar in stature and recognition to the U.S. Green Building Council's *LEED Certification Program*. As such, compared to other programs, *HealthLead* is designed to:

- represent a comprehensive and integrated approach to population health management and well-being.
- incorporate best practices in job safety, community engagement, and well-being services that address the “total worker” and promote corporate stewardship.
- promote and position employee health and well-being as a business sustainability strategy.
- demonstrate that successful organizations manage “multiple bottom lines” including the development and growth of their human capital.
- require organizations to be reaccredited every three years in order to maintain their *HealthLead* designation.

Q. What is the value of becoming a *HealthLead* accredited organization?

A. *HealthLead* accredited organizations can expect that:

- the accreditation process serves as a “cultural catalyst” in developing and sustaining a culture of health.
- the accreditation process provides a “strategic road map” for improving health management and well-being practices and processes.
- the accreditation process serves as a continuous quality improvement platform for making better value-based investments in employee and organizational health.
- accreditation provides added recognition and prestige as having one the healthiest workplaces in America, thus enhancing corporate reputation, recruitment /retainment practices, and being viewed as an “employer of choice.”
- accreditation strengthens the application for other national worksite recognition programs.

Q. What are the long-term goals of the *HealthLead Accreditation Program*?

A. Since accredited organizations need to demonstrate significant health and productivity-related savings, the goal is to provide financial benefits to *HealthLead* accredited organizations:

- *HealthLead* accreditation should be viewed by the institutional investment community as a positive factor in valuing publicly-traded organizations (e.g., healthier employees equals healthier bottom lines). US Healthiest is currently working with a leading business school to demonstrate and promote this premise. In addition, US Healthiest is working with a leading health plan to study whether *HealthLead* accredited organizations that are fully insured, represent a lower actuarial risk, and therefore are eligible for premium discounts.

Q. How much does *HealthLead* accreditation cost and how much time is involved?

A. Full accreditation fees are dependent on the size of your organization and range between \$5,000 and \$20,000. On average, organizations should budget 60 to 100 hours to complete the accreditation process. However, more time should be allotted if *HealthLead* is used as a more intensive continuous quality improvement process.

# What Participating Organizations Have to Say



“Target has a longstanding commitment to building strong, healthy, safe communities, and we believe that commitment starts with our team. The *HealthLead* accreditation process allowed us to examine Target’s current health and well-being practices objectively, ask challenging questions, forge new connections, and chart a course for our future efforts to support and engage the Target team.”



“At HealthPartners, health is what we do and partnership is how we do it. We believe that an integrated approach to well-being through partnership is the key to achieving and sustaining employee and organizational health. The comprehensiveness of *HealthLead* helped to validate our wellness framework and pointed out where we had gaps. Participating in *HealthLead* helped us better tell our story; and learn valuable lessons that we can share internally and with other employers.”



“The *HealthLead* process increased collaboration between various departments in our organization that were responsible for services related to employee health. The process also reinforced the value of working more closely with our vendor benefits providers.”



“*HealthLead* isn’t like an exam that you take, pass, and move on. It is a process that we use every day to help us set goals, prioritize them, work toward them, and measure our progress.”



“We are thrilled to have *HealthLead* recognize The Ohio State University’s commitment to improving the health and well-being of our campus community. The accreditation process validated areas in which we currently excel, including proactively engaging faculty and staff in their own health awareness. We will continue to leverage our resources and expertise across our medical center, health plan, and university functions to become the healthiest university on the globe.”



“Monterey County Health Department — The *HealthLead* process provided us with an integrated approach for identifying not only program weaknesses and gaps, but also program strengths. In doing so, it reinforced areas to address, as well as reinforcing and leveraging our successes and areas of strength.”

US Healthiest exists to catalyze action and social engagement in support of our vision: “To Make US the Healthiest Nation in a Healthier World.” We seek to create a social movement promoting health and well-being everywhere people live, learn, work, and play. We want to find new ways to solve perennial problems of health and well-being, encourage people to make healthy choices, and create a social and physical environment that advances healthy living and well-being.

To learn more about the US Healthiest and *HealthLead*, go to:

[WWW.USHEALTHIEST.ORG](http://WWW.USHEALTHIEST.ORG)

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# Memorandum

**TO:** PERS Board  
**FROM:** Sparb  
**DATE:** August 15, 2014  
**SUBJECT:** Group Health Insurance RFP

Deloitte will attend the meeting via conference call to give an overview of the bids. The self insured bid was released on Wednesday August 13<sup>th</sup>. You can find a complete copy of the RFP at <http://www.nd.gov/ndpers/providers-consultants/consultants/rfp/group-health-self-insured.html> . Pursuant to your direction at the last meeting, a bidder's conference has been scheduled September 4, 2014.

Also on page 33 the following language was added:

*After PBM Contestants' RFP Responses are received, NDPERS may be drafting and providing to PBM Contestants a proposed PBM / NDPERS contract. If this occurs, PBM Contestants will be expected to review the proposed contract and provide requested pricing terms and guarantees in that contract.*

The above is clarification of our process.

Also since the last Board meeting and before the issuance of the RFP. the following information was discussed with Representative Kasper concerning the PBM portion of the RFP. The following is several emails:

**From:** Jim Kasper [<mailto:jmkasper@amg-nd.com>]  
**Sent:** Monday, August 11, 2014 2:57 PM  
**To:** Collins, J. Sparb; 'Jim Kasper'; 'Linda Cahn'  
**Subject:** TO SPARB COLLINS---FROM REP. JIM KASPER----RE: LINDA CAHN COMMENTS ON SPARB COLLINS EMAIL-----FROM REP. JIM KASPER---AUGUST 11, 2014

Hello Sparb:

I took the liberty to send your email to Linda Cahn for her comments. They are below. With her permission to forward to you. I am sending Linda a copy of this email as well.

I strongly suggest that you and the NDPERS Board carefully read her comments and recommendations and follow through with them. This issue will not go away and I want to assure you that there will be Legislation in the 2015 session to address the concerns and recommendations that Linda Cahn lays out in her emails below.

If the NDPERS Board will engage with Linda Cahn NOW, I suggest you will end up with the kind of PBM contract that will truly provide NDPERS, the Legislature, and the North Dakota tax payers with the truth about PBM's and how much money they most likely are costing our state's taxpayers. The result will be savings of huge amounts of dollars to the North Dakota Taxpayers, who are the ultimate funders of all of the NDPERS benefits for state employees.

Perhaps, Sparb, you might want to have a phone discussion with Linda. I certainly do not need to be a part of that discussion.

Please feel free to forward this email to the NDPERS Board members if you wish.

Thank you.

Rep. Jim Kasper  
Chairman Government & Veterans Affairs Committee  
North Dakota House of Representatives  
1128 Westrac Drive  
Fargo, ND 58103  
Office Phone: 701-232-6250  
Cell Phone: 701-799-9000  
Office Fax: 701-232-0796  
Office Email: [jmkasper@amg-nd.com](mailto:jmkasper@amg-nd.com)

**From:** Linda Cahn [<mailto:lindacahn@mac.com>]  
**Sent:** Thursday, August 07, 2014 12:01 PM  
**To:** Jim Kasper  
**Cc:** [breinhar@nd.gov](mailto:breinhar@nd.gov); Kasper, Jim M.  
**Subject:** follow up

Representative Kasper and Brian,

A few quick thoughts to summarize our phone conversations and to respond to Representative Kasper's email of this morning:

**First**, as mentioned, a core learning from a decade of litigation against PBMs - during which I personally reviewed hundreds of PBM/client contracts and RFPs - was that PBMs make extensive representations and promises during RFPs that never get memorialized into PBM/client contracts thereafter.

Accordingly, a RFP questionnaire indicating that certain contract terms must be included in NDPERS next contract *does not* ensure that NDPERS will actually obtain those contract terms after the RFP. Quite the contrary. It is reasonably

certain that NDPERS will end up with the boilerplate contract that it would have obtained from its selected PBM, had NDPERS never conducted a RFP.

The only way to ensure NDPERS obtains the contract terms that it needs to reduce the State's costs is for NDPERS to --

- (i) draft its own form of contract
- (ii) make sure its contract eliminates all "loopholes" that have consistently allowed PBMs to gouge their clients
- (iii) "bid out" the contract during the NDPERS RFP
- (iv) require all PBM contestants to mark-up the NDPERS proposed contract terms - and provide pricing terms and guarantees in the contract
- (v) use the remainder of the RFP to negotiate with PBM contestants to improve their pricing terms and guarantees, and then
- (vi) toward the end of the RFP, require each contestant to execute the final version of its proposed contract as a "binding contract offer"

By proceeding as outlined, NDPERS will use the RFP's leverage to extract the substantive contract terms it needs - as well as the most aggressive pricing terms and guarantees. And when the RFP ends, the only task NDPERS will need to perform is to decide which PBM made the best "binding contract offer" and execute an already-negotiated "contract offer" of that contestant.

Our firm has used the above approach countless times in recent years - for large Health Plans, small Health Plans and for Medicaid - with complete success, and obtained dramatic cost reductions for our clients as a result.

**Second**, a comment about the two alternative rx coverage approaches that NDPERS is considering, as described in Rep. Kasper's email: (i) prescription coverage as part of a health insurance contract; and (ii) via a stand-alone PBM contract.

The former presents significant problems and is extremely unlikely to result in low costs for the following reasons:

When health insurers provide prescription coverage, virtually all do so with fully-insured contracts with their clients, and through subcontracts with PBMs. Such coverage always includes enormous "margins" for the insurer to protect against "risk" resulting from providing fully-insured coverage. Moreover, the fully-insured structure means NDPERS is paying for two layers of profits - the insurer's and the PBM's.

Even worse, the above structure means that NDPERS has no control over the insurer / PBM contract. In fact, NDPERS may not even have access to the underlying contract to examine its terms and verify they are in NDPERS' interests. Instead, NDPERS is entirely dependent on its insurer negotiating - and maintaining - a good contract with a PBM. And the insurer has little incentive to do so, since all it need do is pass-on its own cost increases by raising NDPERS (and its other clients' ) premiums.

Not surprisingly, our review during litigation of scores of insurer/PBM contracts - including very large contracts of BCBS's and other insurers - reflected that such contracts are stuffed with the same "loopholes" as exist in the rest of the marketplace.

For all of the above reasons, we would strongly recommend that NDPERS selects the second option and carve out its rx coverage.

Assuming it does so, NDPERS needs to ensure that its health care coverage costs will be reduced to reflect the full amount of its previous prescription coverage costs. To accomplish that task, if NDPERS hasn't already done so, it should immediately require its health insurer to provide a breakdown for the past year of NDPERS' health insurance and rx coverage costs. Moreover, ideally, the information provided by your insurer should consist of a complete production of actual claims records to enable NDPERS to verify the accuracy of the breakdown.

**Third**, to alert PBM Contestants to the possibility that NDPERS may want to create its own PBM contract and require PBM Contestants to respond to that contract during the NDPERS RFP, we suggest you add the following language to your RFP that is being issued on Monday:

After PBM Contestants' RFP Responses are received, NDPERS may be drafting and providing to all PBM Contestants a proposed PBM / NDPERS contract. All PBM Contestants will be expected to review the proposed contract and provide requested pricing terms and guarantees in that contract.

The above paragraph will provide all contestants with a "warning" about your intentions, without binding NDPERS before your August Board meeting.

**Fourth**, we believe it would be very useful to talk further next week about core contract terms that NDPERS should include in its next PBM contract. We are available for such a call, at whatever time might be convenient for NDPERS leadership team.

Best regards,

Linda Cahn, Esq.  
President, Pharmacy Benefit Consultants  
CEO, The National Prescription Coverage Coalition  
(o) 973 975-0900  
(c) 973 885-3664  
email: [lindacahn@mac.com](mailto:lindacahn@mac.com)  
website: [www.PharmacyBenefitConsultants.com](http://www.PharmacyBenefitConsultants.com)  
website: [www.NationalPrescriptionCoverageCoalition.com](http://www.NationalPrescriptionCoverageCoalition.com)

Also attached is a copy of an article that Linda did for the IFEBP magazine that discusses this approach.

I have talked with Linda and she is very knowledgeable about PBM contracts. I have asked Jan to talk with her as well since she may be a resource we may want to use relating to this part of the contract. As you know, this is a new area for us since we were only authorized by a recent legislative session to do this type of contracting.



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# Memorandum

**TO:** PERS Board  
**FROM:** Sparb  
**DATE:** August 15, 2014  
**SUBJECT:** Preliminary Settlement

Pursuant to our contract with BCBS for the Biennium ended June 30, 2013 there is a preliminary settlement on June 30, 2014. The contract provides for a final settlement on June 30, 2015. Based upon the preliminary settlement, we received \$9,078,348.30. That has been deposited in the health insurance fund.



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# Memorandum

**TO:** PERS Board  
**FROM:** Sparb  
**DATE:** August 15, 2014  
**SUBJECT:** Affordable Care Act

In this memo I will provide an update on three areas relating to the ACA implementation:

1. Who is the employer for the State of North Dakota
2. Dual contracts
3. Rates – Single Plus Dependent (SPD)

## **Who is the Employer for the State of North Dakota**

Attachment #1 is an assessment by Ice Miller concerning who is the employer for the State of North Dakota. Jan will review this with you at the Board meeting and answer any questions. Based upon this and other work Jan has done, the State of North Dakota is considered a single employer under the Affordable Care Act.

## **Dual Contracts**

Also one of the provisions in the Affordable Care Act is that each eligible employee must be offered coverage under the plan. Since 1989 the PERS Board policy has been to only allow married state employees to have one plan and it is paid by the employer whose employee has worked the longest. The question that has arisen is whether our policy means that the other employee who has not worked the longest and is covered under the spouse plan would be considered to have not been offered coverage under the ACA. The following is the email string on this with Deloitte. As you will note, it appears that we will not have to change our policy.

Thanks, Sparb.

To me, it seems like you are making the same offer of coverage to dual eligibles as to any other eligible employee. However, if they elect family coverage, they will be enrolled through their spouse's plan and not be issued a new contract. If that is the case, I don't think you will have a problem with the "offer of coverage" requirement.

Let me know if you want to discuss in more detail.

Best,

Robert

**From:** Collins, J. Sparb [<mailto:scollins@nd.gov>]  
**Sent:** Wednesday, July 30, 2014 3:06 PM  
**To:** Davis, Robert B. (US - Washington D.C.)  
**Cc:** Fricke, Rebecca D.  
**Subject:** Re: Dual Contracts and ACA

The enrollment form offers them the opportunity to enroll in either single or family coverage.

Sparb

On Jul 30, 2014, at 1:57 PM, "Davis, Robert B. (US - Washington D.C.)" <[robedavis@deloitte.com](mailto:robedavis@deloitte.com)> wrote:

Hi Rebecca,

I have one quick follow-up question: will the "Offer of Insurance Coverage" form provide the opportunity to enroll in self-only coverage or family coverage, or will family coverage be the only offer?

Thanks,

Robert

**Robert Davis**

Director  
Deloitte Consulting LLP  
555 12<sup>th</sup> Street NW, Suite 400, Washington, DC, 20004  
Tel/Direct: +1 202 879 3094 | Fax: +1 202 661 1111 | Mobile: +1 202 251 6627  
[robedavis@deloitte.com](mailto:robedavis@deloitte.com) | [www.deloitte.com](http://www.deloitte.com)

Please consider the environment before printing.

**From:** Fricke, Rebecca D. [<mailto:rfricke@nd.gov>]  
**Sent:** Wednesday, July 23, 2014 12:35 PM  
**To:** Davis, Robert B. (US - Washington D.C.)  
**Cc:** Collins, J. Sparb  
**Subject:** FW: Dual Contracts and ACA

Hello Robert. In follow-up to this morning's call, we are asking for input from you regarding how we handle dual contracts and if we can make changes procedurally that will show an offer of coverage was made, but that the coverage in fact is provided under an existing NDPERS contract through a spouse.

What we had in mind was that we would have a special form and process that is an "Offer of Insurance Coverage". The FTE would be asked to complete the form that offers them coverage. If they indicate that they want coverage and they are a spouse of an existing covered employee, the form would indicate that they are being provided the family coverage through their spouse.

Do you feel that this would meet the requirements in that coverage was offered, if accepted they are provided coverage under the spouse?

If so, you noted that this should be done annually unless we have a default opt out, where they only notify us if they have a change to make.

Please let us know your thoughts and let me know if you have further questions.

Rebecca  
NDPERS

### **Rates – Single Plus Dependent (SPD)**

Under the Affordable Care Act eligible employees, who are not full-time employees of the state, must be offered coverage for themselves and eligible dependents. The employer cannot charge more than 9.5% of household income for the single coverage for the employee. If the employee elects to provide coverage to their dependents they must pay the additional charge.

In our plan we have a single and family rate. Therefore, if an eligible member under the ACA elects coverage for their dependents, they will have to pay the family rate. This would be more expensive than if we had a single plus dependent rate. At this point our rate schedule is set for 2013-2015 but I just wanted to provide you this update.

**MEMORANDUM**

**TO:** Janilyn Murtha (North Dakota Public Employees Retirement System)

**FROM:** Christopher Sears and Tiffany Sharpley (Ice Miller LLP)

**DATE:** August 14, 2014

**RE:** Aggregation Requirements under PPACA

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*This Memorandum is provided subject to the attorney/client privilege. To maintain that privilege, you should share its contents only with officials or employees involved in making decisions on the matters discussed herein.*

The North Dakota Public Employees Retirement System ("NDPERS") has asked whether the State of North Dakota ("State") may disaggregate its institutions of higher education from other state agencies for purposes of the Patient Protection and Affordable Care Act of 2010 ("PPACA"). This Memorandum summarizes the law and relevant guidance regarding the application of the controlled group rules under Section 414 of the Internal Revenue Code ("Code") to governmental entities for purposes of analyzing PPACA shared responsibility issues. It then provides a potential application of the controlled group rules to the State's public colleges and universities and other State agencies.

In sum, we believe that, at the very least, the State may take the position that the North Dakota University System is in a "controlled group" with the State and is, therefore, an applicable large employer member of an applicable large employer that includes the University System and the State. This conclusion would allow for disaggregation of the State and the system for most purposes related to PPACA's shared responsibility and reporting requirements as described below. A position might be taken that the University System and the State are completely separate applicable large employers for purposes of PPACA, although we believe that this position is somewhat aggressive based on the facts that have been provided to us for purposes of this analysis. Our view is based on our interpretation of applicable guidance on the good faith application of the "controlled group" principles under Sections 414(b) and (c) of the Internal Revenue Code. It is important to note that if this position is adopted, it can have effects beyond the application of PPACA that could relate to the operation of the qualified retirement plans operated by NDPERS and the University System such as in the application of contribution and benefit limits under Code Section 415, the availability of distributions upon termination from employment, the timing of required minimum distributions under Code Section 401(a)(9), and the limits on includible compensation under Code Section 401(a)(17). These potential effects should be considered before reaching final conclusions with regard to the controlled group question for purposes of PPACA.

## **I. RELEVANT BACKGROUND ON THE STATE'S COLLEGES & UNIVERSITIES**

Section 6 of Article VIII of the North Dakota Constitution created the State Board of Higher Education ("Board"). The Board governs the North Dakota University System ("System"). See N.D. CONST. Art VIII, Sec. 6(1); North Dakota Century Code ("NDCC") 15-10-01. The System is composed of the State's 11 public colleges and universities ("Universities"). The Universities include:

- (1) Bismarck State College;
- (2) Dakota College at Bottineau;
- (3) Dickinson State University;
- (4) Lake Region State College;
- (5) Mayville State University;
- (6) Minot State University;
- (7) North Dakota State College of Science;
- (8) North Dakota State University;
- (9) University of North Dakota;
- (10) Valley City State University; and
- (11) Williston State College.

The Board consists of eight members. N.D. CONST. Art VIII, Sec. 6(2)(a); see also NDCC 15-10-02. The Governor appoints seven members from individuals short-listed by action of four of the following five persons: the President of the North Dakota Education Association, the Chief Justice of the North Dakota Supreme Court, the Superintendent of Public Instruction, the President Pro Tempore of the North Dakota Senate, and the Speaker of the North Dakota House of Representatives. *Id.* The Senate must confirm each of the Governor's seven appointees. *Id.* The Governor appoints the eighth member from the student bodies of the Universities. *Id.* Once appointed, members of the Board may only be removed through impeachment proceedings. N.D. CONST. Art VIII, Sec. 6(3).

The state constitution specifically retains "absolute and exclusive control" of the Universities for the State. See N.D. CONST. Art VIII, Sec. 5. However, the constitution grants the Board

full authority over the institutions under its control with the right, among its other powers, to prescribe, limit, or modify the courses offered at the several institutions.

N.D. CONST. Art VIII, Sec. 6(6)(b); see also NDCC 15-10-11. Additionally, the constitution grants the Board

full authority to organize or reorganize within constitutional and statutory limitations, the work of each institution under its control, and do each and everything necessary and proper for

the efficient and economic administration of said state educational institutions.

*Id.*

The Board controls the funds belonging and allocated to the Universities. NDCC 15-10-16. However, the Board must provide the State's Office of Management and Budget ("Office") with semiannual reports for construction projects costing in excess of \$250,000. NDCC 15-10-47. The Board must also set the System's purchasing policy in coordination with the Office. NDCC 15-10-17(5).

The Board must report to the North Dakota Legislative Assembly during each regular legislative session regarding the status of higher education in this state. NDCC 15-10-14.2(2). The Board must provide an "annual performance and accountability report regarding performance and progress toward the goals outlined in the university system's strategic plan and accountability measures." NDCC 15-10-14.2(1). The Governor or the state legislature may request, and the Board must submit, other reports under NDCC 15-10-14.1.

Eligible employees of the Universities participate in the Uniform Group Insurance Program ("Health Plan"). All of the Universities, to some extent, participate in NDPERS. Some University employees may participate in NDPERS, but some may instead participate in the TIAA-CREF fund. *See* NDCC 54-52.1-03; NDCC Chapter 54-52. Only employees of a "governmental unit" may participate in the Health Plan and NDPERS. *See* NDCC 54-52.1-01(4); NDCC 54-52-01(4). A "governmental unit" is "the state of North Dakota . . . or a participating political subdivision thereof." NDCC 54-52-01(8). For purposes of NDPERS, the employer is a governmental unit. NDCC 54-52-01(6). This means the employer is either the State or a participating political subdivision of the State.

71-02-01-01(28) of the North Dakota Administrative Code defines

"[t]ermination of employment" for the purposes of determination for eligibility for benefit payments [as] a severance of employment by not being on the payroll of a covered employer for a minimum of one month. Approved leave of absence or if reemployed by any covered employer prior to receiving a lump sum distribution of the member's account balance does not constitute termination of employment.

The System is a covered employer. A University employee participating in NDPERS could not receive a distribution if he or she continued to be employed by another covered employer (such as another state agency) after terminating employment with the System or he or she became employed by another such entity within 31 days of terminating employment with the System.

## **II. BRIEF SUMMARY OF EMPLOYER SHARED RESPONSIBILITY RULES**

Code Section 4980H and the final employer shared responsibility regulations ("Final Regulations") promulgated thereunder require "applicable large employers" to offer health care coverage to their full-time employees and the dependent children of its full-time employees, to avoid potential penalties. An "applicable large employer" means an employer that employed an average of at least 50 full-time employees on business days in the preceding calendar year. Treas. Reg. 54.4980H-1(a)(4). An "employer" means the person that is the employer of an employee under the common law standard, including all persons treated as a single employer under the controlled group rules set forth in Code Section 414(b), (c), (m) and (o). Treas. Reg. § 54-4980H-1(a)(16); *see also* Code § 4980H(c)(2)(C)(i). Thus, an applicable large employer may consist of multiple related entities (known as applicable large employer members) due to the aggregation rules under Code Section 414.

An "applicable large employer member" is:

A person that, together with one or more other persons, is treated as a single employer that is an applicable large employer. . . . For rules for governmental entities . . . see 54.4980H-2(b)(4).

Treas. Reg. § 54.4980H-1(a)(5). A "person" means an individual, a trust, estate, partnership, association, company, or corporation. Treas. Reg. § 54-4980H-1(a)(34).

The Final Regulations reserve guidance on the application of the employer aggregation rules under Code Section 414(b), (c), (m) and (o) to governmental entities. Treas. Reg. § 54.4980H-2(b)(4). The Preamble to the Final Regulations states, however, that until further guidance is issued, government entities may apply a reasonable, good faith interpretation of the controlled group rules in determining their status as an applicable large employer.

## **III. IMPORTANCE OF DETERMINATION OF STATUS**

In the case of the System, it is important to consider whether:

- (i) there is a single applicable large employer (the State) without any applicable large employer members;
- (ii) the System is an applicable large employer member that along with other state agencies constitute an applicable large employer (the State); or
- (iii) the System is a separate applicable large employer that is not aggregated with other state agencies.<sup>1</sup>

<sup>1</sup> It is also possible that (1) each University is an applicable large employer member that along with the other Universities and state agencies constitute an applicable large employer (the State), or that (2) each University is a separate applicable large employer that is not aggregated with the other Universities or with any other state agencies. (1) or (2) would result in each University being responsible under Code Section 4980H. We do not

**A. Responsibility for Payment of Employer Shared Responsibility Penalties**

- (i) If the State is a single applicable large employer which includes the System, then the State would be responsible for offering coverage to substantially all full-time employees of the State (which would include System employees) and paying any employer shared responsibility penalty, leaving to State law the issue of whether any penalty would be charged back to the individual entities.
- (ii) If the System is an applicable large employer member, that along with other State agencies is an applicable large employer (the State), then the System would be responsible for offering coverage to substantially all its full-time employees and paying any employer shared responsibility penalty with respect to its own employees (leaving to State law the issue of whether the State would provide the System funding for any of the incurred penalties).
- (iii) If the System is a separate applicable large employer that is not aggregated with any other entity, then the System would be responsible for offering coverage to substantially all its full-time employees and paying any employer shared responsibility penalty with respect to its own employees.

**B. Determining Full-Time Employee Status**

This determination is also important for determining whether hours of service with the System and other State agencies must be aggregated for purposes of determining the full-time status of employees, and determining when an employee can be treated as a newly hired employee or continuing employee under the measurement period/stability period rules.

- (i) If the State is a single applicable large employer and the System is not an independent member unto itself, all hours of service would have to be aggregated across all entities (regardless of whether some of an employee's hours were accrued in the System and some of an employee's hours were accrued at another State agency).
- (ii) Similarly, if the System is an applicable large employer member, hours of service with System would need to be aggregated with hours of service with other State agencies to determine the full-time status of its employees.
- (iii) If the System is a separate applicable large employer itself, it would not need to aggregate hours of service with the System with hours of service with other State agencies.

**C. Satisfying Large Employer Reporting Requirements**

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focus on these possibilities because we have not been asked to do so and because the facts presented to us would not seem to support these outcomes.

Finally, this determination is critical for determining proper reporting under Code Section 6056, the reporting rules for large employers. Code Section 6056 requires each "applicable large employer member" to separately make a Section 6056 filing to the IRS and a statement to its employees each year beginning in 2016 (for 2015).<sup>2</sup> These reporting rules are intended to notify the IRS whether a large employer has offered coverage that satisfies the employer shared responsibility rules or is instead subject to penalties under Code Section 4980H. The preamble to the final regulations reiterates that in determining the applicable large employer members, a governmental entity must use an interpretation of the Code Section 414(b), (c) and (m) that is consistent with that used under the employer shared responsibility rules. The Section 6056 filing must report whether the applicable large employer is a member of an aggregated group under Code Section 414(b), (c) or (m), and the name and EIN of each member of the group constituting the applicable large employer. Under the general reporting method set forth in these rules, each applicable large employer member must report - under its own EIN number and in relevant part - the name, address, and social security number for each full-time employee during the calendar year, as well as the months, if any, during which the employee was covered under an employer-sponsored group health plan.

- (i) If the State and the System are a single applicable large employer (without component members), then presumably the System or the Universities would need to provide the State this information for each of the Universities' full-time employees in order for the State to satisfy this reporting requirement.
- (ii) If the System is an applicable large employer member of the State, the System would have an independent 6056 reporting obligation. However, we do note that there is a special rule for "governmental units" only, which permits a state or political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state<sup>3</sup> (such as the System), to designate another person (such as the State) that is part of or related to the same government unit (the State) to make a Section 6056 filing to the IRS and send a statement to its employees on its behalf if the designated person accepts the designation.<sup>4</sup> The designated person must provide a separate report for each applicable large employer member, and there can only be one Section 6056 transmittal form for

<sup>2</sup> The Preamble to the final regulations under Code Section 6056 indicate that the IRS did not adopt commenters' suggestions that the "applicable large employer" be permitted to report and furnish statements on a consolidated basis for its members, or that the sponsor of a health plan offering coverage to employees of more than one applicable large employer member be permitted to report and furnish statements on behalf of all employers eligible to participate in the plan. The IRS noted that since the employer shared responsibility penalties apply on a "member" basis, it was appropriate that the filing be made separately with respect to each member.

<sup>3</sup> The final regulations under Code Section 6056 do not define the terms "agency or instrumentality of a governmental unit," but reserve this issue for future guidance. Until such guidance is issued, the Preamble to the final regulations states that an entity may determine whether it is an agency or instrumentality of a governmental unit based on a reasonable and good faith interpretation of existing rules for other federal tax purposes.

<sup>4</sup> If the State does agree to report on behalf of the System, the State will be responsible for penalties for failure to file the required returns, but the System would still be responsible for any applicable employer shared responsibility penalties it would incur.

each applicable large employer member (including both full-time employees delegated to the designated entity and full-time employees reported by the member). Since hours of service are aggregated for applicable large employer members of the same applicable large employer, a designated person (such as the State) may be able to better coordinate information amongst different agencies in order to determine full-time status of employees working for multiple agencies.

- (iii) If the System is a separate applicable large employer unto itself that is not aggregated with any other entity, then it has its own independent 6056 reporting obligations (as in (ii) above); however, it would not have the option to allow the State to do its reporting on its behalf.

#### **IV. RELEVANT LAW AND RELATED GUIDANCE**

##### **A. Code Section 414**

The controlled group rules under Code Sections 414(b), (c) and (m) require the aggregation of "related" employers for purposes of a number of rules under the Internal Revenue Code, including the determination of an applicable large employer and its members under PPACA. Code Sections 414(b), (c) and (m) do not specifically address their application to non-stock entities.

However, Treasury Regulation Section 1.414(c)-5, issued contemporaneously with the final 403(b) regulations and effective January 1, 2009, applies the controlled group rules to organizations exempt from tax under Code Section 501(a). This regulation provides that common control exists between exempt organizations if at least 80% of the directors or trustees of one organization are either representatives of or directly or indirectly controlled by the other organization. A trustee or director is treated as a representative of another exempt organization if he or she is also a trustee, director, agent, or employee of the other exempt organization. A trustee or director is controlled by another organization if the other organization has the power to remove such trustee or director and designate a new trustee or director. Treas. Reg. § 1.414(c)-5(b). Treas. Reg. § 1.414(c)-5(c) also permits permissive aggregation of tax-exempt entities having a common exempt purpose if they regularly coordinate their day to day exempt activities. This regulation applies only to tax-exempt organizations under Code Section 501(a) and does not apply to governmental entities.

##### **B. Control Group Guidance for Governmental Plans**

While Code Sections 414(b), (c) and (m) and the underlying regulations do not apply to governmental entities, the Internal Revenue Service ("IRS") has set forth its view in various pieces of guidance on how these concepts should be applied to governmental employers in determining whether they are in the same controlled group.

In General Counsel Memorandum 39616 (March 12, 1987), the IRS held that a "parent-subsidiary" controlled group exists where an entity has a controlling interest in a non-

stock organization because at least 80% of the directors or trustees of the organization are either representatives of, or directly or indirectly control, or are controlled by, such entity. A trustee or director is a representative of the controlling entity if he is a trustee, director, agent, or employee of such entity. A trustee or director is controlled by the controlling entity if such entity has the power to remove such trustee or director and designate a new trustee or director. *See also* PLR 9722039 (May 30, 1997); PLR 9629033 (April 25, 1996); PLR 9442031 (October 21, 1994).

IRS Notice 89-23, which prior to January 1, 2009, provided safe harbors for testing 403(b) plans for nondiscrimination, defined the controlled group for 403(b) plans as, in relevant part:

The employer as defined in Section 414(b), (c), (m), and (o) is deemed to be the entity contributing to or maintaining the 403(b) annuity plan (contributing employer) and each entity in the same controlled group as the contributing employer, which under section 403(b), may contribute to or maintain a 403(b) annuity plan. The controlled group includes each entity of which at least 80% of the directors, trustees or other individual members of the entity's governing body are either representatives of or directly or indirectly control, or are controlled by, the contributing employer. In addition, an entity is included in the same controlled group as the contributing employer if such entity provides directly or indirectly at least 80% of the contributing employer's operating funds and there is a degree of common management or supervision between the entities. A degree of common management or supervision exists if the entity providing the funds has the power to appoint or nominate officers, senior management or members of the board of directors (or other governing board) of the entity receiving the funds. A degree of common management or supervision also exists if the entity providing the funds is involved in the day-to-day operations of the entity.

(emphasis added). Notice 89-23 further provided that:

in the case of an educational organization described in section 170(b)(1)(A)(ii) of an employer which is a state, a political subdivision of a state, or an agency or instrumentality of any one or more of such entities (governmental entity), the term "employer" includes any other educational organization described in section 170(b)(1)(A)(ii) that has the power to levy tax to provide funds to the contributing employer or to set or review the contributing employer's budget (involvement in the budgetary process must consist of more than mere approval of a previously developed budget), and all other educational organizations

described in section 170(b)(1)(A)(ii) that receive tax disbursements pursuant to the same tax levy of an educational organization. If the contributing employer receives a majority of its tax disbursements pursuant to a tax levy of one governmental entity, each other educational organization described in section 170(b)(1)(A)(ii) receiving at least 80% of its tax disbursements pursuant to the same levy is included in the term "employer" so long as its budget is set or reviewed by the same educational organization that sets or reviews the contributing employer's budget. Thus, for example, if a two year college and a university each receive 80% or more of their tax disbursements pursuant to a tax or taxes levied by a state and each of their budgets is reviewed by an educational organization, then both educational organizations are one employer . . .

(emphasis added). The IRS has also stated that:

[w]here separate governmental plans are maintained by different governmental units, the governmental units are treated as a single employer for purposes of the aggregation requirement . . . pursuant to a reasonable and good faith interpretation of the rules and definitions under sections 414(b), (c), (m), and (o) of the Code. The controlled group definition under Notice 89-23, 1989-1 C.B. 654 (the 80 percent control or funding test), is considered a reasonable (but not exclusive) interpretation of these definitions consistent with the unique nature of governmental entities.

IRS Information Letter (Aug. 20, 1991) (emphasis added).

Private Letter Ruling 200028042 (April 19, 2000) provides that a reasonable good faith interpretation requires that entities are aggregated (or not aggregated) on a consistent basis. In PLR 200028942, the IRS determined that the State of Idaho could aggregate state and local entities because it had consistently treated them as a single employer for other purposes in the past.

Notice 96-64, 1996-2 CB 229 (December 31, 1996) states that until further guidance is issued, governments and tax-exempt organizations may apply a reasonable good faith interpretation of existing law in determining whether entities must be aggregated under Sections 414(b) and 414(c), and specifically notes that future guidance will be issued on a prospective basis only.<sup>5</sup>

<sup>5</sup> In informal comments during an IRS web seminar on July 24, 2014, regarding the application of the controlled group rules to governmental entities for purposes of Code Section 4980H, Stephen Tackney, Deputy Division Counsel/Deputy Associate Chief Counsel at the IRS Office of Chief Counsel, indicated that in his opinion the IRS would respect governmental entities' aggregation determinations so long as they were reasonable and in good faith, made on a consistent basis, and not made for the purpose of avoiding the shared responsibility rules.

### **C. Summary Discussion of Tests**

Although other interpretations may also be reasonable, the IRS has laid out in multiple pieces of guidance at least four alternatives for applying a reasonable good faith interpretation of existing law to governmental entities, with the requirement that they be applied in a consistent manner.

- **Board Control Test.** The controlled group test relating to board control is a very "bright line" test that mirrors the stock ownership rules under Code Section 414(b) and (c), as well as the board control rules for tax-exempt organizations under the Code Section 414(c) regulations. Under this test, if at least 80% of the board of an employer is controlled by another employer, then the employers are in the same controlled group.
- **Operating Funds Test.** An employer is in the same controlled group of another employer if the employer provides directly or indirectly at least 80% of the other employer's operating funds and there is a degree of common management between the two employers.
- **Power to Levy Taxes.** A State educational organization is in the same controlled group as another educational organization if it has the power to levy tax to provide funds to the first organization or to set or review the budget of the first organization, as well as all other educational organizations that receive tax disbursements pursuant to that same tax levy.
- **Receipt of Tax Disbursements.** If an educational organization receives a majority of its tax disbursements pursuant to a tax levy of a governmental entity, then any other educational organization receiving at least 80% of its tax disbursements pursuant to the same levy is in the same controlled group as the first educational organization, so long as each of their budgets is set or reviewed by the same educational organization.

## **V. ANALYSIS**

### **A. The System as an Applicable Large Employer Member of the State**

Because the Governor appoints 100% of the Board, the State arguably controls the System under a reasonable, good faith interpretation of the controlled group rules as interpreted by the IRS in the above guidance.<sup>6</sup> The board control test appears to accurately reflect actual control of the State with respect to the System given that the state constitution specifically retains "absolute and exclusive control" of the Universities for the State. *See* N.D.

<sup>6</sup> We do note, however, that the Governor does not have the power to remove the Board members. Board members may only be removed "by impeachment for the offenses and in the manner and according to the procedure provided for the removal of the governor by impeachment proceedings." See N.D. CONST. Art. VIII, Sec. 6.

CONST. Art VIII, Sec. 5. Application of the board control test would suggest that the System is in the same controlled group as the State, and is an applicable large employer member of the State. As such, the System is responsible for its own employer shared responsibility penalty, which would give it control over its own liability. We would note again, however, that hours of employees would have to be aggregated across the entire controlled group.

This result also has some support under the final regulations with respect to Code Section 6056, the reporting rules for large employers, which, as discussed above, require each "applicable large employer member" to separately make a Section 6056 filing to the IRS and a statement to its employees each year beginning in 2016 (for 2015). The preamble to the final regulations reiterates that in determining the applicable large employer members, a governmental entity must use an interpretation of the Code Section 414(b), (c) and (m) that is consistent with that used under the employer shared responsibility rules. The Section 6056 filing must report whether the applicable large employer member is a member of an aggregated group under Code Section 414(b), (c) or (m), and the name and EIN of each member of the group constituting the applicable large employer. The employer reporting rules also contain a special rule that allows governmental units such as state agencies and instrumentalities to delegate to another governmental unit (such as the State or another governmental unit of the State) responsibility for handling this reporting in whole or in part. There is some implication in that discussion that separate governmental units – such as state agencies and instrumentalities – are considered applicable large employer members of the State since such delegation would not be necessary if the governmental units were a single applicable large employer.

#### **B. The System and the State as a Single Applicable Large Employer**

An alternative argument is that the System is aggregated with the other State agencies as part of a single applicable large employer, the State. If the State is responsible for any penalty as a single employer of which the System is a part, then one or more state agency's (or the System's) significant failures could result in the State being held responsible for a much more significant penalty. State law would dictate whether any part of such a penalty would be allocated to the System; if that is the case, so long as the allocation is in proportion to the responsibility of the state agency that caused the liability, the result may not be significantly different than under the controlled group analysis.

If the System and the State were treated as a single employer, the State would be responsible for reporting under Code Section 6056, which would require it to secure information that it presumably does not have relating to each University's employees, including full-time employees not offered coverage under the Health Plan. Given that the System runs its own payroll and has a fairly autonomous Board, we think that IRS may be more likely to view the relationship under the controlled group rules (particularly given the reporting rules under Section 6056).

Given that the Constitution sets up a separate structure for the System with its own Board (albeit likely "controlled" by the State), we believe that it is reasonable to treat the State and the System as if there were two "companies" that are separate members of an applicable

large employer, as opposed to having no separateness and being treated as a single member of an applicable large employer. Thus, we do not believe that the option of treating the State and the System as a single entity (without component members) needs to be the conclusion. In other words, the State could make a reasonable, good faith decision to disaggregate the System from the larger State as separate applicable employer members in a single applicable large employer (*i.e.*, controlled group).

### **C. The System as a Separate Applicable Large Employer**

As we have noted above, governmental entities are required to apply a "good faith" analysis for purposes of determining controlled group status. In this memorandum, we have analyzed the controlled group status of the State and the System using established tests that have been applied in non-governmental settings, as well as guidance that has been applied in governmental settings. Under those fairly objective tests that apply ascertainable percentages of control (whether through Board control or financial control), we believe that there appears to be enough control over the System by the State to establish, in good faith, a controlled group with the System constituting a member of that controlled group.<sup>7</sup> Due to the State constitution vesting absolute and exclusive control over the Universities in the State and the Governor's ability to appoint 100% of the Board's members, we do not think that the System would be treated as a separate applicable large employer under the more objective tests discussed in this memorandum.

We do note that reaching the conclusion that the State and the System are separate members of a single controlled group does allow the State to, for most PPACA purposes, treat the System separately from the State. Most notably, each separate applicable large employer member is responsible for its own compliance with PPACA's shared responsibility and reporting requirements. However, aggregation of hours across the entire applicable large employer will still be required.

Should the State want to take the position that the State and the System are actually two separate applicable large employers (an arguably more aggressive position), we believe further analysis would be necessary. This would require additional review of the historical relationship between the System, the Universities, and the State, as well as further research into the enabling and operational statutes related to all of these entities. This kind of analysis takes one farther from the objective standards that have been discussed in this memorandum, but could still constitute a good faith application of the controlled group rules.

### **D. Collateral Effects**

As mentioned earlier in this memorandum, by interpreting the controlled group rules to mean that members of the System and the State are part of a single employer or are separate members of a single controlled group, other Code provisions that treat members of a

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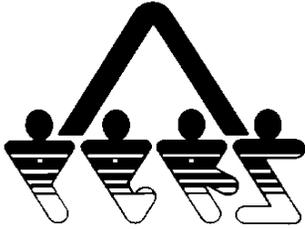
<sup>7</sup> Again, we have not delved into the question of whether the Universities themselves are members of a controlled group with the System or with the System and the State.

controlled group as a single unit must be recognized and carefully considered. Code provisions that must be reviewed along with administrative procedures to ensure compliance as a single entity or controlled group would include: (1) contribution and benefit limitations under Code Section 415; (2) minimum distribution requirements under Code Section 401(a)(9); (3) compensation limits under Code Section 401(a)(17); and (4) the definition of "termination of employment" (which affects when employees may take distributions from their respective retirement programs). These issues would affect not only the retirement programs administered by NDPERS, but also other retirement programs in which University employees might participate (such as the TIAA-CREF fund). We recommend discussing how these provisions are handled now from an administrative perspective by all interested parties.

## **VI. CONCLUSION**

Given the guidance issued by the IRS on the application of the controlled group rules in the governmental context and the good faith standard to be applied, we believe that it is reasonable for the State to disaggregate the State from the System into separate members of a single applicable large employer (*i.e.*, controlled group) for purposes of the application of PPACA. Further analysis might reveal that the State could take a more aggressive position and treat the State and the System as completely separate applicable large employers that are not within the same controlled group. We want to note that PLR 200028042 makes clear that once a controlled group determination has been made for one purpose (*e.g.*, for purposes of complying with PPACA), it must be uniformly applied for all purposes for which a controlled group analysis is relevant. Thus, before reaching a final conclusion on this PPACA issue, NDPERS and the System should consider the other effects of this conclusion on other plans and benefits that they respectively sponsor, administer, and/or participate in, such as the TIAA-CREF fund.

We are happy to discuss these matters with you at your convenience.



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# Memorandum

**TO:** NDPERS Board

**FROM:** Rebecca Fricke

**DATE:** August 11, 2014

**SUBJECT:** Pre-tax Payroll Deductions to Health Savings Accounts (HSA)

NDPERS has received inquiries from participants in the High Deductible Health Plan (HDHP) with a Health Savings Account (HSA) regarding whether NDPERS will be allowing individuals to make pre-tax payroll deductions to their HSA. Although there has not been a large volume of inquiries, staff has been reviewing what would be involved to move forward and allow HDHP participants this option.

Currently, participants can make personal payments directly to Discovery Benefits, the 3<sup>rd</sup> Party Administrator of the HSA accounts. Since these are personal payments, they are considered after-tax employee contributions. These after-tax employee contributions, along with the employer contributions made by the state, are applied against the annual federal limit for contributions. The state currently contributes \$60.74 per month for single contracts and \$147.00 per month for family contracts. These contributions are exempt from federal income taxes. The employee after-tax contributions are eligible for favorable tax treatment through the IRS which allows an individual to claim the after-tax contributions as an adjustment to gross income on their federal tax return. However, an employee is not able to benefit from reduced FICA taxes through after-tax contributions. Currently there are 144 active participants in the plan. Discovery Benefits has indicated that thus far in 2014, there are 34 participants making personal after-tax contributions to their accounts.

Since the participants send their personal payments directly to Discovery Benefits, by either personal check or by setting up automatic withdrawals, NDPERS has no administrative record-keeping responsibilities with regard to employee after-tax contributions unless we are notified by Discovery Benefits that an individual exceeds the annual limit. When this occurs, NDPERS notifies the individual and informs them of the steps they need to take to remove the funds in order to avoid an excise tax.

In reviewing the option to allow pre-tax payroll deductions, staff has determined that there are a number of considerations and steps that would be required in order to implement the option and ensure that it is administered appropriately. Some areas identified so far are:

- a. Revise the Flex Plan Section 125 Plan Document to address the pre-tax payroll deduction option and processes.
- b. Develop a Salary Reduction Agreement form for participants to use to direct their payroll to set-up or modify the pre-tax payroll deduction. Determine whether or not this will be an annual election and how employers will be notified of the election.
- c. Determine the approach that NDPERS staff is to take for annual limit monitoring. Specifically, will staff have direct involvement in monitoring limits, or will NDPERS leave the monitoring to the employee, who must notify NDPERS to take the required action to address the excess contribution? If NDPERS is to monitor, staff will need to learn more about the tools available through Discovery Benefits to ensure we understand what is involved in this process and what additional staff resources may be necessary.
- d. Develop a process for handling excess contributions and potential correction of W-2 by employers. Note that there will be a different process if the excess contribution is made as a pre-tax contribution vs an after-tax contribution.
- e. Educate employers and internal staff on option.
- f. Create participant communications to inform of pre-tax payroll deduction option and employee responsibilities.
- g. Determine logistics of the contributions (i.e. frequency sent to Discovery Benefits, tracking of pre-tax & after-tax deductions by employee vs employer contributions, whether to capture details on PERSlink, etc).
- h. Configure PeopleSoft to allow deduction.

In addition, since the deductions are handled through payroll, employers would also need to agree to this option as it would require changes in their payroll systems and also additional administrative work related to the maintenance of the deductions and W-2 reporting.

Therefore, staff is seeking direction from the Board on this option. Specifically, is the Board comfortable with the current arrangement that only allows employee after tax contributions to the HSA and NDPERS is only involved when the annual limit is exceeded, or would the Board like staff to continue to explore the pre-tax payroll deduction option?

If it is the Board's desire for staff to continue to explore the pre-tax payroll deduction option, staff recommends the following action plan:

- 1) Since employers must support the pretax option through their payroll system, survey employers to determine if it is something they want to offer HDHP participants and can they accommodate the option on their system. The survey would also inform them of what additional maintenance and actions may be needed on their part regarding updating deductions when a person changes the contribution amount or dis-enrolls or re-enrolls in the HDHP plan. The survey can also provide details on the steps the employer will need to take when an employee exceeds the contribution

limits as it is the employer's responsibility to refund the contribution to the employee and possibly update the employee's W-2. In addition, employers need to be aware that the deductions are not subject to FICA/FUTA taxes.

- 2) Staff would bring forward the responses from the employers, as well as more detailed information on the administrative areas outlined above for the Board to consider.

Given the numerous steps required to implement the pre-tax payroll deductions, staff recommends that if the option is to be offered, it be available no sooner than annual enrollment in the fall of 2015 for the 2016 plan year.

**Board Action Requested:**

Determine if NDPERS should continue to limit employee contributions to the HSA as after-tax employee contributions or if staff should move forward with the action plan outlined above for further review and implementation of the option for the 2016 plan year.



# Memo

To: NDPERS Board  
 From: Bryan T. Reinhardt  
 Date: 8/18/2014  
 Re: 2013 EAP Utilization

The following table shows the self-reported 2013 utilization from the NDPERS Employee Assistance Program (EAP) providers. The overall EAP utilization rate is at 6.6%. This is lower than the 8-9% rate in prior years.

## NDPERS Employee Assistance Program – 2013

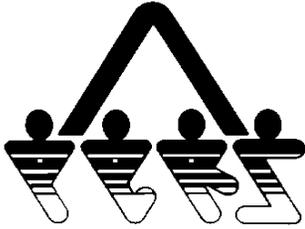
	NDPERS TOTAL	Live Well	Deer Oaks	The Village	St. Alexius
Contracts*	16030	65	1500	3600	10865
Cases**	1052	11	91	222	728
%	6.6%	16.9%	6.1%	6.2%	6.7%
Sessions***	1595	42	130	695	728
%	10.0%	64.6%	8.7%	19.3%	6.7%
Case Types:					
Psychiatric	554	3	43	80	428
Family/Personal	381	6	23	75	277
Work Problems	42	0	11	21	10
Financial/Legal	31	2	4	24	1
Drugs/Alcohol	23	0	2	12	9
Other/Unknown	20	0	8	10	2

\* - Contracts are adjusted from current levels because NDSU, ITD, Lake Region, and the AG Dept switched providers mid year with the open enrollment.

\*\* - Note that family members are also eligible for the EAP.

\*\*\* - Per Session information was not available from St. Alexius.

If you have any questions or need anymore information, please contact me.



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# Memorandum

**TO:** PERS Board

**FROM:** Sparb

**DATE:** August 14, 2014

**SUBJECT:** Medicare Blue Rx Rate Renewal

The next rate renewal will be effective January 1, 2015.

BCBS will be available at the meeting to review the rate renewal with the Board. However, they are still working on finalizing the rates, so the specific information will be sent by email to you prior to the meeting.



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# Memorandum

**TO:** PERS Board

**FROM:** Sparb

**DATE:** August 14, 2014

**SUBJECT:** Draft Legislative Actuarial/Technical Reviews

Attached is first draft of the technical reviews from Segal that will be presented to the Legislative Employee Benefits Committee. Also included is a matrix for each bill. You will note that the matrix has a copy of the bill draft, reason for change, and comments. The first two columns we used in developing the bills. The comment column is staff's recent observations on the bills. We will discuss these observations at the Board meeting.

The four bills are:

1. Bill No. 15.0043.01 which relates to an election by members in the DC plan to transfer to the DB plan.
2. Bill No. 15.0136.01 which is the PERS technical bill.
3. Bill No. 15.0137.01 which is the PERS retirement bill.
4. Bill No. 15.0139.01 which relates to retirement contributions by National Guard security officers and firefighters.



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July 25, 2014

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 – Bill Draft No. 15.0136.01000**

Dear Sparb:

The following presents our analysis of the proposed changes found in draft Bill No. 15.0136.01000:

**Systems Affected:** North Dakota Public Employees Retirement System (PERS) Hybrid Plan and Highway Patrolmen's Retirement System (HPRS)

**Summary:** The proposed legislation would make the following important changes:

- Revises the definition of "salary" in the HPRS to include expense allowances.
- Updates federal compliance provisions of the Hybrid Plan and HPRS regarding Internal Revenue Code sections 401(a)(17), 401(a)(9), 401(a)(31), 415(b) and (d), and 402(c)(4) in North Dakota Century Code (NDCC) sections 39-03.1-11.2 and 54-52-28.
- Updates federal compliance provisions for qualified military service in the Hybrid Plan to comply with required amendments under the Heroes Earnings Assistance and Tax Relief Act of 2008 (HEART Act) in NDCC section 54-52-17.14.
- Requires that employees of participating political subdivisions be enrolled in the Hybrid Plan within the first month of eligible employment and that retirees returning to work must reenroll in the Plan or permanently waive future participation in the Plan within the first month of reemployment.
- Provides clarifying language regarding determination of final average salary for participants in the HPRS and temporary employees in the Hybrid Plan.

*Actuarial Cost Analysis:* This bill would not have a significant actuarial cost impact on the Hybrid Plan or the Highway Patrolmen's Retirement System.

*Technical Comments:* Our comments on the bill are as follows:

### **General**

The bill would generally clarify existing statutory provisions to more accurately reflect actual operations of the Systems or to make the terms of the plans under the Systems more consistent with each other. In addition, the bill updates the provisions of the plans to comply with current federal income tax rules for qualified plans. The provisions of this bill do not appear to directly or significantly impact the benefits payable from the Hybrid Plan or HPRS.

Our review and analysis of this bill does not include provisions relating to the uniform group insurance program in NDCC chapter 54-52.1.

### **Benefits Policy Issues**

➤ Adequacy of Retirement Benefits

No impact.

➤ Benefits Equity and Group Integrity

No impact.

➤ Competitiveness

No impact.

➤ Purchasing Power Retention

No impact.

➤ Preservation of Benefits

No impact.

➤ Portability

No impact.

➤ Ancillary Benefits

- No impact.
- *Social Security:* No impact.

### Funding Policy Issues

➤ Actuarial Impacts

This bill would have no material actuarial impact on the Hybrid Plan or the Highway Patrolmen's Retirement System.

➤ Investment Impacts

- *Cash Flow*: No impact.
- *Asset Allocation*: The bill would not create new investment asset allocation issues.

### Administration Issues

➤ Implementation Issues

This bill would not present any significant implementation issues for the PERS.

➤ Administrative Costs

The bill would have no impact on the administrative resources of the PERS.

➤ 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 PERS may need to update employee communications material to indicate that new eligible employees must be enrolled in the Hybrid Plan within the first month of employment.

➤ Compliance Issues

The bill amends various sections of the North Dakota Century Code, chapters 39-03.1 and 54-52 to change references under Internal Revenue Code sections 401(a)(9), 401(a)(17), 401(a)(31), 415(b) and (d), and 402(c)(4) from the Code language in effect on August 1, 2013 to the language in effect on August 1, 2015. No material changes have been made to these Internal Revenue Code sections since August 1, 2013, other than the statutory indexing of dollar amounts set forth in Code sections 401(a)(17) and 415(b).

You may wish to determine whether amendments to the Hybrid Plan and HPRS, as well as other plans governed by the PERS Board (such as the Defined Contribution Plan), are necessary to comply with the Supreme Court ruling in *United States v. Windsor* relating to same-gender marriage and the definition of spouse for purposes of federal tax laws. Pursuant to IRS Notice 2014-19, if such amendment is necessary or desirable, the plan amendment must be effective June 26, 2013 (unless an earlier effective date is selected), and governmental plans must be amended no later than the close of the first legislative session of the legislative body with the authority to amend the plan that ends after December 31, 2014. The IRS Notice suggests that, even if a plan amendment is not required, a clarifying amendment may help ensure proper plan operations in the future.

➤ Miscellaneous and Drafting Issues

We note that although the HPRS contains military service language that is similar to military service language in the Hybrid Plan, this bill does not amend the HPRS language (in NDCC section 39-03.1-10.3) to comply with required amendments under the HEART Act, as it does for the Hybrid Plan (in NDCC section 54-52-17.14). You may wish to consider including HEART Act language in the HPRS statutes.

Similarly, we note that although the PERS Defined Contribution Plan contains both military service language and references under Internal Revenue Code sections 401(a)(9), 401(a)(17), 401(a)(31), 415, and 402(c)(4) that are similar to military service and Internal Revenue Code language in the Hybrid Plan, this bill does not amend the Defined Contribution Plan statutes to comply with the HEART Act (in NDCC section 54-52.6-09.4) nor the updated Internal Revenue Code sections (in NDCC section 54-52.6-21). You may wish to consider including both HEART Act language and updated Internal Revenue Code references in the Defined Contribution Plan statutes.

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,

Sincerely,

Brad Ramirez, FSA, MAAA, FCA, EA  
Vice President and Consulting Actuary

Melanie Walker, JD  
Vice President

/cz

cc: Tammy Dixon  
Laura Mitchell

**NDPERS Technical Legislation**  
**2015 Session**  
**LC 15.0136.01000**

<b>Proposed Legislation</b>	<b>Reason</b>	<b>Comments</b>
<p><b>SECTION 1. AMENDMENT.</b> Subsection 6 of section 39-03.1-01 of the North Dakota Century Code is amended and reenacted as follows:</p> <p>6. "Salary" means the actual dollar compensation, excluding any bonus, or overtime, <u>or expense allowance</u>, paid to or for a contributor for the contributor's services.</p>	<p>Clarify the definition of Salary.</p>	
<p><b>SECTION 2. AMENDMENT.</b> Section 39-03.1-11.2 of the North Dakota Century Code is amended and reenacted as follows:</p> <p><b>39-03.1-11.2. Internal Revenue Code compliance.</b></p> <p>The board shall administer the plan in compliance with the following sections of the Internal Revenue Code in effect on August 1, <del>2013</del><u>2015</u>, as it applies for governmental plans.</p> <p>1. Section 415, including the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code.</p> <p>a. The defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code, as approved by the legislative assembly, must be adjusted under section 415(d) of the Internal Revenue Code, effective January first of each year following a regular legislative session. The adjustment of the defined benefit dollar limitation under section 415(d) applies to participating members who have had a separation from employment, but that member's benefit payments may</p>	<p>Each session we submit this to update the reference to the IRS code.</p>	

Proposed Legislation	Reason	Comments
<p>not reflect the adjusted limit prior to January first of the calendar year in which the adjustment applies.</p> <p>b. If a participating member's benefit is increased by plan amendment after the commencement of benefit payments, the member's annual benefit may not exceed the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code, as adjusted under section 415(d) for the calendar year in which the increased benefit is payable.</p> <p>c. If a participating member is, or ever has been, a participant in another defined benefit plan maintained by the employer, the sum of the participant's annual benefits from all the plans may not exceed the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code. If the participating member's employer-provided benefits under all such defined benefit plans would exceed the defined benefit dollar limitation, the benefit must be reduced to comply with section 415 of the Internal Revenue Code. This reduction must be made pro rata between the plans, in proportion to the participating member's service in each plan.</p> <p>2. The minimum distribution rules under section 401(a)(9) of the Internal Revenue Code, including the incidental death benefit requirements under section 401(a)(9)(G), and the regulations issued under that provision to the extent applicable to governmental plans. Accordingly, benefits must be distributed or begin to be distributed no later than a member's required beginning date, and the required minimum distribution rules override any inconsistent provision of</p>		

Proposed Legislation	Reason	Comments
<p>this chapter. A member's required beginning date is April first of the calendar year following the later of the calendar year in which the member attains age seventy and one-half or terminates employment.</p> <p>3. The annual compensation limitation under section 401(a)(17) of the Internal Revenue Code, as adjusted for cost-of-living increases under section 401(a)(17)(B).</p> <p>4. The rollover rules under section 401(a)(31) of the Internal Revenue Code. Accordingly, a distributee may elect to have an eligible rollover distribution, as defined in section 402(c)(4) of the Internal Revenue Code, paid in a direct rollover to an eligible retirement plan, as defined in section 402(c)(8)(B) of the Internal Revenue Code, specified by the distributee.</p> <p>5. If the plan of retirement benefits set forth in this chapter is terminated or discontinued, the rights of all affected participating members to accrued retirement benefits under this chapter as of the date of termination or discontinuance is nonforfeitable, to the extent then funded.</p>		
<p><b>SECTION 3. AMENDMENT.</b> Subsection 3 of section 39-03.1-14.1 of the North Dakota Century Code is amended and reenacted as follows:</p> <p>3. Pursuant to rules adopted by the board, a member who has service credit in the system and in any of the alternate plans described in subdivision a or b of subsection 1 is entitled to benefits under this chapter. The employee may elect to have benefits calculated using the benefit formula in section 39-03.1-11 under either of the following calculation methods:</p>	<p>This is a technical correction as this was previously overlooked when this change was originally implemented.</p>	

Proposed Legislation	Reason	Comments
<p>a. By using the <u>final</u> average of the highest salary received by the member for any thirty-six months employed during the last one hundred twenty months of employment in the highway patrolmen's retirement system <u>as calculated in 39-03.1-11</u>. If the participating member has worked for less than thirty-six months at retirement, the final average salary is the average salary for the total months of employment.</p> <p>b. Using the <u>final</u> average of the highest salary received by the member for any thirty-six months during the last one hundred twenty months <u>of as calculated in 39-03.1-11</u> employment, with service credit not to exceed one month in any month when combined with the service credit earned in the alternate retirement system.</p> <p>The board shall calculate benefits for an employee under this subsection by using only those years of service employment earned under this chapter.</p>		

Proposed Legislation	Reason	Comments
<p><b>SECTION 4. AMENDMENT.</b> Subsection 1 of section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:</p> <p>1. Every eligible governmental-unit <u>participating political subdivision</u> employee <del>concurring in</del> at the time the <u>political subdivision joins</u> the plan must so state in writing <u>if the employee concurs in the plan</u> and all future eligible employees of <u>the participating political subdivision</u> are participating members <u>in the plan and must be enrolled in the plan within the first month of employment.</u> <u>Except as otherwise provided by law, every other eligible governmental unit employee of a participating governmental unit is a participating member in the plan and must be enrolled in the plan within the first month of employment.</u> An employee who was not enrolled in the retirement system when eligible to participate must be enrolled immediately upon notice of the employee's eligibility, unless the employee waives in writing the employee's right to participate for the previous time of eligibility, to avoid contributing to the fund for past service. An employee who is eligible for normal retirement who accepts a retirement benefit under this chapter and who subsequently becomes employed with a participating employer other than the employer with which the employee was employed at the time the employee retired under this chapter may, <del>before reenrolling</del> <u>being reenrolled</u> in the retirement plan <u>within the first month of employment</u>, elect to permanently waive future participation in the retirement plan and the retiree health program and maintain that employee's retirement status. An employee making this election is not required to make any future employee contributions to the public employees retirement system nor is the employee's employer required to make any further contributions on behalf of that employee.</p>	<p>Designates that a member becomes a participating member upon employment rather than receipt of an application</p>	



Proposed Legislation	Reason	Comments
<p>member for any thirty-six months employed during the last one hundred twenty months of employment in the public employees retirement system as calculated in 54-52-17. If the participating member has worked for less than thirty-six months at retirement, the final average salary is the average salary for the total months of employment.</p> <p>(2) The <del>final average of the highest salary received by the member for any thirty-six consecutive months during the last one hundred twenty months of</del> as calculated in 54-52-17 for employment with any of the three eligible employers under this subdivision, with service credit not to exceed one month in any month when combined with the service credit earned in the alternate retirement system.</p> <p>The board shall calculate benefits for an employee under this subsection by using only those years of service credit earned under this chapter</p>		
<p><b>SECTION 6. AMENDMENT.</b> Section 54-52-17.14 of the North Dakota Century Code is amended and reenacted as follows:</p> <p><b>54-52-17.14. Military service under the Uniformed Services Employment and Reemployment Rights Act - Member retirement credit.</b></p> <p>A member reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333], is entitled to receive retirement credit for the period of qualified military service. The required contribution for the credit, including payment for retiree health benefits, must be made in the same</p>	<p>Compliance with Federal Requirements. Incorporate the provisions of the Heroes Earnings Assistance and Relief Tax Act (HEART). <i>If a participating member dies on or after</i></p>	<p>This needs to be done for HP and DC as well.</p>

Proposed Legislation	Reason	Comments
<p>manner and by the same party as would have been made had the employee been continuously employed. If the salary the member would have received during the period of service is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased must be used. Employees must be allowed up to three times the period of military service or five years, whichever is less, to make any required payments. This provision applies to all qualifying periods of military service since October 1, 1994. Any payments made by the member to receive qualifying credit inconsistent with this provision must be refunded. Employees shall make application to the employer for credit and provide a DD Form 214 to verify service. <u>If a participating member dies on or after December 31, 2006, while performing qualified military service, as defined in section 414(u)(5) of the Internal Revenue Code, the deceased member's beneficiaries are entitled to any death benefits, other than credit for years of service for purposes of benefits, that would have been provided under the plan if the participating member had resumed employment and then terminated employment on account of death. The period of such member's qualified military service shall be treated as vesting service under the plan.</u></p>	<p><i>January 1, 2007 while performing qualified military service (as defined in section 414(u)(5) of the Internal Revenue Code), the deceased member's beneficiaries shall be entitled to any death benefits (other than credit for years of service for purposes of benefits) that would have been provided under the Plan if such participating member had resumed employment and then terminated employment on account of death. In addition, the period of such member's qualified military service shall be treated as vesting service under the Plan."</i></p>	

Proposed Legislation	Reason	Comments
<p><b>SECTION 7. AMENDMENT.</b> Section 54-52-28 of the North Dakota Century Code is amended and reenacted as follows:</p> <p><b>54-52-28. Internal Revenue Code compliance.</b></p> <p>The board shall administer the plan in compliance with the following sections of the Internal Revenue Code in effect on August 1, 2015, as it applies for governmental plans.</p> <ol style="list-style-type: none"> <li>1. Section 415, including the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code. <ol style="list-style-type: none"> <li>a. The defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code, as approved by the legislative assembly, must be adjusted under section 415(d) of the Internal Revenue Code, effective January first of each year following a regular legislative session. The adjustment of the defined benefit dollar limitation under section 415(d) applies to participating members who have had a separation from employment, but that member's benefit payments may not reflect the adjusted limit prior to January first of the calendar year in which the adjustment applies.</li> <li>b. If a participating member's benefit is increased by plan amendment after the commencement of benefit payments, the member's annual benefit may not exceed the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code, as adjusted under section 415(d) for the calendar year in which the increased benefit is payable.</li> <li>c. If a participating member is, or ever has been, a participant in another defined benefit plan maintained by the employer, the sum of the</li> </ol> </li> </ol>	<p>Each session we submit this to update the reference to the IRS code.</p>	

Proposed Legislation	Reason	Comments
<p>participant's annual benefits from all the plans may not exceed the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code. If the participating member's employer-provided benefits under all such defined benefit plans would exceed the defined benefit dollar limitation, the benefit must be reduced to comply with section 415 of the Internal Revenue Code. The reduction must be made pro rata between the plans, in proportion to the participating member's service in each plan.</p> <p>2. The minimum distribution rules under section 401(a)(9) of the Internal Revenue Code, including the incidental death benefit requirements under section 401(a)(9)(G), and the regulations issued under that provision to the extent applicable to governmental plans. Accordingly, benefits must be distributed or begin to be distributed no later than a member's required beginning date, and the required minimum distribution rules override any inconsistent provision of this chapter. A member's required beginning date is April first of the calendar year following the later of the calendar year in which the member attains age seventy and one-half or terminates employment.</p> <p>3. The annual compensation limitation under section 401(a)(17) of the Internal Revenue Code, as adjusted for cost-of-living increases under section 401(a)(17)(B).</p> <p>4. The rollover rules under section 401(a)(31) of the Internal Revenue Code. Accordingly, a distributee may elect to have an eligible rollover distribution, as defined in section 402(c)(4) of the Internal Revenue Code, paid in a direct rollover to an eligible retirement plan, as defined in section 402(c)(8)(B) of the</p>		

Proposed Legislation	Reason	Comments
<p>Internal Revenue Code, specified by the distributee.</p> <p>5. If the plan of retirement benefits set forth in this chapter is terminated or discontinued, the rights of all affected participating members to accrued retirement benefits under this chapter as of the date of termination or discontinuance is nonforfeitable, to the extent then funded</p>		
<p><b>SECTION 8. AMENDMENT.</b> Subsection 1 of section 54-52.1-03 of the North Dakota Century Code is amended and reenacted as follows:</p> <p>1. Any eligible employee may be enrolled in the uniform group insurance program created by this chapter by requesting enrollment with the employing department. If an eligible employee does not enroll in the uniform group insurance program at the time of beginning employment, <u>in order to enroll at a later time the eligible employee must meet minimum requirements established by the board to enroll thereafter. An employing department may not require an active eligible employee to request coverage to receive the minimum employer-paid life insurance benefits coverage or employee assistance program benefits coverage.</u></p>	<p>Designates that a member becomes a participating member upon employment for life and EAP rather than receipt of an application</p>	
<p><b>SECTION 9. AMENDMENT.</b> Section 54-52.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:</p> <p><b>54-52.1-03.1. Certain political subdivisions authorized to join uniform group insurance program - Employer contribution.</b></p> <p>A political subdivision, <u>if eligible under federal law</u>, may extend the benefits of the uniform group insurance program under this chapter to its permanent employees, subject to</p>	<p>Clarify that political subdivisions can only join the NDPERS insurance plan if</p>	

<b>Proposed Legislation</b>	<b>Reason</b>	<b>Comments</b>
<p>minimum requirements established by the board and a minimum period of participation of sixty months. If the political subdivision withdraws from participation in the uniform group insurance program, before completing sixty months of participation, unless federal or state laws or rules are modified or interpreted in a way that makes participation by the political subdivision in the uniform group insurance program no longer allowable or appropriate, the political subdivision shall make payment to the board in an amount equal to any expenses incurred in the uniform group insurance program that exceed income received on behalf of the political subdivision's employees as determined under rules adopted by the board. The Garrison Diversion Conservancy District, and district health units required to participate in the public employees retirement system under section 54-52-02, shall participate in the uniform group insurance program under the same terms and conditions as state agencies. A retiree who has accepted a retirement allowance from a participating political subdivision's retirement plan may elect to participate in the uniform group under this chapter without meeting minimum requirements at age sixty-five, when the employee's spouse reaches age sixty-five, upon the receipt of a benefit, when the political subdivision joins the uniform group insurance plan if the retiree was a member of the former plan, or when the spouse terminates employment. If a retiree or surviving spouse does not elect to participate at the times specified in this section, the retiree or surviving spouse must meet the minimum requirements established by the board. Each retiree or surviving spouse shall pay directly to the board the premiums in effect for the coverage then being provided. The board may require documentation that the retiree has accepted a retirement allowance from an eligible retirement plan other than the public employees retirement system.</p>	<p>permitted under federal law (ACA).</p>	
<p><b>SECTION 10. AMENDMENT.</b> Section 54-52.1-03.4 of the North Dakota Century Code</p>		

Proposed Legislation	Reason	Comments
<p>is amended and reenacted as follows:</p> <p><b>54-52.1-03.4. Temporary employees and employees on unpaid leave of absence.</b></p> <p>A temporary employee employed before August 1, 2007, may elect to participate in the uniform group insurance program by completing the necessary enrollment forms and qualifying under the medical underwriting requirements of the program <u>if such election is made before January 1, 2015, and if the temporary employee is participating in the uniform group insurance program as of January 1, 2015.</u> <del>A temporary employee employed on or after August 1, 2007, is only eligible</del> <u>In order for a temporary employee employed after July 31, 2007, to qualify to participate in the uniform group insurance program if</u> <del>the employee is</del> <u>must be</u> employed at least twenty hours per week <del>and</del> <u>must be employed</u> at least twenty weeks each year of employment, <u>must make the election to participate before January 1, 2015; and must be participating in the uniform group insurance program as of January 1, 2015.</u> <del>A To be eligible to participate in the uniform group insurance program, a temporary employee first employed after December 31, 2013 2014, or any temporary employee not participating in the uniform group insurance program as of January 1, 2015 is eligible to participate in the uniform group insurance program only if the employee meets</del> <u>must meet</u> the definition of a full-time employee under section 4980H(c)(4) of the Internal Revenue Code [26 U.S.C. 4980H(c)(4)]. <del>The Monthly,</del> the temporary employee or the temporary employee's employer shall pay <del>monthly</del> to the board the premiums in effect for the coverage being provided. In the case of a temporary employee who is an applicable taxpayer as defined in section 36B(c)(1)(A) of the Internal Revenue Code [26 U.S.C. 36B(c)(1)(A)], the temporary employee's required contribution for medical and hospital benefits self-only coverage may not exceed 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)], and the employer shall pay any difference between the maximum employee required contribution for medical and hospital</p>	<p>Clarifies that temp employees before January 2015 must enroll before that date to be eligible if they do not meet the new ACA eligibility provisions</p>	

Proposed Legislation	Reason	Comments
<p>benefits self-only coverage and the cost of the premiums in effect for this coverage. An employer may pay health or life insurance premiums for a permanent employee on an unpaid leave of absence. A political subdivision, department, board, or agency may make a contribution for coverage under this section.</p>		
<p><b>SECTION 11. AMENDMENT.</b> Section 54-52.1-18 of the North Dakota Century Code is amended and reenacted as follows:</p> <p><b>54-52.1-18. High-deductible health plan alternative with health savings account option.</b></p> <p><u>1.</u> The board shall develop and implement a high-deductible health plan as an alternative to the plan under section <del>54-52.1-06</del> <u>54-52.1-02</u>. The high-deductible health plan alternative with a health savings account must be made available to state employees by January 1, 2012. The <u>After June 30, 2013, at the board's discretion, the</u> high-deductible health plan alternative may be offered, <del>at the discretion of the board,</del> to political subdivisions <del>after June 30, 2013</del> <u>for coverage of political subdivision employees. If a political subdivision elects this high-deductible option the political subdivision may not offer the plan under section 54-52.1-02.</u></p> <p><u>2.</u> Health savings account fees for participating state employees must be paid by the employer. Subject</p> <p><u>a.</u> <u>Except as provided in subdivision b, subject to the limits of section 223(b) of the Internal Revenue Code [26 U.S.C. 233(b)], the difference between the cost of the single and family premium for eligible state employees under section 54-52.1-06 and the premium for those employees electing to participate under the high-deductible health plan under this section must be deposited in a health savings account for the benefit of each participating employee.</u></p>	<p>Based on current language, it appears that coverage can be made available to political subdivisions on an individual basis as an option to the PPO/Basic plan. This will make the HDHP available on a group basis.</p>	<p>RF: replace June 30, 2013 to June 30, 2015</p>

Proposed Legislation	Reason	Comments
<p>b. <u>If the public employees retirement system is unable to establish a health savings account due to the employee's ineligibility under federal or state law or due to failure of the employee to provide necessary information in order to establish the account, the system is not responsible for depositing the health savings account contribution. The member will remain a participant in the high-deductible health plan regardless of whether a health savings account is established.</u></p> <p>3. Each new <u>state</u> employee of a participating employer under this section must be provided the opportunity to elect the high-deductible health plan alternative. At least once each biennium, the board shall have <u>provide</u> an open enrollment period allowing existing <u>state</u> employees of a participating employer under this section or a <u>political subdivision</u> to change their coverage.</p>	<p>Clarifies what will happen when an HSA account cannot be established for a member.</p>	



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July 25, 2014

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State of North Dakota Public Employees' Retirement System  
400 East Broadway, Suite 505  
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Re: **Technical Comments – Bill Draft No. 15.0043.01000**

Dear Sparb:

The following presents our analysis of the proposed changes found in draft Bill No. 15.0043.01000:

***Systems Affected:*** North Dakota Public Employees Retirement System (PERS) Hybrid Plan

***Summary:*** The proposed legislation would allow current Defined Contribution (DC) participants the option to participate in the PERS Hybrid Plan. This election would take place during a three-month period beginning no later than December 1, 2015. Participants' Defined Contribution account balances (less rollovers) would be transferred to the PERS Hybrid plan, and the participant would be credited with benefits as if they had always participated in the PERS Hybrid plan. The opportunity for DC Plan participants to participate in the Hybrid Plan is limited only to currently active employees whose DC Plan account balances are not subject to any court order, such as a qualified domestic relations order.

***Actuarial Cost Analysis:*** This bill will have an actuarial cost impact on the Hybrid Plan. Due to the transfer of funds and the crediting of service, both the assets and the liabilities would increase as a result of the transfer.

It is difficult to predict which participants will elect to participate in the Hybrid Plan. However, previous analysis has concluded that for nearly all DC plan members' account balances are less than the actuarial present value of comparable service under the Hybrid Plan. For this reason, we assume that 100% of DC participants will elect to transfer in this analysis.

Under the current valuation assumptions, the increase in the Actuarial Accrued Liability (AAL) for all of the Defined Contribution Plan members as of July 1, 2010 would be \$27,731,027, offset by assets from existing DC balances of \$15,047,830. If this were to be amortized using the current 20 year policy of the PERS Plan for Main members, the additional required annual contribution would be \$885,163. In addition to this amortization amount, the annual employer Normal Cost (total Normal Cost less member contributions) would be \$825,264. This would result in a required employer contribution of \$1,710,427 on behalf of the DC Plan participants, which is approximately 10.6% of DC Plan participant payroll. This is based on the projected annual payroll of \$16,186,241 for DC Plan members.

The total cost of the proposed legislation for all DC Plan participants, spread over the payroll of all active members in the PERS Main System, would be 0.2% of payroll. This is based on the projected annual payroll from the July 1, 2010 Main System valuation of \$767,253,390 (including all DC Plan participants).

*Technical Comments:* Our comments on the bill are as follows:

### General

Allowing participants to choose their type of benefit exposes the Hybrid Plan to antiselection risk. This is the risk that participants will behave in ways that will have the greatest cost impact to the Plan. Any analysis of provisions involving choice should consider this effect.

### Benefits Policy Issues

➤ Adequacy of Retirement Benefits

To the extent that Defined Contribution members elect a Hybrid Plan benefit that has a greater value than their current account balance, the bill will improve benefit adequacy for this group of employees.

➤ Benefits Equity and Group Integrity

No impact.

➤ Competitiveness

No impact.

➤ Purchasing Power Retention

No impact.

➤ Preservation of Benefits

No impact.

➤ Portability

No impact.

➤ Ancillary Benefits

- No impact.
- *Social Security*: No impact.

**Funding Policy Issues**

➤ Actuarial Impacts

This bill would have an actuarial impact on the Hybrid Plan as discussed above.

➤ Investment Impacts

- *Cash Flow*: The Hybrid plan will receive increased contributions as a result of the bill. These will come from the initial transfer of account balances and the ongoing contributions from new members. Additional benefit payments would also be expected to be paid as a result of the granting of service to former Defined Contribution participants.
- *Asset Allocation*: Because the bill would affect a relatively small portion of the Hybrid Plan's employees, the bill is not expected to create new investment asset allocation issues.

**Administration Issues**

➤ Implementation Issues

This bill would present implementation issues for the PERS. The bill specifies that the Board shall determine the method by which a participating member may make a written election. System staff would be responsible for notifying the affected members and processing the forms in accordance with the bill. The provision that the spousal signature requirement may be waived in extenuating circumstances will require that the Board or System staff make determinations in those cases.

➤ Administrative Costs

The bill would have an impact on the administrative resources of the PERS in addressing the implementation issues discussed above.

➤ Needed Authority

The bill appears to provide appropriate levels of administrative and governance authority to the PERS Board to implement the mandated changes.

➤ Integration

No impact.

➤ Employee Communications

The PERS would need to notify the affected participants of their option to elect under the bill. It may also be appropriate for the PERS to assist participants in making this election by estimating the value of benefits under the Hybrid Plan on an individual basis.

➤ Compliance Issues

Pursuant to Internal Revenue Code section 415 and the regulations thereunder, annuity benefits attributable to a plan-to-plan transfer are not subject to annual benefit dollar limitations. However, it is our understanding that this exception only applies to the extent that the actuarial value of the service credited from the transfer is not greater than the amount of the asset transfer. Thus, it appears that actuarial value of the service credited which exceeds the value of the assets transferred for any individual will be subject to the Code section 415(b) annual benefit limit. For DC Plan participants who transfer to the Hybrid Plan and then retire with less than ten years of participation in the Hybrid Plan, their annual benefit may be limited to the extent that this excess annuity value (when added to subsequently earned Hybrid Plan benefit) is greater than the prorated annual benefit limitation.

➤ Miscellaneous and Drafting Issues

The language in this bill indicates that DC Plan participants who elect to transfer to the Hybrid Plan waive all rights to the DC Plan account balance. It is unclear whether this includes the right to the value of mandatory employee contributions, since employee contributions under the Hybrid Plan are immediately vested. You may wish to consider clarifying whether transferring participants retain the right to receive mandatory employee contribution amounts after the transfer, regardless of vesting status, in the provisions of the bill, as well as in the notice to participants of the option to transfer.

Mr. Sparb Collins  
Page 5

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  
Vice President and Consulting Actuary

Sincerely,



Melanie Walker, JD  
Vice President

/cz

cc: Tammy Dixon  
Laura Mitchell

5325809V1/01640.004

**DC transferring into DB Bill**  
**2015 Session**  
**LC 15.0043.01**

<b>Proposed Legislation</b>	<b>Reason</b>	<b>Comments</b>
<p>A BILL for an Act to create and enact a new section to chapter 54-52.6 of the North Dakota Century Code, relating to an election for members of the defined contribution retirement plan to transfer to the public employees retirement system.</p> <p><b>BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:</b></p> <p><b>SECTION 1.</b> A new section to chapter 54-52.6 of the North Dakota Century Code is created and enacted as follows:</p> <p><b><u>Changes to election.</u></b></p> <p><u>1. In this section the term "participating member" is limited in application to a participating member who elected to participate in the defined contribution retirement plan established under this chapter; is an actively participating member of the defined contribution plan as of the effective date of this Act; and is an active employee on the date an election is made under this section. The term does not include a participant who is not actively employed on the date of transfer of the funds under this section, has taken a distribution from the defined contribution plan, is retired, is no longer actively employed, or who is a member who has a qualified domestic relations order or other court order on the member's account.</u></p> <p><u>2. Notwithstanding any other provision of law, the board shall provide an</u></p>		<p><u>RF. Actively employed with a NDPERS employer</u></p>

Proposed Legislation	Reason	Comments
<p><u>opportunity for each participating member to elect in writing to terminate membership in the defined contribution retirement plan under this chapter and to elect to become a participating member in the public employees retirement system under chapter 54 - 52 .</u></p> <p><u>3. The board shall establish a three - month election period beginning not later than December 1, 2015. A participating member who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the defined contribution plan. A participating member who makes and files a written election under this section ceases to be a member of the defined contribution plan upon receipt by the public employees retirement system of the account balance of the member's defined contribution plan under this chapter and waives all rights to that employee's accumulated fund balance under the defined contribution plan. If the board determines a participating member was not adequately notified of the option to make an election under this section, the board may provide that participating member a reasonable time, not to exceed three months, within which to make that election.</u></p> <p><u>4. The public employees retirement system shall credit the transferring employee with the service credit and salary history reflected on the public employees retirement system's electronic database.</u></p> <p><u>5. The board shall determine the method by which a participating member may make a written election under this section. If the participating member is married at the time of the election, the election is not effective unless the election is signed by the individual's spouse. However, the board may waive this spousal signature requirement if the spouse's signature cannot be obtained because of extenuating circumstances.</u></p> <p><u>6. For a participating member who elects to terminate membership in the</u></p>		<p><u>Election Period is a concern</u></p> <p><u>RF/SD Line 22: file the election with the NDPERS office</u> Is this the vested account balance? What happens to any non-vested employer contributions?</p> <p><u>Page 2 Line 1: file the election with the NDPERS office</u> Do we not retain this now, or what would this mean to our internal processes?</p> <p><u>Page 2, Line 6, 15: change the board to executive director of NDPERS</u></p>

Proposed Legislation	Reason	Comments
<p><u>defined contribution plan under this section, the board shall transfer that member's accumulated fund balance, less any rollovers from other plans made into the defined contribution plan, to the public employees retirement system under chapter 54 - 52. If funds are transferred from the defined contribution plan to the defined benefit plan under an election made under this section, the board shall record this transfer to the defined benefit plan as employee and employer contributions in the same manner as transferred by the defined contribution provider.</u></p>		<p>What would happen to any rollovers if there were any? Where would that money go? Can't have both a DB and DC?</p> <p>Need to verify how TIAA-CREF tracks earnings on each contribution source (ee pre-tax, ee after tax, er). How would earnings on after tax ee contributions be recorded in the DB plan and how would earnings on the employer contribution be recorded in the DB plan? Are vested employer contributions going to be part of the member account balance in the DB plan?</p> <p><u>RF/SD; person has monies remaining in the DC plan. Would this make them ineligible to transfer to the DB</u></p> <p><u>Add wording relating to retroactive PEP-not eligible</u></p>

Proposed Legislation	Reason	Comments

Comments on Technical Comments by Segal dated 7/25/2014

1. On page 2, they calculate the cost of the bill based on Main System covered payroll for 7/1/2010 – why aren't they using current covered payroll?
2. Need to discuss administrative process for identifying individuals whose benefit may be limited under IRC 415
3. Compliance Issues on Page 4: Retire within 10 Years how do we limit the benefit
4. Do we need to add language to the bill to clarify mandatory employee contributions.
5. This excludes Temporary employees based on definition in 54-52.6

Additional Issues:

Process for computing 'DB' benefits estimates

Rollover monies roll to another vehicle? ?Ask Segal

Mapping of the employee contributions & additional funds

Vested account balance



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July 25, 2014

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Bismarck, ND 58502

Re: **Technical Comments – Bill Draft No. 15.0137.01000**

Dear Sparb:

The following presents our analysis of the proposed changes found in draft Bill No. 15.0137.01000:

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

**Summary:** The proposed legislation would increase both the employer contribution rates and the member contribution rates that are mandated by statute in the Hybrid Plan (Main only) and Defined Contribution Plan by 1% of the member's monthly salary beginning January 2016. The bill would also adjust member contribution rates for the following groups:

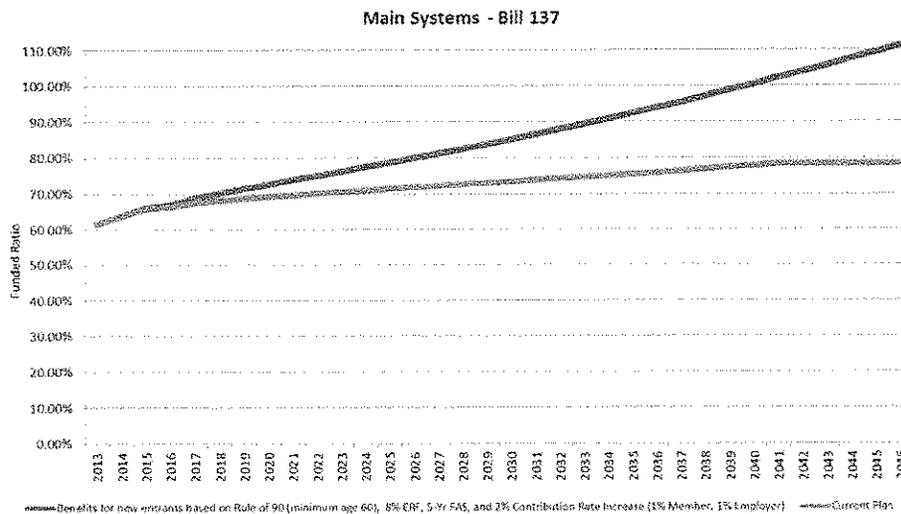
- Peace officers in the Hybrid Plan employed by the State bureau of criminal investigation, for which member contributions would *decrease* 0.5% annually, rather than increase. While not part of the draft bill, we have assumed the employer contributions will not decrease in 2016 unless approved by the PERS board; and
- Temporary employees in the Hybrid Plan and Defined Contribution Plan, for which the member contribution rate would increase by 2% annually in 2016, instead of 1%.

The proposed legislation would also make the following benefit modifications for Hybrid Plan members (except for National Guard security officers, peace officers or correctional officers employed by the Bureau of Criminal Investigation or by a political subdivision, or a Supreme Court or district court judge) first enrolled after December 31, 2015:

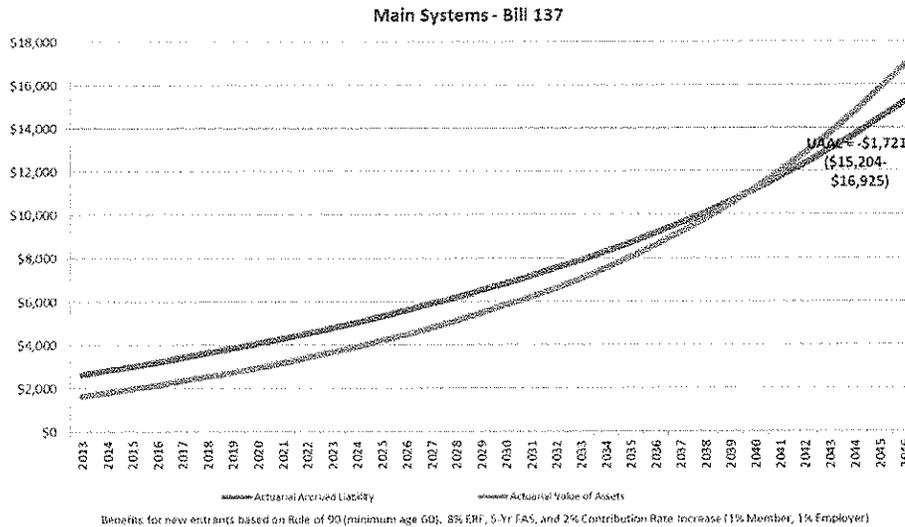
- Final average salary would be based on the five highest periods of twelve consecutive months employed during the one hundred eighty months immediately preceding retirement, excluding months without earnings. Currently, final average salary is based on the highest salary for any thirty six months employed within the last one hundred eighty months of employment, with no requirement for any months to be consecutive; and
- The minimum age at which unreduced benefits could begin (normal retirement date) would be increased to a combined total of years of service credit and years of age equal to ninety where member is at least sixty years old (Rule of 90). Currently, normal retirement age requires attaining a Rule of 85 with no minimum age; and
- The early retirement reduction would be changed from an actuarial reduction to account for benefit payment prior to normal retirement date to a fixed rate of eight percent per year benefit payments begin prior to normal retirement date.

**Actuarial Cost Analysis:**

This bill would positively affect the current funding level of the Hybrid Plan. To illustrate the effect, the funded ratios (Actuarial Value of Assets compared to Actuarial Accrued Liability) for the Main System are compared in the graph below for the current plan of benefits (green line) and the proposed changes (red line). We have assumed an 8% market value return for all years.



To further illustrate the impact, the graph below shows that the Main System is projected to have an Actuarial Value of Assets (green line) in excess of the Actuarial Accrued Liability (blue line) by July 1, 2041.



**Technical Comments:** Our comments on the bill are as follows:

### General

The bill would significantly increase funding to the Systems in the form of additional employer and member contributions.

The changes applicable to new members enrolled after December 31, 2015 would not provide immediate costs savings but would be realized over a period of years as new members replace those currently in the System. The cost savings would be very gradual and would be expected to take over 30 years to completely take effect.

### Benefits Policy Issues

#### > Adequacy of Retirement Benefits

The increase in member and employer contributions would have no impact on retirement benefits for existing members in the Hybrid Plan. The additional contributions to the Defined Contribution Plan will provide additional retirement income to members of that Plan.

For new members enrolled after December 31, 2015, the changes in final average salary, normal retirement date and early retirement reduction would have the effect of reducing the overall adequacy of retirement benefits as compared to existing members. Such effect will vary based on the individual experience of the member.

#### > Benefits Equity and Group Integrity

To the extent decreased member contributions raises the take-home pay of members, this bill would rebalance salary equity between peace officers/correctional officers employed by political subdivisions and peace officers employed by the State Bureau of Criminal

Investigation, so that members in both groups will be required to make contributions equal to 5.5% of pay effective in 2016. Currently, peace officers/correctional officers employed by political subdivisions make member contributions equal to 5.5% of pay, while peace officers employed by the State Bureau of Criminal Investigation make member contributions equal to 6% of pay.

For new members enrolled after December 31, 2015, the changes in final average salary, normal retirement date and early retirement reduction would have the effect of reducing the overall equity of retirement benefits as compared to existing members. This means that a new employee working in the same position with similar job duties as a current employee would be paying the same member contributions but accruing less valuable retirement benefits.

> Competitiveness

To the extent increased member contributions reduce the take-home pay of members without a resulting increase in pension benefits under the Hybrid Plan, this bill may diminish the total compensation package offered by participating employers in the System.

Similarly, due to the changes to final average salary, normal retirement date and early retirement reductions under this bill, new members enrolled after December 31, 2015 would receive a lower compensation package than is currently offered by participating employers in the System.

> Purchasing Power Retention

No impact.

> Preservation of Benefits

Increased funding to the System in the form of additional employer and member contributions will reduce the unfunded actuarial accrued liability of the System at a faster rate than currently projected. By requiring additional funding the bill would help preserve the value of benefits from the System for several years.

> Portability

The additional member contributions to the Defined Contribution plan would be fully portable as are the existing member contributions.

> Ancillary Benefits

- No impact.
- Social Security: No impact.

### Funding Policy Issues

➤ Actuarial Impacts

As previously noted, the bill will have a positive actuarial impact on the Hybrid Plan.

➤ Investment Impacts

- Cash Flow: The bill would have a positive impact on cash flow.
- Asset Allocation: The bill does not create new investment asset allocation issues.

### Administration Issues

➤ Implementation Issues

This bill would have a modest impact on administrative costs of the PERS as there new benefit structures would be added for new employees. It would also have an effect on the members and participating employers, since their required contributions would increase.

- In addition, pursuant to rules under Internal Revenue Code section 414(h), participating employers (including the State) would be required to take formal, written action to elect to pick up the increased (or decreased) member contribution amounts for 2016, in order for such contributions to be made on a pre-tax basis.

➤ Administrative Costs

No impact.

➤ 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

Employee communications will be necessary to describe the impact of increased (or decreased) member contributions on employee pay.

Employee communications provided to new members (e.g., member handbooks) will need to be updated to describe the benefit modifications to final average salary, normal retirement date and early retirement reductions.

➤ Miscellaneous and Drafting Issues

Since this bill would increase member contribution rates, participating employers (including the State) would need to determine whether they can pay for the increased member contributions from their own funds as a salary supplement or would reduce members' current or future salary, while also paying an increased employer contribution rate. Any participating employer that decides to reduce members' salary to pay for the increased level of member contributions must pay and report FICA taxes on the member contribution amounts made via salary reduction.

The provision of the bill that modifies the early retirement reduction for members enrolled after December 31, 2015 indicates that the reduction will be a "fixed rate of eight percent to account for benefit payments beginning before normal retirement date." It may be desirable to clarify that the 8% reduction is *per year* that benefit payments begin before normal retirement date.

The projections were made using generally accepted actuarial practices and are based on the July 1, 2013 actuarial valuation. Calculations were completed under the supervision of Tammy Dixon, FSA, MAAA, EA.

Projections, by their nature, are not a guarantee of future results. The modeling projections are intended to serve as estimates of future financial outcomes that are based on the information available to us at the time the modeling 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  
Vice President and Consulting Actuary

Sincerely,



Melanie Walker, JD  
Vice President

/cz

cc: Tammy Dixon  
Laura Mitchell

**NDPERS Retirement Legislation**  
**2015 Session**  
**LC 15.0137.01000**

<b>Proposed Legislation</b>	<b>Reason</b>	<b>Comments</b>
<p><b>SECTION 1. AMENDMENT.</b> Section 54-52-02.9 of the North Dakota Century Code is amended and reenacted as follows:</p> <p><b>54-52-02.9. Participation by temporary employees.</b>  A temporary employee may elect, within one hundred eighty days of beginning employment, to participate in the public employees retirement system and receive credit for service after enrollment. The temporary employee shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and; with an additional two percent increase, beginning with the reporting period of January 2013, and; with an additional increase of two percent, beginning with the monthly reporting period of January 2014; and with an additional increase of two percent, beginning with the monthly reporting period of January 2016. The temporary employee shall also pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. An employer may not pay the temporary employee's contributions. A temporary employee may continue to participate as a temporary employee in the public employees retirement system until termination of employment or reclassification of</p>	<p>Increases the contribution rate for temporary employees by <u>21%</u> for participation in the Main retirement plan January of 2016</p>	

<b>Proposed Legislation</b>	<b>Reason</b>	<b>Comments</b>
<p>the temporary employee as a permanent employee. A temporary employee may not purchase any additional credit, including additional credit under section 54-52-17.4 or past service under section 54-52-02.6.</p>		
<p><b>SECTION 2. AMENDMENT.</b> Subsection 2 of section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:</p> <p>2. Each member must be assessed and required to pay monthly four percent of the monthly salary or wage paid to the member, and such assessment must be deducted and retained out of such salary in equal monthly installments commencing with the first month of employment. Member contributions increase by one percent of the monthly salary or wage paid to the member beginning with the monthly reporting period of January 2012, and; with an additional increase of one percent, beginning with the monthly reporting period of January 2013, and; with an additional increase of one percent, beginning with the monthly reporting period of January 2014; <u>and with an additional increase of one percent, beginning with the monthly reporting period of January 2016.</u></p>	<p>Increases the contribution rate for active employees by 1% for participation in the Main retirement plan January of 2016</p>	
<p><b>SECTION 3. AMENDMENT.</b> Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:</p> <p><b>54-52-06. Employer's contribution to retirement plan.</b> Each governmental unit shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Governmental unit contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012, and; with an additional increase of one percent, beginning with the reporting period of</p>	<p>Increases the Employer contribution rate 1% for participation in the Main retirement plan beginning January of 2016</p>	

Proposed Legislation	Reason	Comments
<p>January 2013, and with; an additional increase of one percent, beginning with the monthly reporting period of January 2014; <u>and with an additional increase of one percent, beginning with the monthly reporting period of January 2016.</u> For those members who elect to exercise their rights under section 54-52-17.14, the employing governmental unit, or in the case of a member not presently under covered employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit shall pay the contribution monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, into the retirement fund from its funds appropriated for payroll and salary or any other funds available for these purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date they became due, penalty and interest to be paid on delinquent contributions may be waived. An employer is required to submit contributions for any past eligible employee who was employed after July 1, 1977, for which contributions were not made if the employee would have been eligible to become vested had the employee participated and if the employee elects to join the public employees retirement system. Employer contributions may not be assessed for eligible service that an employee has waived pursuant to subsection 1</p>		

Proposed Legislation	Reason	Comments
<p>of section 54-52-05. The board shall report to each session of the legislative assembly the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.</p>		
<p><b>SECTION 4. AMENDMENT.</b> Section 54-52-06.4 of the North Dakota Century Code is amended and reenacted as follows:</p> <p><b>54-52-06.4. Contribution by peace officers employed by the bureau of criminal investigation - Employer contribution.</b></p> <p>Each peace officer employed by the bureau of criminal investigation who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. Peace officer contributions increase by one percent of the member's monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the reporting period of January 2013. <u>Peace officer contributions decrease by one-half of one percent of the member's monthly salary beginning with the monthly reporting period of January 2016.</u> The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The peace officer's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. The employer's contribution must be paid from funds appropriated for salary or from any other funds available for such purposes. If the peace officer's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required peace officer's assessment.</p>	<p>Decreases the employee contribution rate by .5% for BCI members</p>	
<p><b>SECTION 5. AMENDMENT.</b> Section 54-52-17 of the North Dakota Century Code is amended and reenacted as</p>		

Proposed Legislation	Reason	Comments
<p>follows:</p> <p><b>54-52-17. Formulation of plan.</b></p> <p>Participating members shall receive benefits according to this section and according to rules adopted by the board, not inconsistent with this chapter. No person is entitled to receive a prior service benefit if the person was not continuously employed by a governmental unit in North Dakota for a period of not less than two years immediately prior to eligibility for retirement.</p> <p>1. Participating members shall receive credit for full-time employment or its equivalent from the date they attain eligibility until their normal retirement date, postponed retirement date, or early retirement date, as defined in this section. Part-time employment will be recognized as full-time employment on a prorated basis as the board may prescribe.</p> <p>2. Retirement benefits are calculated from the participating member's final average salary, which is the average of the highest salary received by the member for any thirty-six months employed during the last one hundred twenty months of employment. For members who terminate employment on or after August 1, 2010, final average salary is the average of the highest salary received by the member for any thirty-six months employed during the last one hundred eighty months of employment. For members who terminate employment between July 31, 2005, and August 1, 2010, final average salary is the average of the highest salary received by the member for any thirty-six months employed during the period for which the board has appropriate and accurate salary records on its electronic database, but that period may not be more than the last one hundred eighty months of employment. <u>Except for a national guard security officer or firefighter, a peace officer or correctional officer employed by the bureau of</u></p>	<p>For those hired January 1, 2016 and after, changes final average salary from highest thirty six months in last one hundred and eighty months to the five highest twelve consecutive month periods</p> <p>For those hired January 1,</p>	



Proposed Legislation	Reason	Comments
<p>b. <u>Except for a national guard security officer or firefighter, a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, or a supreme court or district court judge, normal retirement date for members first enrolled after December 31, 2015 is:</u></p> <p><u>(1) The first day of the month next following the month in which the member attains the age of sixty-five years; or</u></p> <p><u>(2) When the member has a combined total of years of service credit and years of age equal to ninety and the member attains a minimum age of sixty and has not received a retirement benefit under this chapter.</u></p> <p>c. <u>Normal retirement date for a national guard security officer or firefighter is the first day of the month next following the month in which the national guard security officer or firefighter attains the age of fifty-five years and has completed at least three eligible years of employment as a national guard security officer or firefighter.</u></p> <p>e.d. <u>Normal retirement date for a peace officer or correctional officer employed by a political subdivision is:</u></p> <p><u>(1) The first day of the month next following the month in which the peace officer or correctional officer attains the age of fifty-five years and has completed at least three eligible years of employment as a peace officer or correctional officer; or</u></p> <p><u>(2) When the peace officer or correctional officer has a combined total of years of service credit and years of age equal to eighty-five and has not received</u></p>	<p><u>Current language limits the member to use Dual Membership to attain Normal Retirement</u></p>	<p><u>3.c. Strike out "as a national guard security officer or firefighter."</u></p> <p><u>3.d.(1) Strike out "as a peace officer or correctional officer."</u></p> <p><u>3.e(1) Strike out "as a peace officer"</u></p>

Proposed Legislation	Reason	Comments
<p>a retirement benefit under this chapter.</p> <p>d.e. Normal retirement date for a peace officer employed by the bureau of criminal investigation is:</p> <p>(1) The first day of the month next following the month in which the peace officer attains the age of fifty-five years and has completed at least three eligible years of employment as a peace officer; or</p> <p>(2) When the peace officer has a combined total of years of service credit and years of age equal to eighty-five and has not received a retirement benefit under this chapter.</p> <p>e.f. Postponed retirement date is the first day of the month next following the month in which the member, on or after July 1, 1977, actually severs or has severed the member's employment after reaching the normal retirement date.</p> <p>f.g. Early retirement date, except for a national guard security officer or firefighter or a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, is the first day of the month next following the month in which the member attains the age of fifty-five years and has completed three years of eligible employment. For a national guard security officer or firefighter, early retirement date is the first day of the month next following the month in which the national guard security officer or firefighter attains the age of fifty years and has completed at least three years of eligible employment. For a peace officer or correctional officer employed by the bureau of</p>		

<b>Proposed Legislation</b>	<b>Reason</b>	<b>Comments</b>
<p>criminal investigation or by a political subdivision, early retirement date is the first day of the month next following the month in which the peace officer or correctional officer attains the age of fifty years and has completed at least three years of eligible employment.</p> <p>g.h. Disability retirement date is the first day of the month after a member becomes permanently and totally disabled, according to medical evidence called for under the rules of the board, and has completed at least one hundred eighty days of eligible employment. For supreme and district court judges, permanent and total disability is based solely on a judge's inability to perform judicial duties arising out of physical or mental impairment, as determined pursuant to rules adopted by the board or as provided by subdivision a of subsection 3 of section 27-23-03. A member is eligible to receive disability retirement benefits only if the member:</p> <p>(1) Became disabled during the period of eligible employment; and</p> <p>(2) Applies for disability retirement benefits within twelve months of the date the member terminates employment. A member is eligible to continue to receive disability benefits as long as the permanent and total disability continues and the member submits the necessary documentation and undergoes medical testing required by the board, or for as long as the member participates in a rehabilitation program required by the board, or both. If the board determines that a member no longer</p>		

<b>Proposed Legislation</b>	<b>Reason</b>	<b>Comments</b>
<p>meets the eligibility definition, the board may discontinue the disability retirement benefit. The board may pay the cost of any medical testing or rehabilitation services it deems necessary and these payments are appropriated from the retirement fund for those purposes.</p> <p>4. The board shall calculate retirement benefits as follows:</p> <p>a. Normal retirement benefits for all retirees, except supreme and district court judges, reaching normal retirement date equal an annual amount, payable monthly, comprised of a service benefit and a prior service benefit, as defined in this chapter, which is determined as follows:</p> <p>(1) Service benefit equals two percent of final average salary multiplied by the number of years of service employment.</p> <p>(2) Prior service benefit equals two percent of final average salary multiplied by the number of years of prior service employment.</p> <p>b. Normal retirement benefits for all supreme and district court judges under the public employees retirement system reaching normal retirement date equal an annual amount, payable monthly, comprised of a benefit as defined in this chapter, determined as follows:</p> <p>(1) Benefits must be calculated from the time of appointment or election to the bench and must equal three and one-half percent of final average salary multiplied by the first ten years of judicial service, two and eighty hundredths percent of final average salary multiplied by the second ten years of judicial</p>		

Proposed Legislation	Reason	Comments
<p>service, and one and one-fourth percent of final average salary multiplied by the number of years of judicial service exceeding twenty years.</p> <p>(2) Service benefits must include, in addition, an amount equal to the percent specified in subdivision a of final average salary multiplied by the number of years of nonjudicial employee service and employment.</p> <p>c. Postponed retirement benefits are calculated as for single life benefits for those members who retired on or after July 1, 1977.</p> <p>d. Early retirement benefits are calculated as for single life benefits accrued to the date of termination of employment, but must be actuarially reduced to account for benefit payments beginning prior to the normal retirement date, which is the earlier of age sixty-five or the age at which current service plus age equals eighty-five. <u>Except for a national guard security officer or firefighter, a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, or a supreme court or district court judge, early retirement benefits for members first enrolled after December 31, 2015, are calculated for single life benefits accrued to the date of termination of employment, but must be reduced by a fixed rate of eight percent to account benefit payments beginning before the normal retirement date.</u> A retiree, other than a supreme or district court judge, is eligible for early retirement benefits only after having completed three years of</p>	<p>The early retirement reduction factor for those hired January 1, 2016 and after is increased from 6% to 8% for each year.</p>	

<b>Proposed Legislation</b>	<b>Reason</b>	<b>Comments</b>
<p>eligible employment. A supreme or district court judge retiree is eligible for early retirement benefits only after having completed five years of eligible employment.</p> <p>e. Except for supreme and district court judges, disability retirement benefits are twenty-five percent of the member's final average salary. Disability retirement benefits for supreme and district court judges are seventy percent of final average salary reduced by the member's primary social security benefits and by any workforce safety and insurance benefits paid. The minimum monthly disability retirement benefit under this section is one hundred dollars.</p> <p>5. Upon termination of employment after completing three years of eligible employment, except for supreme and district court judges, who must complete five years of eligible employment, but before normal retirement date, a member who does not elect to receive early retirement benefits is eligible to receive deferred vested retirement benefits payable commencing on the member's normal retirement date in one of the optional forms provided in subsection 9. Members who have delayed or inadvertently failed to apply for retirement benefits to commence on their normal retirement date may choose to receive either a lump sum payment equal to the amount of missed payments, or an actuarial increase to the form of benefit the member has selected, which increase must reflect the missed payments.</p> <p>6. If before retiring a member dies after completing three years of eligible employment, except for supreme and district court judges, who must have completed five years of eligible employment, the board shall pay the member's account</p>		

<b>Proposed Legislation</b>	<b>Reason</b>	<b>Comments</b>
<p>balance to the member's designated beneficiary as provided in this subsection. If the member has designated an alternate beneficiary with the surviving spouse's written consent, the board shall pay the member's account balance to the named beneficiary. If the member has named more than one primary beneficiary, the board shall pay the member's account balance to the named primary beneficiaries in the percentages designated by the member or, if the member has not designated a percentage for the beneficiaries, in equal percentages. If one or more of the primary beneficiaries has predeceased the member, the board shall pay the predeceased beneficiary's share to the remaining primary beneficiaries. If any beneficiary survives the member, yet dies before distribution of the beneficiary's share, the beneficiary must be treated as if the beneficiary predeceased the member. If there are no remaining primary beneficiaries, the board shall pay the member's account balance to the contingent beneficiaries in the same manner. If there are no remaining designated beneficiaries, the board shall pay the member's account balance to the member's estate. If the member has not designated an alternate beneficiary or the surviving spouse is the beneficiary, the surviving spouse of the member may select a form of payment as follows:</p> <p>a. If the member was a supreme or district court judge, the surviving spouse may select one of the following optional forms of payment:</p> <p>(1) A lump sum payment of the member's retirement account as of the date of death.</p> <p>(2) Payments as calculated for the deceased member as if the member was of normal retirement age at the date of death, payable until the spouse dies.</p> <p>b. The surviving spouse of all other members may select one</p>		

<b>Proposed Legislation</b>	<b>Reason</b>	<b>Comments</b>
<p>of the following options:</p> <p>(1) A lump sum payment of the member's retirement account as of the date of death.</p> <p>(2) Payment of a monthly retirement benefit equal to fifty percent of the deceased member's accrued single life retirement benefits until the spouse dies.</p> <p>(3) If the member dies on or after the member's normal retirement date, the payment of a monthly retirement benefit equal to an amount that would have been paid to the surviving spouse if the member had retired on the day of the member's death and had selected a one hundred percent joint and survivor annuity, payable until the spouse dies. A surviving spouse who received a benefit under this subsection as of July 31, 1995, is entitled to the higher of that person's existing benefit or the equivalent of the accrued benefit available under the one hundred percent joint and survivor provision as if the deceased member were of normal retirement age, with the increase payable beginning August 1, 1995.</p> <p>7. If a member not coming under the provisions of subsection 6 terminates employment because of death, permanent and total disability, or any voluntary or involuntary reason prior to retirement, the member or the member's designated beneficiary is entitled to the member's account balance at</p>		

<b>Proposed Legislation</b>	<b>Reason</b>	<b>Comments</b>
<p>termination. The board automatically shall refund a member's account balance if the member has completed less than three years of eligible employment, has an account balance of less than one thousand dollars, and was not a supreme or district court judge. If the member was a supreme or district court judge, the board automatically shall refund a member's account balance if the member completed less than five years of eligible employment. A member may waive the refund if the member submits a written statement to the board, within thirty days after termination, requesting that the member's account balance remain in the fund.</p> <p>8. The surviving spouse of a member receiving retirement benefits must be the member's primary beneficiary unless there is no surviving spouse or the surviving spouse designates an alternate beneficiary in writing. If a member receiving retirement benefits or the member's surviving spouse receiving retirement benefits dies before the total amount of benefits paid to either or both equals the amount of the member's account balance at retirement, the difference must be paid to the named beneficiary of the recipient or, if there is no named beneficiary, to the recipient's estate.</p> <p>9. The board shall adopt rules providing for the receipt of retirement benefits in the following optional forms:</p> <ul style="list-style-type: none"> <li>a. Single life.</li> <li>b. An actuarially equivalent joint and survivor option, with fifty percent or one hundred percent options.</li> <li>c. Actuarially equivalent life with ten-year or twenty-year certain options.</li> <li>d. An actuarially equivalent partial lump sum distribution option with a twelve-month maximum lump sum distribution.</li> </ul>		

<b>Proposed Legislation</b>	<b>Reason</b>	<b>Comments</b>
<p>e. An actuarially equivalent graduated benefit option with either a one percent or two percent increase to be applied the first day of January of each year.</p> <p>Except for supreme and district court judges, unless a member specifically requests that the member receive benefits according to one of these options at the time of applying for retirement, all retirement benefits must be in the form of a single life benefit. For supreme and district court judges, unless a member specifically requests that the member receive benefits according to one of these options at the time of applying for retirement, all retirement benefits must be in the form of a lifetime monthly pension with fifty percent of the benefit continuing for the life of the surviving spouse, if any.</p> <p>10. The fund may accept rollovers from other eligible plans under rules adopted by the board for the purchase of additional service credit, but only to the extent the transfer is a rollover contribution that meets the requirement of section 408 of the Internal Revenue Code.</p> <p>11. The board may accept trustee-to-trustee transfers as permitted by Internal Revenue Code section 403(b)(13) and section 457(e)(17) from an Internal Revenue Code section 403(b) annuity or Internal Revenue Code section 457 deferred compensation plan for the purchase of permissive service credit, as defined in Internal Revenue Code section 415(n)(3)(A) or as repayment of a cashout from a governmental plan under Internal Revenue Code section 415(k)(3).</p> <p>12. The board may establish individual retirement accounts and individual retirement annuities as permitted under section 408(q) of the Internal Revenue Code to allow employees to make voluntary employee contributions. The board may adopt rules to implement and administer the accounts and annuities under this section.</p>		

Proposed Legislation	Reason	Comments
<p><b>SECTION 6. AMENDMENT.</b> Subsection 1 of section 54-52-17.2 of the North Dakota Century Code is amended and reenacted as follows:</p> <p>1. a. For the purpose of determining eligibility for benefits under this chapter, an employee's years of service credit is the total of the years of service credit earned in the public employees retirement system and the years of service credit earned in any number of the following:</p> <ul style="list-style-type: none"> <li>(1) The teachers' fund for retirement.</li> <li>(2) The highway patrolmen's retirement system.</li> <li>(3) The teachers' insurance and annuity association of America - college retirement equities fund (TIAA-CREF), for service credit earned while employed by North Dakota institutions of higher education.</li> </ul> <p>Service credit may not exceed twelve months of credit per year.</p> <p>b. Pursuant to rules adopted by the board, an employee who has service credit in the system and in any of the plans described in paragraphs 1 and 2 of subdivision a is entitled to benefits under this chapter. The employee may elect to have benefits calculated using the benefit formula in section 54-52-17 under either of the following methods:</p> <ul style="list-style-type: none"> <li>(1) The average of the highest salary received by the member for any thirty-six months employed during the last one hundred twenty months of employment in the public employees retirement system. If the</li> </ul>		

Proposed Legislation	Reason	Comments
<p>participating member has worked for less than thirty-six months at retirement, the final average salary is the average salary for the total months of employment. <u>If the participating member was first enrolled after December 31, 2015, and worked for less than sixty months at retirement, the final average salary is the average salary for the total months of employment.</u></p> <p>(2) The average of the highest salary received by the member for any thirty-six consecutive months during the last one hundred twenty months of employment with any of the three eligible employers under this subdivision, with service credit not to exceed one month in any month when combined with the service credit earned in the alternate retirement system.</p> <p>The board shall calculate benefits for an employee under this subsection by using only those years of service credit earned under this chapter.</p>		
<p><b>SECTION 7. AMENDMENT.</b> Section 54-52.6-02 of the North Dakota Century Code is amended and reenacted as follows:</p> <p><b>54-52.6-02. (Effective through July 31, 2017) Election.</b></p> <p>1. The board shall provide an opportunity for eligible</p>		

<b>Proposed Legislation</b>	<b>Reason</b>	<b>Comments</b>
<p>employees who are new members of the public employees retirement system under chapter 54-52 to transfer to the defined contribution plan under this chapter pursuant to the rules and policies adopted by the board. An election made by a member of the public employees retirement system under chapter 54-52 to transfer to the defined contribution retirement plan under this chapter is irrevocable. For an individual who elects to transfer membership from the public employees retirement system under chapter 54-52 to the defined contribution retirement plan under this chapter, the board shall transfer a lump sum amount from the public employees retirement system fund to the participating member's account in the defined contribution retirement plan under this chapter. However, if the individual terminates employment prior to receiving the lump sum transfer under this section, the election made is ineffective and the individual remains a member of the public employees retirement system under chapter 54-52 and retains all the rights and privileges under that chapter. This section does not affect an individual's right to health benefits or retiree health benefits under chapter 54-52.1.</p> <p>2. If the board receives notification from the internal revenue service that this section or any portion of this section will cause the public employees retirement system or the retirement plan established under this chapter to be disqualified for tax purposes under the Internal Revenue Code, then the portion that will cause the disqualification does not apply.</p> <p>3. A participating member who becomes a temporary employee may still participate in the defined contribution retirement plan upon filing an election with the board within one hundred eighty days of transferring to temporary employee status. The participating member may not become a member of the defined benefit plan as a temporary employee. The temporary employee electing to participate in the defined contribution retirement plan shall pay monthly to the fund an</p>	<p>Increases the contribution for DC temporary employees by 2%</p>	

Proposed Legislation	Reason	Comments
<p>amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012 <del>and;</del> with an additional increase of two percent, beginning with the monthly reporting period of January 2013, <del>and;</del> with an additional increase of two percent, beginning with the monthly reporting period of January 2014; <u>and with an additional increase of two percent, beginning with the monthly reporting period of January 2016.</u> The temporary employee shall also pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. An employer may not pay the temporary employee's contributions. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee.</p> <p>4. A former participating member who has accepted a retirement distribution pursuant to section 54-52.6-13 and who subsequently becomes employed by an entity different from the employer with which the member was employed at the time the member retired but which does participate in any state-sponsored retirement plan may, before reenrolling in the defined contribution retirement plan, elect to permanently waive future participation in the defined contribution retirement plan, whatever plan in which the new employing entity participates, and the retiree health program and maintain that member's retirement status. Neither the member nor the employer are required to make any future retirement contributions on behalf of that employee.</p> <p><b>(Effective after July 31, 2017) Election.</b></p> <p>1. The board shall provide an opportunity for each eligible</p>		

<b>Proposed Legislation</b>	<b>Reason</b>	<b>Comments</b>
<p>employee who is a member of the public employees retirement system on September 30, 2001, and who has not made a written election under this section to transfer to the defined contribution retirement plan before October 1, 2001, to elect in writing to terminate membership in the public employees retirement system and elect to become a participating member under this chapter. Except as provided in section 54-52.6-03, an election made by an eligible employee under this section is irrevocable. The board shall accept written elections under this section from eligible employees during the period beginning on July 1, 1999, and ending 12:01 a.m. December 14, 2001. An eligible employee who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. An eligible employee who makes and files a written election under this section ceases to be a member of the public employees retirement system effective twelve midnight December 31, 2001; becomes a participating member in the defined contribution retirement plan under this chapter effective 12:01 a.m. January 1, 2002; and waives all of that person's rights to a pension, annuity, retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective December 31, 2001. This section does not affect a person's right to health benefits or retiree health benefits under chapter 54-52.1. An eligible employee who is first employed and entered upon the payroll of that person's employer after September 30, 2001, may make an election to participate in the defined contribution retirement plan established under this chapter at any time during the first six months after the date of employment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide</p>		

<b>Proposed Legislation</b>	<b>Reason</b>	<b>Comments</b>
<p>the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window.</p> <p>2. If an individual who is a deferred member of the public employees retirement system on September 30, 2001, is reemployed and by virtue of that employment is again eligible for membership in the public employees retirement system under chapter 54-52, the individual may elect in writing to remain a member of the public employees retirement system or if eligible to participate in the defined contribution retirement plan established under this chapter to terminate membership in the public employees retirement system and become a participating member in the defined contribution retirement plan established under this chapter. An election made by a deferred member under this section is irrevocable. The board shall accept written elections under this section from a deferred member during the period beginning on the date of the individual's reemployment and ending upon the expiration of six months after the date of that reemployment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window. A deferred member who makes and files a written election to remain a member of the public employees retirement system retains all rights and is subject to all conditions as a member of that retirement system. A deferred member who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. A deferred member who makes and files a written election to terminate membership in the public employees</p>		

<b>Proposed Legislation</b>	<b>Reason</b>	<b>Comments</b>
<p>retirement system ceases to be a member of the public employees retirement system effective on the last day of the payroll period that includes the date of the election; becomes a participating member in the defined contribution retirement plan under this chapter effective the first day of the payroll immediately following the date of the election; and waives all of that person's rights to a pension, an annuity, a retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective the last day of the payroll that includes the date of the election. This section does not affect any right to health benefits or retiree health benefits to which the deferred member may otherwise be entitled.</p> <p>3. An eligible employee who elects to participate in the retirement plan established under this chapter must remain a participant even if that employee returns to the classified service or becomes employed by a political subdivision that participates in the public employees retirement system. The contribution amount must be as provided in this chapter, regardless of the position in which the employee is employed. Notwithstanding the irrevocability provisions of this chapter, if a member who elects to participate in the retirement plan established under this chapter becomes a supreme or district court judge, becomes a member of the highway patrol, becomes employed in a position subject to teachers' fund for retirement membership, or becomes an employee of the board of higher education or state institution under the jurisdiction of the board who is eligible to participate in an alternative retirement program established under subsection 6 of section 15-10-17, the member's status as a member of the defined contribution retirement plan is suspended, and the member becomes a new member of the retirement plan for which that member's new position is eligible. The member's account balance remains in the defined contribution retirement plan,</p>	<p>Increases the contribution for DC temporary employees by 2%</p>	

<b>Proposed Legislation</b>	<b>Reason</b>	<b>Comments</b>
<p>but no new contributions may be made to that account. The member's service credit and salary history that were forfeited as a result of the member's transfer to the defined contribution retirement plan remain forfeited, and service credit accumulation in the new retirement plan begins from the first day of employment in the new position. If the member later returns to employment that is eligible for the defined contribution plan,</p> <p>the member's suspension must be terminated, the member again becomes a member of the defined contribution retirement plan, and the member's account resumes accepting contributions. At the member's option, and pursuant to rules adopted by the board, the member may transfer any available balance as determined by the provisions of the alternate retirement plan into the member's account under this chapter.</p> <p>4. After consultation with its actuary, the board shall determine the method by which a participating member or deferred member may make a written election under this section. If the participating member or deferred member is married at the time of the election, the election is not effective unless the election is signed by the individual's spouse. However, the board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.</p> <p>5. If the board receives notification from the internal revenue service that this section or any portion of this section will cause the public employees retirement system or the retirement plan established under this chapter to be disqualified for tax purposes under the Internal Revenue Code, then the portion that will cause the disqualification does not apply.</p> <p>6. A participating member who becomes a temporary employee may still participate in the defined contribution retirement plan upon filing an election with the board within one hundred eighty days of transferring to temporary employee status. The participating member may not become a</p>		

Proposed Legislation	Reason	Comments
<p>member of the defined benefit plan as a temporary employee. The temporary employee electing to participate in the defined contribution retirement plan shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and; with an additional increase of two percent, beginning with the monthly reporting period of January 2013, and; with an additional increase of two percent, beginning with the monthly reporting period of January 2014; <u>and with an additional increase of two percent, beginning with the monthly reporting period of January 2016.</u> The temporary employee shall also pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. An employer may not pay the temporary employee's contributions. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee.</p> <p>7. A former participating member who has accepted a retirement distribution pursuant to section 54-52.6-13 and who subsequently becomes employed by an entity different from the employer with which the member was employed at the time the member retired but which does participate in any state-sponsored retirement plan may, before reenrolling in the defined contribution retirement plan, elect to permanently waive future participation in the defined contribution retirement plan, whatever plan in which the new employing entity participates, and the retiree health program and maintain that member's retirement status. Neither the member nor the employer are required to make any future retirement</p>		

Proposed Legislation	Reason	Comments
<p>contributions on behalf of that employee.</p>		
<p><b>SECTION 8. AMENDMENT.</b> Section 54-52.6-09 of the North Dakota Century Code is amended and reenacted as follows:</p> <p><b>54-52.6-09. Contributions - Penalty.</b></p> <p>1. Each participating member shall contribute monthly four percent of the monthly salary or wage paid to the participant, and this assessment must be deducted from the participant's salary in equal monthly installments commencing with the first month of participation in the defined contribution retirement plan established under this chapter. Participating member contributions increase by one percent of the monthly salary or wage paid to the participant beginning with the monthly reporting period of January 2012, and; with an additional increase of one percent, beginning with the reporting period of January 2013, and; with an additional increase of one percent, beginning with the monthly reporting period of January 2014; <u>and with an additional increase of one percent, beginning with the monthly reporting period of January 2016.</u></p> <p>2. The employer shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Employer contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012, and; with an additional increase of one percent, beginning with the monthly reporting period of January 2013, and; with an additional increase of one percent, beginning with the monthly reporting period of January 2014; <u>and with an additional increase of one percent, beginning with the monthly reporting period of January 2016.</u> If the employee's</p>	<p>Increases the active member contribution rate in the Defined Contribution Plan by 1% beginning January 2016</p> <p>Increases the employer contribution rate in the Defined Contribution Plan by 1% beginning January 2016</p>	

<b>Proposed Legislation</b>	<b>Reason</b>	<b>Comments</b>
<p>contribution is paid by the employer under subsection 3, the employer shall contribute, in addition, an amount equal to the required employee's contribution. The employer shall pay monthly such contribution into the participating member's account from its funds appropriated for payroll and salary or any other funds available for such purposes. If the employer fails to pay the contributions monthly, it is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due.</p> <p>3. Each employer, at its option, may pay the employee contributions required by this section for all compensation earned after December 31, 1999. The amount paid must be paid by the employer in lieu of contributions by the employee. If the employer decides not to pay the contributions, the amount that would have been paid will continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the employer may not be included as gross income of the employee in determining tax treatment under this code and the federal Internal Revenue Code until they are distributed or made available. The employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a combination of a reduction in gross salary and offset against future salary increases. Employee contributions paid by the employer must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made before the date on which employee contributions were assumed by the employer.</p>		

<b>Proposed Legislation</b>	<b>Reason</b>	<b>Comments</b>
An employer shall exercise its option under this subsection by reporting its choice to the board in writing.		



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July 14, 2014

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 – Bill Draft No. 15.0139.01000**

Dear Sparb:

The following presents our analysis of the proposed changes found in Bill Draft No. 15.0139.0100:

**Systems Affected:** North Dakota Public Employees Retirement System (Hybrid Plan) and Retiree Health Benefit Fund

**Summary:** The proposed legislation would eliminate National Guard firefighters as a separate group of participating members in the Hybrid Plan and Retiree Health Benefit Fund. The bill would also align the contribution structure of both member and employer contributions for security officers employed by the National Guard with the contribution structure for peace officers employed by the State Bureau of Criminal Investigation.

**Actuarial Cost Analysis:** The proposed legislation would not have a material impact on the overall actuarial cost of the Hybrid Plan or the Retiree Health Benefit Fund. If assets are transferred between cost groups as a result of the bill, the cost rates associated with those groups could change as discussed below.

**Technical Comments:** Our comments on the bill are as follows:

### **General**

The Hybrid Plan provides very similar levels of benefits to both National Guard security officers and peace officers employed by the State Bureau of Criminal Investigation, including the benefit accrual formula (2% of final average salary times years of service), death benefits, and optional forms of retirement benefits. However, these employee groups have different normal retirement dates and early retirement reduction rates. For National Guard security officers, the normal retirement date is age 55 with three years of eligible employment, and early retirement reduction

is based on months prior to reaching age 55 with three years of eligible employment. For peace officers employed by the State Bureau of Criminal Investigation, the normal retirement date is age 55 with three years of eligible employment or attaining Rule of 85 eligibility, and the early retirement reduction is based on months prior to reaching age 55 with three years of eligible employment or the age at which Rule of 85 is met.

By aligning the contribution structure of both member and employer contributions for security officers employed by the National Guard with the contribution structure for peace officers employed by the State Bureau of Criminal Investigation, National Guard security officers would experience an increase in required member contributions from 4.5% of monthly salary to 6% of monthly salary with no increase in retirement benefits. We assume the employer contribution rate for National Guard security officers will be identical to the employer contribution rate for peace officers employed by the State Bureau of Criminal Investigation, as approved by the PERS board. Thus, the National Guard's employer contribution rate may also increase under this bill (from 7.00% to 10.31%).

### **Benefits Policy Issues**

#### ➤ Adequacy of Retirement Benefits

No impact.

#### ➤ Benefits Equity and Group Integrity

Under the bill, National Guard security officers would pay the same member contributions as peace officers employed by the State Bureau of Criminal Investigation but would not be eligible to retire under the Rule of 85.

#### ➤ Competitiveness

No impact.

#### ➤ Purchasing Power Retention

No impact.

#### ➤ Preservation of Benefits

Increased funding to the System in the form of additional member contributions from National Guard security officers provides additional funds to pay down the unfunded actuarial accrued liability of the System at a faster rate. By setting up this additional funding mechanism it will help preserve the value of benefits from the System for future years.

➤ Portability

No impact.

➤ Ancillary Benefits

- ◆ No impact.
- ◆ Social Security: No impact.

**Funding Policy Issues**

➤ Actuarial Impacts

Given that the National Guard participants have similar same ages, service and salaries as the Law Enforcement with Prior Main Service participants, the bill does not create a material change in actuarial costs. In particular, the most recent actuarial valuation shows the following information.

	National Guard	Law Enforcement with Prior Main Service (BCI)
Average age	36.5	38.5
Average service credits	5.5	7.3
Average compensation	\$43,359	\$51,109
Total normal cost	10.49% of pay	10.60% of pay
Member contribution*	4.50%	6.00%
Employer normal cost	5.99%	4.60%

\*Contribution effective January 1, 2014

➤ Investment Impacts

- ◆ Asset Allocation: The bill does not create new investment asset allocation issues.
- ◆ Cash Flow Impacts: The bill will create additional cash flow to the System.

**Administration Issues**

➤ Implementation Issues

Pursuant to rules under Internal Revenue Code section 414(h), the National Guard would be required to take formal, written action to elect to pick up the increased member contribution amounts, in order for such contributions to be made on a pre-tax basis.

➤ Administrative Costs

The bill will have minimal effect on administrative resources.

➤ 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.

➤ Cross Impact on Other Plans

No impact.

➤ Employee Communications

Employee communications may be necessary to describe the impact of increased member contributions on pay to National Guard security officers.

➤ Miscellaneous and Drafting Issues

Since this bill would increase member contribution rates for security officers, the National Guard would need to determine whether they can pay for the increased member contributions from their own funds as a salary supplement or would reduce members' current or future salary, while also perhaps paying an increased employer contribution rate. If the National Guard decides to reduce members' salary to pay for the increased level of member contributions, they must pay and report FICA taxes on the member contribution amounts made via salary reduction.

The actuarial results summarized herein are based on the actuarial valuation as of July 1, 2013, which was completed under the supervision of Tammy Dixon, FSA, MAAA, EA.

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  
Vice President and Consulting Actuary

/cz

cc: Tammy Dixon

Mr. Sparb Collins, Executive Director  
July 15, 2014  
Page 5

Laura Mitchell  
Melanie Walker

5322578v1/01640.004

**Air National Guard Retirement Plan  
2015 Session  
LC 15.0139.01**

<b>Proposed Legislation</b>	<b>Reason</b>	<b>Comments</b>
<p>A BILL for an Act to amend and reenact section 54-52-01, subsection 3 of section 54-52-05, sections 54-52-06.4 and 54-52-06.5, subsection 3 of section 54-52-17, and section 54-52.1-03.2 of the North Dakota Century Code, relating to state employee retirement plans; and to repeal section 54-52-06.2 of the North Dakota Century Code, relating to retirement contributions by national guard security officers and firefighters.</p> <p><b>BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:</b>  <b>SECTION 1. AMENDMENT.</b> Section 54-52-01 of the North Dakota Century Code is amended and reenacted as follows:  <b>54-52-01. (Effective through July 31, 2017) Definition of terms.</b>  As used in this chapter, unless the context otherwise requires:</p> <ol style="list-style-type: none"> <li>1. "Account balance" means the total contributions made by the employee, vested employer contributions under section 54-52-11.1, the vested portion of the vesting fund as of June 30, 1977, and interest credited thereon at the rate established by the board.</li> <li>2. "Beneficiary" means any person in receipt of a benefit provided by this plan or any person designated by a participating member to receive benefits.</li> <li>3. "Correctional officer" means a participating member who is employed as a correctional officer by a political subdivision.</li> <li>4. "Eligible employee" means all permanent employees who meet all of the eligibility requirements set by this chapter and who are eighteen years or more of age, and includes appointive and elective officials under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12, and nonteaching employees of the superintendent of public instruction, including the superintendent of public instruction, who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.13, and employees of the state board for career and technical education who elect to transfer from</li> </ol>		<p><u>Where does it allow security police employed by the Nat'l guard -to be in the law enforcement plan?</u></p> <p><u>Should NG security police get rule of 85 like BCI and other LE plans?</u></p>

Proposed Legislation	Reason	Comments
<p>the teachers' fund for retirement to the public employees retirement system under section 54-52-02.14. Eligible employee does not include state employees who elect to become members of the retirement plan established under chapter 54-52.6.</p> <p>5. "Employee" means any person employed by a governmental unit, whose compensation is paid out of the governmental unit's funds, or funds controlled or administered by a governmental unit, or paid by the federal government through any of its executive or administrative officials; licensed employees of a school district means those employees eligible to participate in the teachers' fund for retirement who, except under subsection 2 of section 54-52-17.2, are not eligible employees under this chapter.</p> <p>6. "Employer" means a governmental unit.</p> <p>7. "Funding agent" or "agents" means an investment firm, trust bank, or other financial institution which the retirement board may select to hold and invest the employers' and members' contributions.</p> <p>8. "Governmental unit" means the state of North Dakota, except the highway patrol for members of the retirement plan created under chapter 39-03.1, or a participating political subdivision thereof.</p> <p>9. "National guard security officer or firefighter" means a participating member who is:</p> <p><del>a. A security police employee of the North Dakota national guard; or</del></p> <p><del>b. A firefighter employee of the North Dakota national guard.</del></p> <p>10. "Participating member" means all eligible employees who through payment into the plan have established a claim against the plan.</p> <p>11. "Peace officer" means a participating member who is a peace officer as defined in section 12-63-01 and is employed as a peace officer by the bureau of criminal investigation or by a political subdivision and, notwithstanding subsection 12, for persons employed after August 1, 2005, is employed thirty-two hours or more per week and at least twenty weeks each year of employment. Participating members of the law enforcement retirement plan created by this chapter who begin employment after August 1, 2005, are ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system.</p> <p>12. "Permanent employee" means a governmental unit employee whose</p>		

<b>Proposed Legislation</b>	<b>Reason</b>	<b>Comments</b>
<p>services are not limited in duration and who is filling an approved and regularly funded position in an eligible governmental unit, and is employed twenty hours or more per week and at least twenty weeks each year of employment.</p> <p>13. "Prior service" means service or employment prior to July 1, 1966.</p> <p>14. "Prior service credit" means such credit toward a retirement benefit as the retirement board may determine under the provisions of this chapter.</p> <p>15. "Public employees retirement system" means the retirement plan and program established by this chapter.</p> <p>16. "Retirement" means the acceptance of a retirement allowance under this chapter upon either termination of employment or termination of participation in the retirement plan and meeting the normal retirement date.</p> <p>17. "Retirement board" or "board" means the seven persons designated by this chapter as the governing authority for the retirement system created.</p> <p>18. "Seasonal employee" means a participating member who does not work twelve months a year.</p> <p>19. "Service" means employment on or after July 1, 1966.</p> <p>20. "Service benefit" means the credit toward retirement benefits as determined by the retirement board under the provisions of this chapter.</p> <p>21. "Temporary employee" means a governmental unit employee who is not eligible to participate as a permanent employee, who is at least eighteen years old and not actively contributing to another employer-sponsored pension fund, and, if employed by a school district, occupies a noncertified teacher's position.</p> <p>22. "Wages" and "salaries" means the member's earnings in eligible employment under this chapter reported as salary on the member's federal income tax withholding statements plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as payments for unused sick leave, personal leave, vacation leave paid in a lump sum, overtime, housing allowances, transportation expenses, early retirement incentive pay, severance pay, medical insurance, workforce safety and insurance benefits, disability insurance premiums or benefits, or salary received by a member in lieu of previously employer-provided fringe benefits under an agreement between the member and participating employer. Bonuses may be considered as salary under this section if reported and annualized pursuant to rules adopted by the board.</p>		

Proposed Legislation	Reason	Comments
<p><b>(Effective after July 31, 2017) Definition of terms.</b> As used in this chapter, unless the context otherwise requires:</p> <ol style="list-style-type: none"> <li>1. "Account balance" means the total contributions made by the employee, vested employer contributions under section 54-52-11.1, the vested portion of the vesting fund as of June 30, 1977, and interest credited thereon at the rate established by the board.</li> <li>2. "Beneficiary" means any person in receipt of a benefit provided by this plan or any person designated by a participating member to receive benefits.</li> <li>3. "Correctional officer" means a participating member who is employed as a correctional officer by a political subdivision.</li> <li>4. "Eligible employee" means all permanent employees who meet all of the eligibility requirements set by this chapter and who are eighteen years or more of age, and includes appointive and elective officials under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12, and nonteaching employees of the superintendent of public instruction, including the superintendent of public instruction, who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.13, and employees of the state board for career and technical education who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.14. Eligible employee does not include nonclassified state employees who elect to become members of the retirement plan established under chapter 54-52.6 but does include employees of the judicial branch and employees of the board of higher education and state institutions under the jurisdiction of the board.</li> <li>5. "Employee" means any person employed by a governmental unit, whose compensation is paid out of the governmental unit's funds, or funds controlled or administered by a governmental unit, or paid by the federal government through any of its executive or administrative officials; licensed employees of a school district means those employees eligible to participate in the teachers' fund for retirement who, except under subsection 2 of section 54-52-17.2, are not eligible employees under this chapter.</li> <li>6. "Employer" means a governmental unit.</li> <li>7. "Funding agent" or "agents" means an investment firm, trust bank, or other financial institution which the retirement board may select to hold and invest the</li> </ol>		

Proposed Legislation	Reason	Comments
<p>employers' and members' contributions.</p> <p>8. "Governmental unit" means the state of North Dakota, except the highway patrol for members of the retirement plan created under chapter 39-03.1, or a participating political subdivision thereof.</p> <p>9. "National guard security officer or firefighter" means a participating member who is:</p> <p><del>a. A security police employee of the North Dakota national guard; or</del></p> <p><del>b. A firefighter employee of the North Dakota national guard.</del></p> <p>10. "Participating member" means all eligible employees who through payment into the plan have established a claim against the plan.</p> <p>11. "Peace officer" means a participating member who is a peace officer as defined in section 12-63-01 and is employed as a peace officer by the bureau of criminal investigation or by a political subdivision and, notwithstanding subsection 12, for persons employed after August 1, 2005, is employed thirty-two hours or more per week and at least twenty weeks each year of employment. Participating members of the law enforcement retirement plan created by this chapter who begin employment after August 1, 2005, are ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system.</p> <p>12. "Permanent employee" means a governmental unit employee whose services are not limited in duration and who is filling an approved and regularly funded position in an eligible governmental unit, and is employed twenty hours or more per week and at least twenty weeks each year of employment.</p> <p>13. "Prior service" means service or employment prior to July 1, 1966.</p> <p>14. "Prior service credit" means such credit toward a retirement benefit as the retirement board may determine under the provisions of this chapter.</p> <p>15. "Public employees retirement system" means the retirement plan and program established by this chapter.</p> <p>16. "Retirement" means the acceptance of a retirement allowance under this chapter upon either termination of employment or termination of participation in the retirement plan and meeting the normal retirement date.</p> <p>17. "Retirement board" or "board" means the seven persons designated by this chapter as the governing authority for the retirement system created.</p> <p>18. "Seasonal employee" means a participating member who does not work</p>		

Proposed Legislation	Reason	Comments
<p>twelve months a year.</p> <p>19. "Service" means employment on or after July 1, 1966.</p> <p>20. "Service benefit" means the credit toward retirement benefits as determined by the retirement board under the provisions of this chapter.</p> <p>21. "Temporary employee" means a governmental unit employee who is not eligible to participate as a permanent employee, who is at least eighteen years old and not actively contributing to another employer-sponsored pension fund, and, if employed by a school district, occupies a noncertified teacher's position.</p> <p>22. "Wages" and "salaries" means the member's earnings in eligible employment under this chapter reported as salary on the member's federal income tax withholding statements plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as payments for unused sick leave, personal leave, vacation leave paid in a lump sum, overtime, housing allowances, transportation expenses, early retirement incentive pay, severance pay, medical insurance, workforce safety and insurance benefits, disability insurance premiums or benefits, or salary received by a member in lieu of previously employer-provided fringe benefits under an agreement between the member and participating employer. Bonuses may be considered as salary under this section if reported and annualized pursuant to rules adopted by the board.</p>		
<p><b>SECTION 2. AMENDMENT.</b> Subsection 3 of section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:</p> <p>3. Each employer, at its option, may pay all or a portion of the employee contributions required by subsection 2 and sections 54-52-06.1, 54-52-06.2, 54-52-06.3, and 54-52-06.4 or the employee contributions required to purchase service credit on a pretax basis pursuant to subsection 5 of section 54-52-17.4. Employees may not receive the contributed amounts directly once the employer has elected to pay the employee contributions. The amount paid must be paid by the employer in lieu of contributions by the employee. If the state determines not to pay the contributions, the amount that would have been paid must continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the employer, they may not be included as</p>		

Proposed Legislation	Reason	Comments
<p>gross income of the employee in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee or from the levy authorized by subsection 5 of section 57-15-28.1. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a contribution of a reduction in gross salary and offset against future salary increases. If employee contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made <del>prior to</del> <u>before</u> the date on which employee contributions were assumed by the employer. An employer exercising its option under this subsection shall report its choice to the board in writing.</p>		
<p><b>SECTION 3. AMENDMENT.</b> Section 54-52-06.4 of the North Dakota Century Code is amended and reenacted as follows:  <b>54-52-06.4. Contribution by peace officers employed by the bureau of criminal investigation or security officers employed by the national guard – Employer contribution.</b> Each peace officer employed by the bureau of criminal investigation or national guard security officer who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. Peace officer contributions increase by one percent of the member's monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the reporting period of January 2013. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The peace officer's or security officer's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. The employer's contribution must be paid from funds appropriated for salary or from any other funds available for such purposes. If the peace officer's or security officer's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required peace officer's or security officer's assessment.</p>		

Proposed Legislation	Reason	Comments
<p><b>SECTION 4. AMENDMENT.</b> Section 54-52-06.5 of the North Dakota Century Code is amended and reenacted as follows:  <b>54-52-06.5. Reduction in member and employer contributions.</b>  The required increase in the amount of member and employer contributions under sections 54-52-02.9, 54-52-05, 54-52-06, 54-52-06.1, <del>54-52-06.2</del>, 54-52-06.3, 54-52.6-02, and 54-52.6-09 must be reduced to the rate in effect on July 1, 2013, effective on the July first that follows the first valuation of the public employees retirement system main system showing a ratio of the actuarial value of assets to the actuarial accrued liability of the public employees retirement system main system that is equal to or greater than one hundred percent</p>		
<p><b>SECTION 5. AMENDMENT.</b> Subsection 3 of section 54-52-17 of the North Dakota Century Code is amended and reenacted as follows:  3. Retirement dates are defined as follows:  a. Normal retirement date, except for a national guard security officer <del>or firefighter</del> or a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, is:  (1) The first day of the month next following the month in which the member attains the age of sixty-five years; or  (2) When the member has a combined total of years of service credit and years of age equal to eighty-five and has not received a retirement benefit under this chapter.  b. Normal retirement date for a national guard security officer <del>or firefighter</del> is the first day of the month next following the month in which the national guard security officer <del>or firefighter</del> attains the age of fifty-five years and has completed at least three eligible years of employment as a national guard security officer <del>or firefighter</del>.  c. Normal retirement date for a peace officer or correctional officer employed by a political subdivision is:  (1) The first day of the month next following the month in which the peace officer or correctional officer attains the age of fifty-five years and has completed at least three eligible years of employment as a peace officer or correctional officer; or (2) When the peace officer or correctional officer has a combined total of years of service credit and years of age equal to eighty-five and has not received a retirement benefit under this chapter.</p>		

<b>Proposed Legislation</b>	<b>Reason</b>	<b>Comments</b>
<p>d. Normal retirement date for a peace officer employed by the bureau of criminal investigation is:</p> <p>(1) The first day of the month next following the month in which the peace officer attains the age of fifty-five years and has completed at least three eligible years of employment as a peace officer; or</p> <p>(2) When the peace officer has a combined total of years of service credit and years of age equal to eighty-five and has not received a retirement benefit under this chapter.</p> <p>e. Postponed retirement date is the first day of the month next following the month in which the member, on or after July 1, 1977, actually severs or has severed the member's employment after reaching the normal retirement date.</p> <p>f. Early retirement date, except for a national guard security officer or firefighter or a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, is the first day of the month next following the month in which the member attains the age of fifty-five years and has completed three years of eligible employment. For a national guard security officer or firefighter, early retirement date is the first day of the month next following the month in which the national guard security officer or firefighter attains the age of fifty years and has completed at least three years of eligible employment. For a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, early retirement date is the first day of the month next following the month in which the peace officer or correctional officer attains the age of fifty years and has completed at least three years of eligible employment.</p> <p>g. Disability retirement date is the first day of the month after a member becomes permanently and totally disabled, according to medical evidence called for under the rules of the board, and has completed at least one hundred eighty days of eligible employment. For supreme and district court judges, permanent and total disability is based solely on a judge's inability to perform judicial duties arising out of physical or mental impairment, as determined pursuant to rules adopted by the board or as provided by subdivision a of subsection 3 of section 27-23-03. A member is eligible to receive disability retirement benefits only if the member:</p> <p>(1) Became disabled during the period of eligible employment; and</p>		

Proposed Legislation	Reason	Comments
<p>(2) Applies for disability retirement benefits within twelve months of the date the member terminates employment. A member is eligible to continue to receive disability benefits as long as the permanent and total disability continues and the member submits the necessary documentation and undergoes medical testing required by the board, or for as long as the member participates in a rehabilitation program required by the board, or both. If the board determines that a member no longer meets the eligibility definition, the board may discontinue the disability retirement benefit. The board may pay the cost of any medical testing or rehabilitation services it deems necessary and these payments are appropriated from the retirement fund for those purposes.</p>		
<p><b>SECTION 6. AMENDMENT.</b> Section 54-52.1-03.2 of the North Dakota Century Code is amended and reenacted as follows:  <b>54-52.1-03.2. (Contingent expiration date) Retiree health benefits fund - Appropriation.</b>  1. The board shall establish a retiree health benefits fund account with the Bank of North Dakota for the purpose of prefunding and providing hospital benefits coverage and medical benefits coverage under the uniform group insurance program for retired eligible employees or surviving spouses of retired eligible employees and their dependents as provided in this chapter. The state shall contribute monthly to the retiree health benefits fund an amount equal to one and fourteen hundredths percent of the monthly salaries and wages of all participating members of the highway patrolmen's retirement system under chapter 39-03.1, and one and fourteen hundredths percent of the monthly salaries of all supreme or district court judges who are participating members of the public employees retirement system under chapter 54-52. Each governmental unit that contributes to the public employees retirement system fund under section 54-52-06 or the retirement plan under chapter 54-52.6 shall contribute monthly to the retiree health benefits fund an amount equal to one and fourteen hundredths percent of the monthly salaries or wages of all participating members of the public employees retirement system under chapter 54-52 or chapter 54-52.6, except for nonteaching employees of the superintendent of public instruction who elect to participate in the public employees retirement system pursuant to section 54-52-02.13 and employees</p>		

Proposed Legislation	Reason	Comments
<p>of the state board for career and technical education who elect to participate in the public employees retirement system pursuant to section 54-52-02.14. For nonteaching employees of the superintendent of public instruction who elect to participate in the public employees retirement system pursuant to section 54-52-02.13, the superintendent of public instruction shall contribute monthly to the retiree health benefits fund an amount equal to three and twenty-four hundredths percent of the monthly salaries or wages of those nonteaching employee members, beginning on the first of the month following the transfer under section 54-52-02.13 and continuing thereafter for a period of eight years, after which time the superintendent of public instruction shall contribute one and fourteen hundredths percent of the monthly salary or wages of those nonteaching employee members. For employees of the state board for career and technical education who elect to participate in the public employees retirement system pursuant to section 54-52-02.14, the state board for career and technical education shall contribute monthly to the retiree health benefits fund an amount equal to two and ninety-nine hundredths percent of the monthly salary or wages of those employee members, beginning on the first of the month following the transfer under section 54-52-02.14 and continuing thereafter for a period of eight years, after which time the state board for career and technical education shall contribute one and fourteen hundredths percent of the monthly salary or wages of those employee members. The employer of a national guard security officer <del>or firefighter</del> shall contribute monthly to the retiree health benefits fund an amount equal to one and fourteen hundredths percent of the monthly salaries or wages of all national guard security officers <del>or firefighters</del> participating in the public employees retirement system under chapter 54-52. Job service North Dakota shall reimburse monthly the retiree health benefits fund for credit received under section 54-52.1-03.3 by members of the retirement program established by job service North Dakota under section 52-11-01. The board, as trustee of the fund and in exclusive control of its administration, shall:</p> <p>a. Provide for the investment and disbursement of moneys of the retiree health benefits fund and administrative expenditures in the same manner as moneys of the public employees retirement system are invested, disbursed, or expended.</p> <p>b. Adopt rules necessary for the proper administration of the retiree health</p>		

Proposed Legislation	Reason	Comments
<p>benefits fund, including enrollment procedures.</p> <p>2. All moneys deposited in the fund established under subsection 1, not otherwise appropriated, are hereby appropriated to the board for the purpose of making investments for the fund and to make contributions toward hospital and medical benefits coverage for eligible retired employees or surviving spouses of eligible retired employees and their dependents under the uniform group insurance program.</p> <p>3. If a member terminates employment because of death, permanent and total disability, or any voluntary or involuntary reason prior to retirement, the member or the member's designated beneficiary is entitled to the member's account balance at termination. If a member's account balance is withdrawn, the member relinquishes all rights to benefits under the retiree health benefits fund.</p> <p><b>(Contingent effective date) Retiree health benefits fund - Appropriation.</b></p> <p>1. The board shall establish a retiree health benefits fund account with the Bank of North Dakota for the purpose of prefunding and providing hospital benefits coverage and medical benefits coverage and prescription drug coverage under any health insurance program and dental, vision, and long-term care benefits coverage under the uniform group insurance program for retired eligible employees or surviving spouses of retired eligible employees and their dependents as provided in this chapter. The state shall contribute monthly to the retiree health benefits fund an amount equal to one and fourteen hundredths percent of the monthly salaries and wages of all participating members of the highway patrolmen's retirement system under chapter 39-03.1, and one and fourteen hundredths percent of the monthly salaries of all supreme or district court judges who are participating members of the public employees retirement system under chapter 54-52. Each governmental unit that contributes to the public employees retirement system fund under section 54-52-06 or the retirement plan under chapter 54-52.6 shall contribute monthly to the retiree health benefits fund an amount equal to one and fourteen hundredths percent of the monthly salaries or wages of all participating members of the public employees retirement system under chapter 54-52 or chapter 54-52.6, except for nonteaching employees of the superintendent of public instruction who elect to participate in the public employees retirement system pursuant to section 54-52-02.13 and employees of the state board for career and technical education</p>		

Proposed Legislation	Reason	Comments
<p>who elect to participate in the public employees retirement system pursuant to section 54-52-02.14. For nonteaching employees of the superintendent of public instruction who elect to participate in the public employees retirement system pursuant to section 54-52-02.13, the superintendent of public instruction shall contribute monthly to the retiree health benefits fund an amount equal to three and twenty-four hundredths percent of the monthly salaries or wages of those nonteaching employee members, beginning on the first of the month following the transfer under section 54-52-02.13 and continuing thereafter for a period of eight years, after which time the superintendent of public instruction shall contribute one and fourteen hundredths percent of the monthly salary or wages of those nonteaching employee members. For employees of the state board for career and technical education who elect to participate in the public employees retirement system pursuant to section 54-52-02.14, the state board for career and technical education shall contribute monthly to the retiree health benefits fund an amount equal to two and ninety-nine hundredths percent of the monthly salary or wages of those employee members, beginning on the first of the month following the transfer under section 54-52-02.14 and continuing thereafter for a period of eight years, after which time the state board for career and technical education shall contribute one and fourteen hundredths percent of the monthly salary or wages of those employee members. The employer of a national guard security officer <del>or firefighter</del> shall contribute monthly to the retiree health benefits fund an amount equal to one and fourteen hundredths percent of the monthly salaries or wages of all national guard security officers <del>or firefighters</del> participating in the public employees retirement system under chapter 54-52. Job service North Dakota shall reimburse monthly the retiree health benefits fund for credit received under section 54-52.1-03.3 by members of the retirement program established by job service North Dakota under section 52-11-01. The board, as trustee of the fund and in exclusive control of its administration, shall:</p> <p>a. Provide for the investment and disbursement of moneys of the retiree health benefits fund and administrative expenditures in the same manner as moneys of the public employees retirement system are invested, disbursed, or expended.</p> <p>b. Adopt rules necessary for the proper administration of the retiree health benefits fund, including enrollment procedures.</p>		

<b>Proposed Legislation</b>	<b>Reason</b>	<b>Comments</b>
<p>2. All moneys deposited in the fund established under subsection 1, not otherwise appropriated, are hereby appropriated to the board for the purpose of making investments for the fund and to make contributions toward hospital and medical benefits coverage and prescription drug coverage under any health insurance program and dental, vision, and long-term care benefits coverage under the uniform group insurance program for eligible retired employees or surviving spouses of eligible retired employees and their dependents as elected.</p> <p>3. If a member terminates employment because of death, permanent and total disability, or any voluntary or involuntary reason prior to retirement, the member or the member's designated beneficiary is entitled to the member's account balance at termination. If a member's account balance is withdrawn, the member relinquishes all rights to benefits under the retiree health benefits fund.</p>		
<p><b>SECTION 7. REPEAL.</b> Section 54-52-06.2 of the North Dakota Century Code is repealed.</p>		



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# Memorandum

**TO:** PERS Board  
**FROM:** Sparb  
**DATE:** August 15, 2014  
**SUBJECT:** Government Finance Committee Study

Attachment #1 and #2 were reviewed by Gallagher with the Government Finance Committee at their last meeting.

Concerning Attachment #1, you will note that there is a significant difference in the projection amounts concerning the closing of the PERS DB/Hybrid Plan. Segal projected that if only the state side of the plan is closed it would cost \$163 million whereas Gallagher projects that to be \$301 million. Similarly, if both the state and political sub side of the plans are closed Segal projects that to cost \$99 million whereas Gallagher projects it to be \$445 million. You can also see on pages 13 and 15 how that affects the long term funded status projections.

You can see Gallagher's conclusions on page 21 which are:

- Segal's Plan closure study was not based on the same outputs as the July 1, 2013 actuarial valuation.
- Segal adjusted to reflect fewer retirements, although this was not an item noted as having any impact on the contribution rate within the July 1, 2013 actuarial valuation.
- Segal's adjustments reduced the present value of projected benefit payments by about \$264M.
- No other adjustments were made to reflect increased benefits or increased contributions due to deferred retirements.
- Segal did not include post 7/1/13 hires in their study.
- Gallagher estimates if no adjustments were made and post 7/1/13 hires were included:
  - If only the State employees group was closed and separated from the Non-State
    - The insolvency date would be in 30 years, not 35 years

- The one-time contribution would be \$301M instead of \$163M
- If the entire plan is closed
  - The insolvency date would be in 32 years, not 42 years
  - The one-time contribution would be \$445M instead of \$99M
  - Under various other reasonable assumptions, the insolvency dates may vary slightly, but total ultimate costs can vary by wide margins.

Segal will be at the next meeting of the Board by conference call to review with you their perspective on the above. Also, the Government Finance Committee has requested that they appear at their next meeting as well to discuss the above.

Attachment #2 was reviewed by Gallagher with the committee as well.



Arthur J. Gallagher & Co.  
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# Actuarial Audit of NDPERS Plan Design Study Summary of Findings

DOUG ANDERSON | AUGUST 5, 2014

# Table of Contents

• Recap of July 1 <sup>st</sup> Presentation	3
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• Investment Return Sensitivity Analysis	17
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*This report is intended for use by the North Dakota Legislative Management Committee. The purpose of the report is to summarize results of an independent review by Gallagher Benefit Services, Inc. of information originally prepared by The Segal Company for the NDPERS relative to the cost of potential NDPERS changes.*

*Participant data for this review was provided by both NDPERS and The Segal Company and the results included herein are dependent on the accuracy of that data. Results were based on an attempted match of the July 1, 2013 actuarial valuation report, the plan provisions in effect at that time, and except as noted, the assumptions used for that valuation.*

*Gallagher Benefit Services, Inc. expresses no opinion on the proposed plan design changes other than providing a range of reasonable cost forecasts as noted in this report. The actuary preparing this report is a member of the American Academy of Actuaries and meets the Qualification Standards to provide the actuarial opinions contained in this report.*

# Recap of July 1<sup>st</sup> Presentation

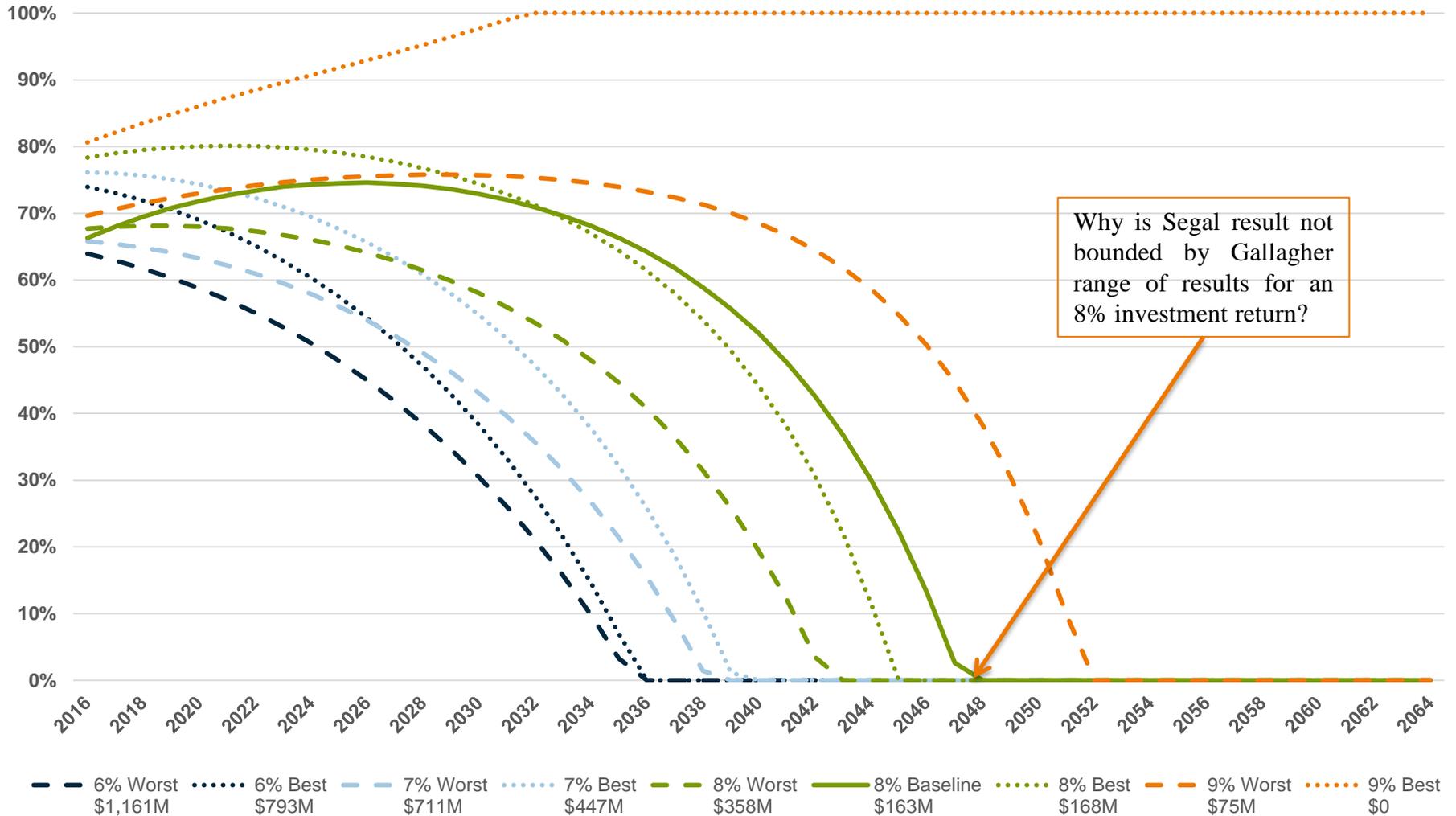
# Recap of July 1<sup>st</sup> Presentation

Task	July 1 <sup>st</sup> Status	Comments
Review Participant Data	Done	<ul style="list-style-type: none"><li>• No issues found for over 99% of participant records</li><li>• Outstanding issues would not significantly impact results</li></ul>
Assumption Review	Done	<ul style="list-style-type: none"><li>• No significant issues with current assumptions</li><li>• National 10-year trend to lower investment return assumption</li></ul>
July 1, 2013 Valuation Audit	Done	<ul style="list-style-type: none"><li>• Present Value of Benefits matched within 1%</li></ul>
Assumption Recommendations	Done	<ul style="list-style-type: none"><li>• Suggested consideration of both favorable and unfavorable set of assumptions to demonstrate reasonable range of results</li></ul>
Plan Closure Study Audit	In Progress	<ul style="list-style-type: none"><li>• Significant differences between Gallagher and Segal in both projected insolvency dates and amounts needed to fully fund certain scenarios remain to be reconciled</li></ul>

# Plan Options Evaluation Summary (Preliminary)

## Main Systems – State Plan Closed (separated from Poli Sub)

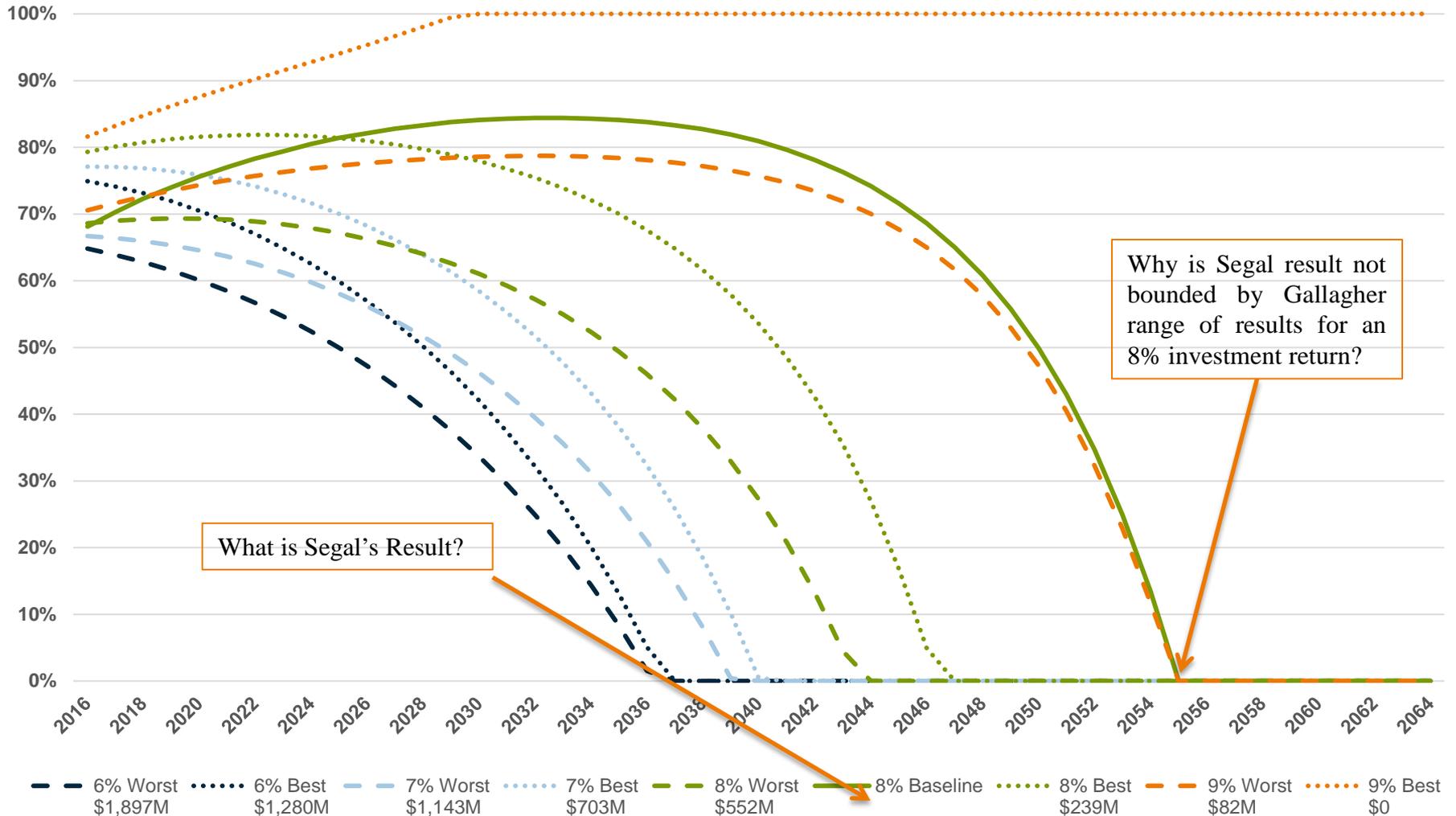
### Funded Status



# Plan Options Evaluation Summary (Preliminary)

## Main Systems – Existing Plan with No New Entrants as of 1/1/2016

### Funded Status



What is Segal's Result?

Why is Segal result not bounded by Gallagher range of results for an 8% investment return?

# Plan Closure Study Actuarial Audit Findings

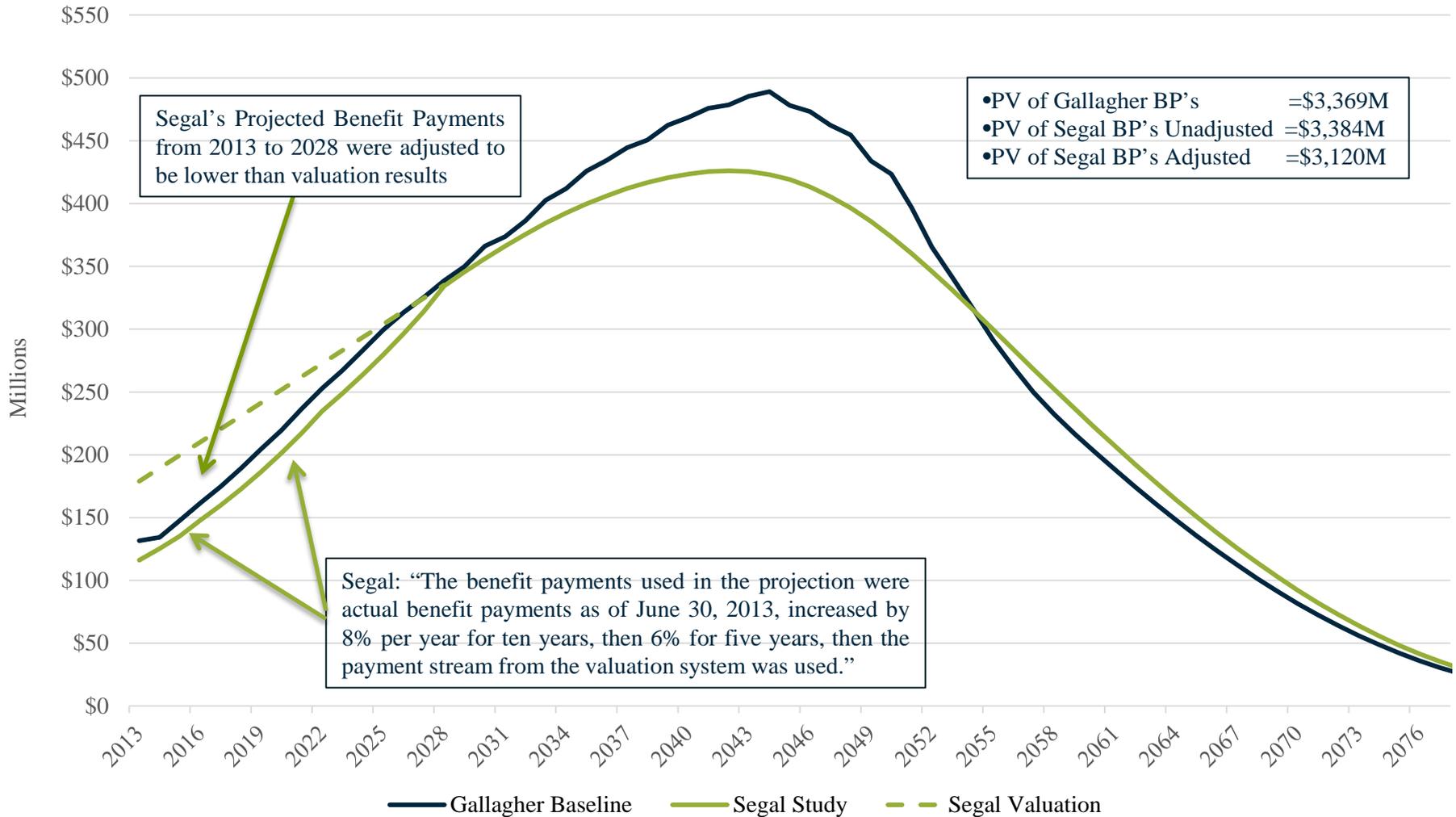
# Plan Closure Study Actuarial Audit Findings

	Gallagher Finding	Gallagher Comments
Issue #1 Disclosure	<ul style="list-style-type: none"> <li>Segal made adjustments to the valuation outputs to reduce projected benefit payments from years 2014 through 2028 without disclosing in their report the reason for the change or the cost impact.</li> </ul>	<ul style="list-style-type: none"> <li>Actuarial Standards of Practice (ASOP) No. 41 states that an actuarial report should “identify the methods, procedures, assumptions, and data used by the actuary with sufficient clarity that another actuary qualified in the same practice area could make an objective appraisal of the reasonableness of the actuary’s work as presented in the actuarial report.”</li> <li>Segal’s March 6, 2014 study states that “cost estimates are based on the July 1, 2013 actuarial valuation results.”</li> </ul>
Issue #2 Methodology	<ul style="list-style-type: none"> <li>Segal explained the reduction in projected benefit payments was due to “The current valuation assumptions (as approved by the Board of Trustees) appear to have higher rates of assumed retirement than are currently being observed.”</li> <li>Segal said no other adjustments were made. This implies:               <ul style="list-style-type: none"> <li>No larger benefit payments for deferred retirements.</li> <li>No adjustments for higher contributions due to fewer retirements.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Gallagher results, as demonstrated on July 1<sup>st</sup>, have shown that adjustments to retirement assumptions do not significantly impact present values (i.e. either the Plan pays a retiree less for longer, or more for a shorter period).</li> <li>Segal’s actuarial valuation shows no change to the contribution requirement in the prior year due to retirement experience.</li> </ul>
Issue #3 Omission	<ul style="list-style-type: none"> <li>Segal excluded from the Study the impact of Participants entering after 7/1/2013 and before the assumed closure date of 1/1/16.</li> </ul>	<ul style="list-style-type: none"> <li>The inclusion of Participants during this period adds significant benefit payments to the Plan. However, additional assumed Member and Employer contributions are nearly offsetting.</li> </ul>

# Comparison of Values

<b>Estimated Present Value as of July 1, 2013 for:</b>	<b>Segal</b>	<b>Gallagher</b>	<b>Difference</b>
July 1, 2013 Actuarial Valuation Result	\$3,384M	\$3,369M	(\$15M)
Segal Adjustments for Study	<u>    (264M)</u>	<u>        0M</u>	<u>    264M</u>
All Participants as of 7/1/13	\$3,120M	\$3,369M	\$249M
New Participants entering between 7/1/13 and 1/1/16	<u>        0M</u>	<u>    112M</u>	<u>    112M</u>
All Participants entering before 1/1/16	\$3,120M	\$3,481M	\$361M
<b>Estimated Future Contributions for:</b>			
New Participants entering between 7/1/13 and 1/1/16	\$0M	\$155M	\$155M
<b>Projected Values for Closed State Employee Only</b>			
Years to insolvency	35 Years	30 Years	5 Years
One-time contribution to fully fund	\$163M	\$301M	\$138M
<b>Projected Values if Both Groups are Closed</b>			
Years to insolvency	42 Years	32 Years	10 Years
One-time contribution to fully fund	\$99M	\$445M	\$346M

# Comparison of Project Benefit Payments



# Updated Plan Closure Study Results

# Summary of Significant Assumptions

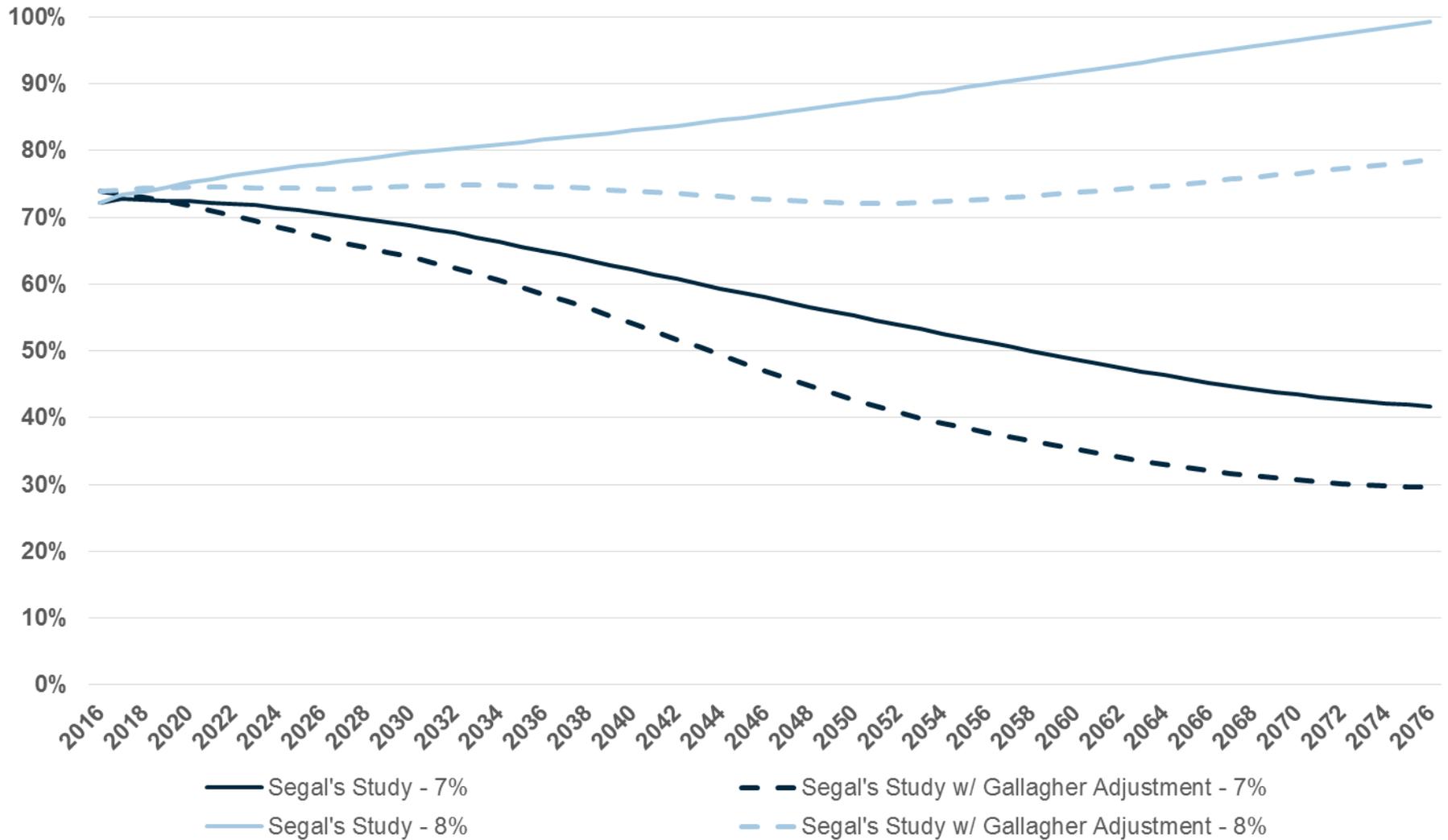
Actuarial projection results will vary based on assumptions for future expectations. The sensitivity of results to different assumptions can help provide a better understanding of a reasonable range of outputs. The projections on the following pages include results under Segal's assumptions as well as under two sets of assumptions developed by Gallagher representing a cost favorable set of assumptions and cost unfavorable set of assumptions.

	NDPERS July 1, 2013 Valuation	Gallagher Recommended Assumption Sets for Sensitivity Analysis	
		Cost Favorable	Cost Unfavorable
Investment Return	8.0%	8.0%	7.5%
Salary Increases	Rates based on Experience Study	10% lower	10% higher
Mortality Rates	Rates based on Experience Study	Study rates without Male margin	RP 2000 Table with projections
Withdrawal Rates	Rates based on Experience Study	10% lower	10% higher
Retirement Rates	Rates based on Experience Study	Shifter later	Shifted earlier

# Plan Options Evaluation Summary

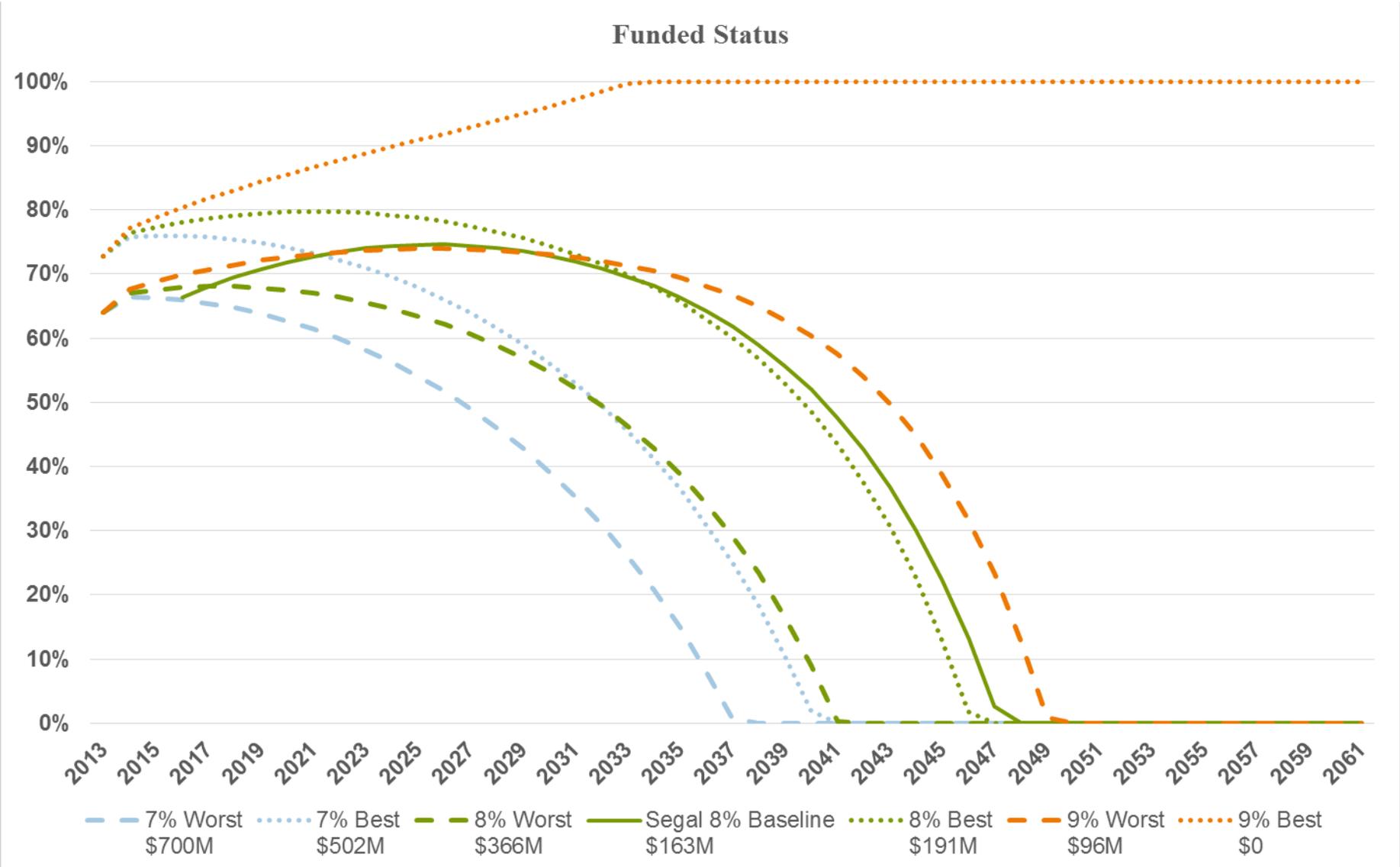
## Main Systems – Existing Plan No Change (entire group)

Funded Status



# Plan Options Evaluation Summary

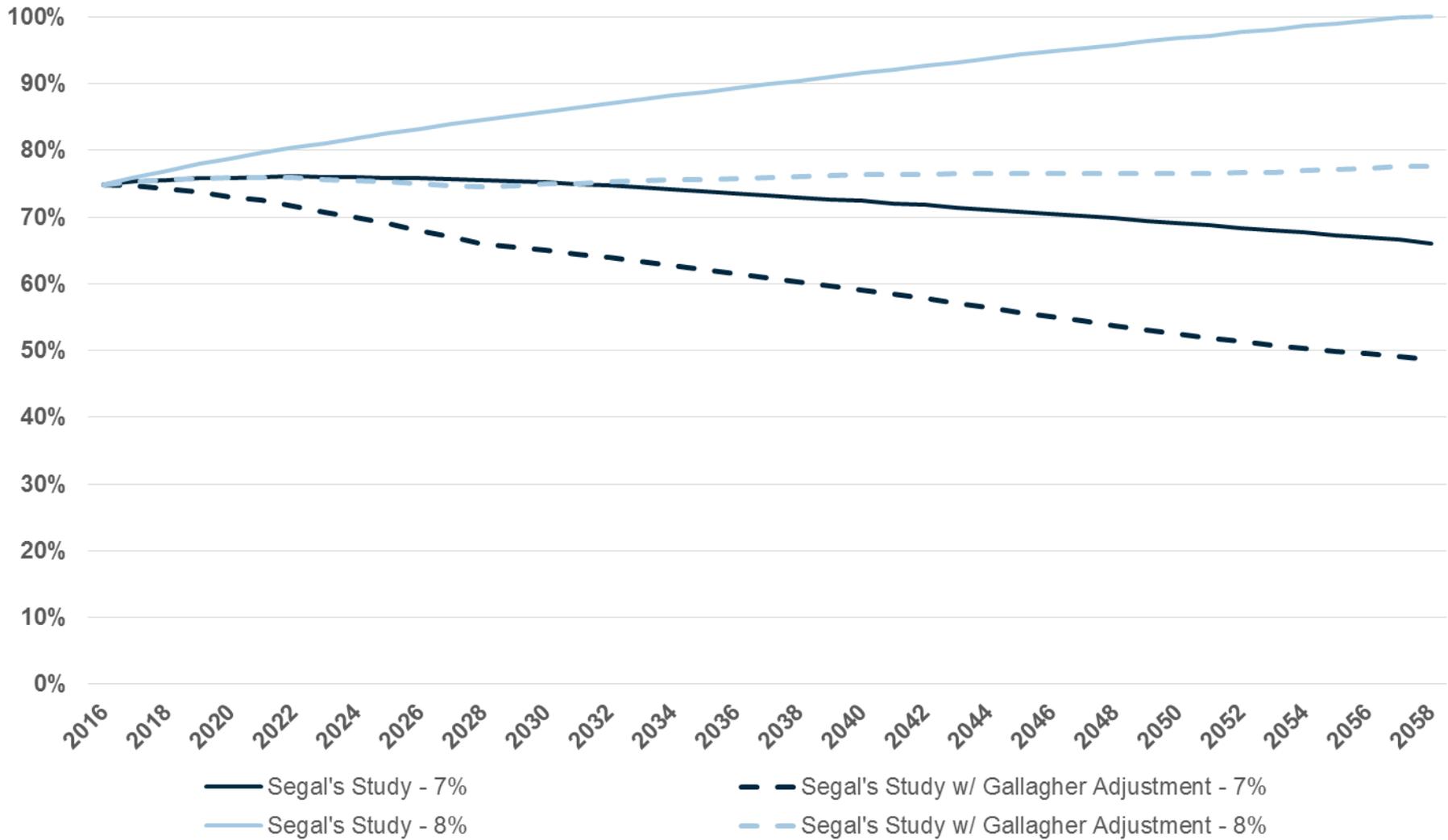
## Main Systems – State Plan Closed (separated from Poli Sub)



# Plan Options Evaluation Summary

## Main Systems – Political Sub Plan (without state members)

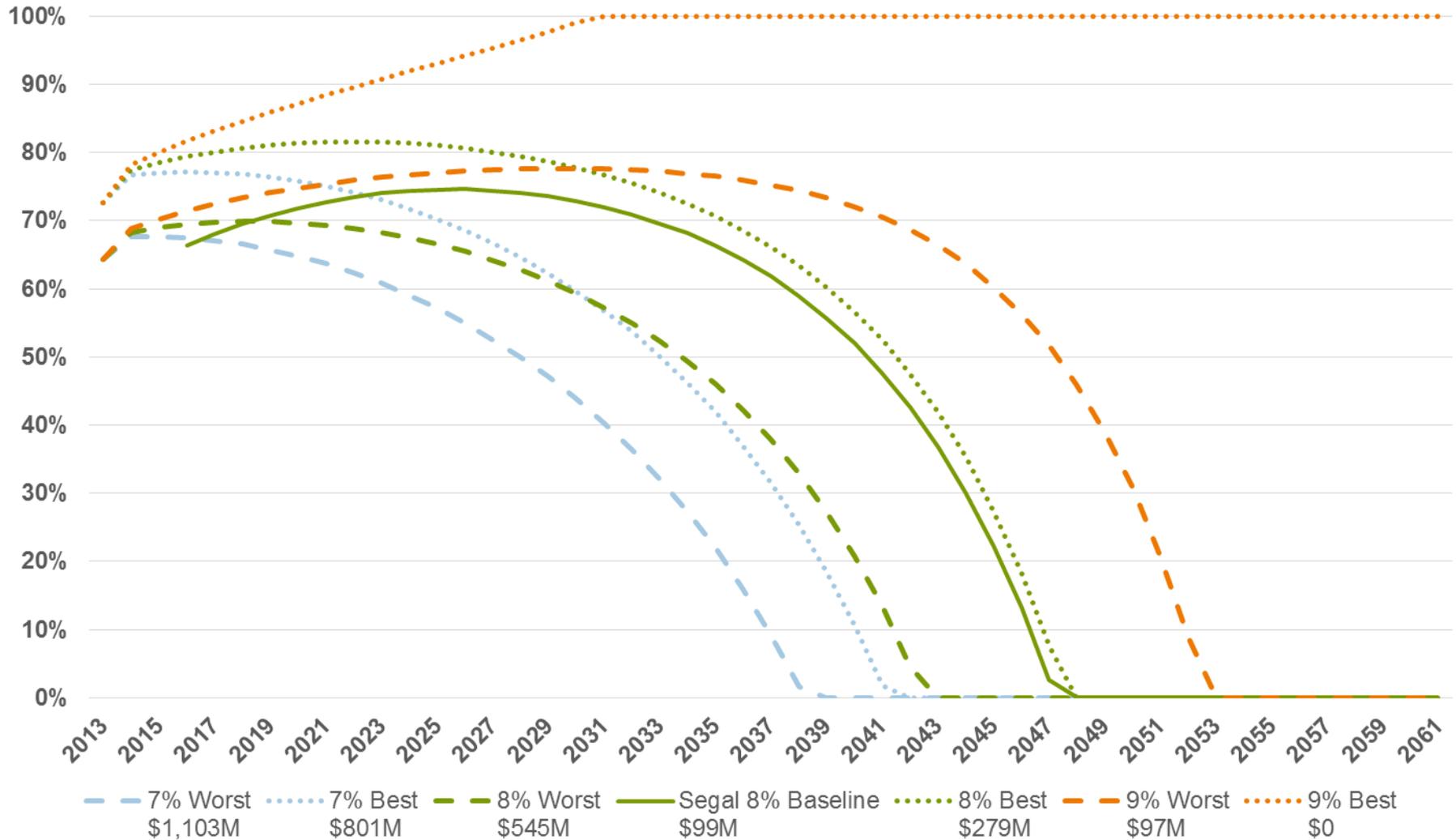
Funded Status



# Plan Options Evaluation Summary

## Main Systems – Existing Plan with No New Entrants as of 1/1/2016

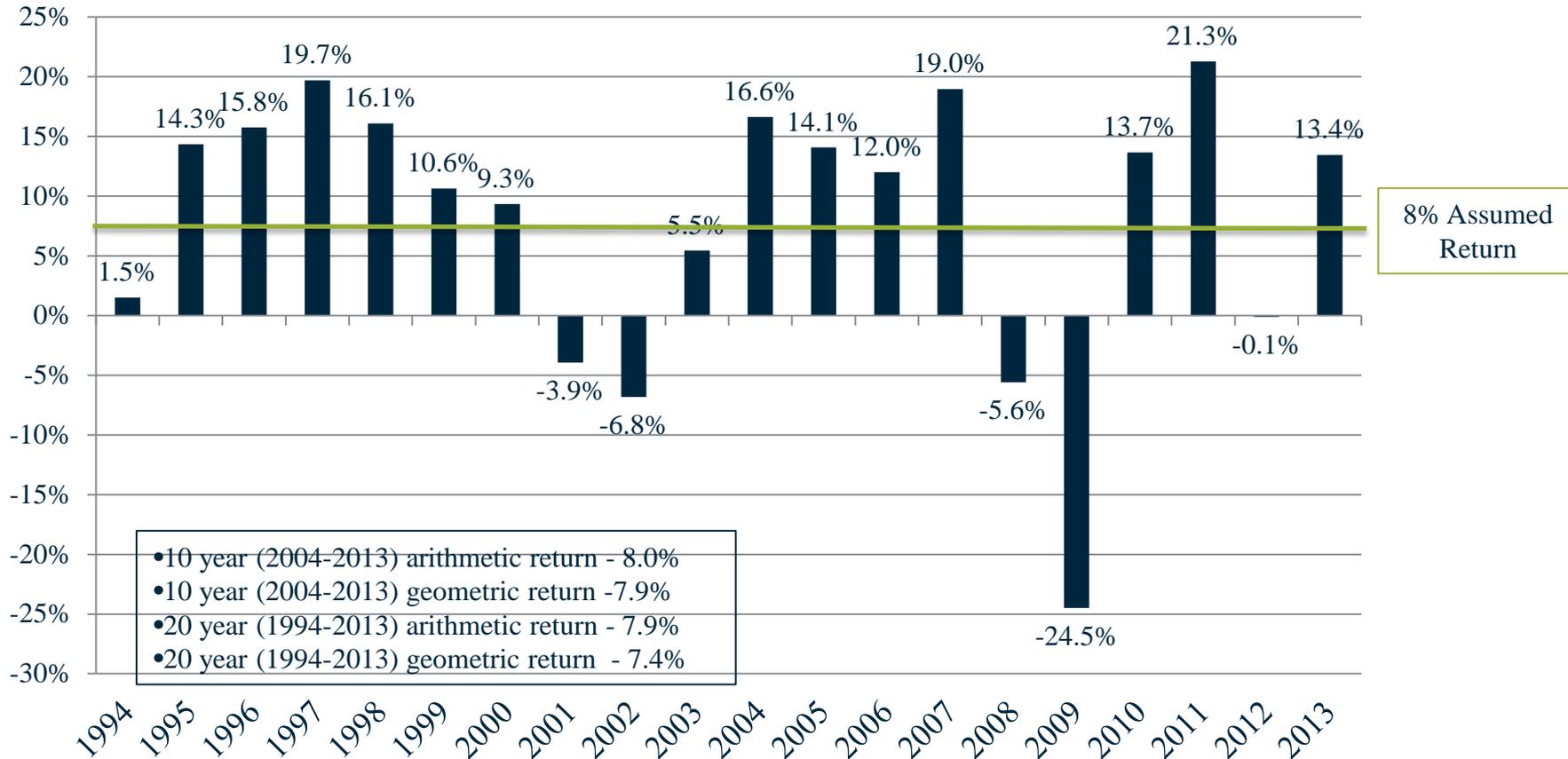
### Funded Status



# Investment Return Sensitivity Analysis

# NDPERS Actual Investment Returns

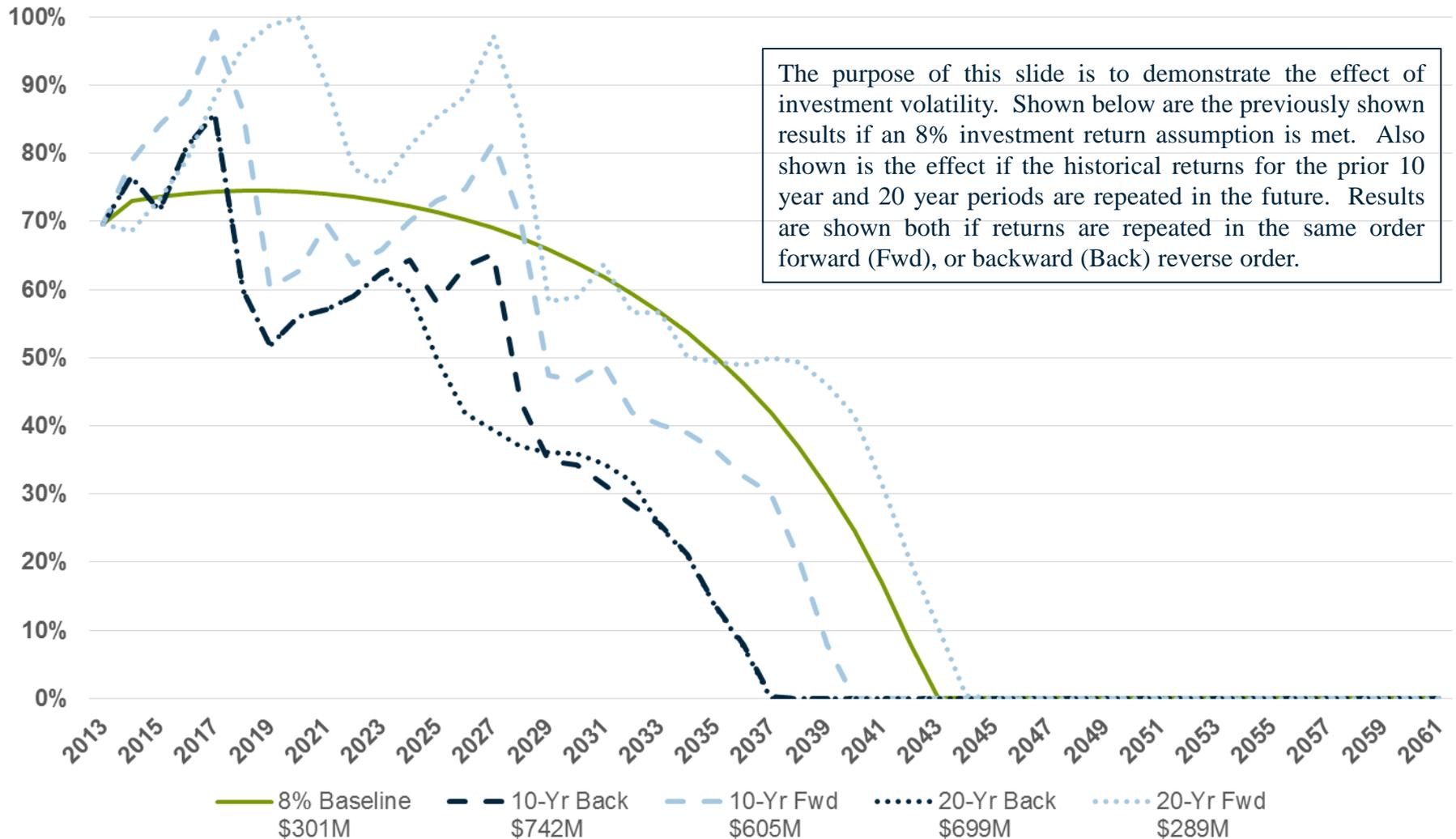
## Annual Investment Return (net of expenses)



# Plan Options Evaluation Summary

## Main Systems – State Plan Closed (separated from Poli Sub)

### Funded Status



The purpose of this slide is to demonstrate the effect of investment volatility. Shown below are the previously shown results if an 8% investment return assumption is met. Also shown is the effect if the historical returns for the prior 10 year and 20 year periods are repeated in the future. Results are shown both if returns are repeated in the same order forward (Fwd), or backward (Back) reverse order.

# Actuarial Audit Conclusions

# Actuarial Audit Conclusions

## Conclusions

- Segal's Plan closure study was not based on the same outputs as the July 1, 2013 actuarial valuation.
- Segal adjusted to reflect fewer retirements, although this was not an item noted as having any impact on the contribution rate within the July 1, 2013 actuarial valuation.
- Segal's adjustments reduced the present value of projected benefit payments by about \$264M.
- No other adjustments were made to reflect increased benefits or increased contributions due to deferred retirements.
- Segal did not include post 7/1/13 hires in their study.
- Gallagher estimates if no adjustments were made and post 7/1/13 hires were included:
  - If only the State employees group was closed and separated from the Non-State
    - The insolvency date would be in 30 years, not 35 years
    - The one-time contribution would be \$301M instead of \$163M
  - If the entire plan is closed
    - The insolvency date would be in 32 years, not 42 years
    - The one-time contribution would be \$445M instead of \$99M
- Under various other reasonable assumptions, the insolvency dates may vary slightly, but total ultimate costs can vary by wide margins.

# Summary of Results

		<b>Segal Result</b>	<b>Gallagher Result</b>
State Plan Closed (separated from Political Subdivisions)	Baseline Result	\$163M	\$301M
	With Range Due to Alternative Demographic Assumptions		\$191M to \$366M
	With Impact due to Investment Volatility (20 year repetition)		\$289M to \$699M
		<b>Segal Result</b>	<b>Gallagher Result</b>
Plan Closed for State and Political Subdivisions	Baseline Result	\$99M	\$445M
	With Range Due to Alternative Demographic Assumptions		\$279M to \$545M
	With Impact due to Investment Volatility (20 year repetition)		\$442M to \$1,098M



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# Thank You

**Doug Anderson | Area Sr. VP of  
Actuarial & Retirement Services**

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Arthur J. Gallagher & Co.  
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# Comparison of Defined Contribution Benefits vs. NDPERS Defined Benefits

DOUG ANDERSON | AUGUST 5, 2014

# Defined Benefit vs. Defined Contribution



***Defined Benefit*** plans provide a fixed monthly benefit. Contributions will increase if investment earnings are less than an assumed amount and will decrease if earnings exceed an assumed amount.

***Defined Contribution*** plans provide benefits that will vary with investment earnings. The contribution amount is fixed.

Regardless of the type of retirement program, benefits will be based on contributions plus investment earnings less administrative costs.

# Comparison of DB & DC Features

	Defined Benefit Plans	Defined Contribution Plans
<b>Investment Risk</b>	Maintained by Sponsor	Maintained by Employee
<b>Participant's Retirement Benefit</b>	Fixed Benefit	Variable Benefit
<b>Employee Cost</b>	Fixed Rate	Fixed Rate
<b>Employer Cost</b>	Variable Cost	Fixed Rate
<b>Benefit Accrual Pattern</b>	Accruals are relatively small early and relatively large near retirement	Accruals are more consistent throughout career
<b>Advantaged Participants</b>	Employees closer to retirement	Employees further from retirement
<b>Retention &amp; Portability</b>	Greater retention of employees (due to valuable accruals near retirement)	Greater portability for employees (due to more valuable early accruals)
<b>Subsidized Early Retirement</b>	Available	Not Available
<b>Understandability</b>	Generally considered difficult for employees to understand	Generally considered easy for employees to understand
<b>Post Retirement Risk</b>	Participant can't outlive benefits	Participant must manage post-retirement mortality risk

# Defined Contribution vs. NDCERS Defined Benefit Plan

## Current Contribution Rate

Ratio of DC to DB benefits at later of Termination or Normal Retirement Age

		Service at Termination						
		5	10	15	20	25	30	35
Age at Hire	20	1765%	1256%	904%	660%	306%	145%	<b>108%</b>
	25	1201%	863%	629%	462%	214%	<b>102%</b>	<b>118%</b>
	30	818%	591%	434%	320%	149%	<b>110%</b>	130%
	35	556%	404%	298%	220%	<b>102%</b>	121%	147%
	40	379%	276%	204%	151%	<b>112%</b>	136%	170%
	45	258%	188%	139%	<b>103%</b>	125%	156%	-
	50	175%	128%	<b>95%</b>	<b>115%</b>	144%	-	-
	55	<b>119%</b>	<b>87%</b>	<b>106%</b>	132%	-	-	-
60	<b>81%</b>	<b>97%</b>	121%	-	-	-	-	

### DC Plan Inputs

Pre-retirement return	<b>8.00%</b>
Post-retirement return	<b>8.00%</b>
Total EE + ER contribution	<b>14.12%</b>
Valuation salary scale	
Valuation mortality (blended 50/50)	

# Defined Contribution vs. NDCERS Defined Benefit Plan

## Contributions Equal Normal Cost

Ratio of DC to DB benefits at later of Termination or Normal Retirement Age

		Service at Termination						
		5	10	15	20	25	30	35
Age at Hire	20	1289%	917%	660%	482%	223%	106%	79%
	25	877%	630%	459%	337%	157%	74%	86%
	30	597%	432%	317%	234%	108%	80%	95%
	35	406%	295%	218%	161%	75%	88%	107%
	40	277%	201%	149%	110%	82%	99%	124%
	45	188%	137%	102%	75%	91%	114%	-
	50	128%	94%	70%	84%	105%	-	-
	55	87%	64%	77%	96%	-	-	-
60	59%	71%	88%	-	-	-	-	

### DC Plan Inputs

Pre-retirement return	8.00%
Post-retirement return	8.00%
Total EE + ER contribution	10.31%
Valuation salary scale	
Valuation mortality (blended 50/50)	

# Defined Contribution vs. NDCERS Defined Benefit Plan

## Post-retirement Longevity Risk Transfer

Ratio of DC to DB benefits at later of Termination or Normal Retirement Age

		Service at Termination						
		5	10	15	20	25	30	35
Age at Hire	20	919%	654%	471%	344%	153%	70%	52%
	25	626%	449%	328%	241%	107%	49%	59%
	30	426%	308%	226%	167%	74%	55%	68%
	35	290%	211%	155%	114%	51%	63%	80%
	40	197%	144%	106%	78%	58%	74%	96%
	45	134%	98%	73%	54%	68%	89%	-
	50	91%	67%	50%	63%	81%	-	-
	55	62%	46%	58%	75%	-	-	-
60	42%	53%	69%	-	-	-	-	

**DC Plan Inputs**

- Pre-retirement return **8.00%**
- Post-retirement return **4.00%**
- Total EE + ER contribution **10.31%**
- Valuation salary scale
- Valuation mortality (blended 50/50)

# Defined Contribution vs. NDCERS Defined Benefit Plan

## Unfavorable Investment Performance

Ratio of DC to DB benefits at later of Termination or Normal Retirement Age

		Service at Termination						
		5	10	15	20	25	30	35
Age at Hire	20	415%	309%	233%	178%	91%	47%	37%
	25	310%	233%	178%	136%	69%	36%	41%
	30	232%	176%	135%	103%	53%	41%	47%
	35	173%	132%	101%	78%	40%	46%	56%
	40	129%	99%	76%	59%	45%	54%	67%
	45	97%	74%	57%	44%	53%	65%	-
	50	72%	55%	43%	51%	63%	-	-
	55	54%	41%	50%	61%	-	-	-
60	40%	48%	59%	-	-	-	-	

### DC Plan Inputs

Pre-retirement return	6.00%
Post-retirement return	4.00%
Total EE + ER contribution	10.31%
Valuation salary scale	
Valuation mortality (blended 50/50)	

# Defined Contribution vs. NDCERS Defined Benefit Plan

## Favorable Investment Performance

Ratio of DC to DB benefits at later of Termination or Normal Retirement Age

		Service at Termination						
		5	10	15	20	25	30	35
Age at Hire	20	2814%	1918%	1325%	932%	381%	160%	<b>115%</b>
	25	1747%	1202%	842%	596%	244%	<b>102%</b>	126%
	30	1085%	752%	531%	377%	154%	<b>111%</b>	140%
	35	674%	469%	332%	236%	<b>97%</b>	122%	158%
	40	418%	292%	207%	148%	<b>106%</b>	137%	183%
	45	260%	182%	129%	<b>93%</b>	<b>119%</b>	158%	-
	50	161%	<b>113%</b>	<b>81%</b>	<b>103%</b>	<b>137%</b>	-	-
	55	<b>100%</b>	<b>70%</b>	<b>90%</b>	<b>118%</b>	-	-	-
60	<b>62%</b>	<b>78%</b>	<b>103%</b>	-	-	-	-	

### DC Plan Inputs

Pre-retirement return	<b>10.00%</b>
Post-retirement return	<b>8.00%</b>
Total EE + ER contribution	<b>10.31%</b>
Valuation salary scale	
Valuation mortality (blended 50/50)	



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# Thank You

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# Memorandum

**TO:** PERS Board

**FROM:** Sparb

**DATE:** August 15, 2014

**SUBJECT:** DC Legislation Bill Drafts

Attached please find copies of bill drafts being considered by the Government Finance Committee relating to establishing a DC retirement plan for new state employees. These bills are:

1. LC 176 – Establishes a DC plan for all new employees starting January 2016. Also allows existing employees to transfer to the DC plan.
2. LC 189 – Establishes a special fund in section 2 called the retirement stabilization fund for the purpose of addressing any unfunded retirement benefit obligations.
3. LC 010 – a concurrent resolution to amend and reenact section 24 of article X of the constitution to allow the legislature to transfer money from the foundation aid stabilization fund to the retirement stabilization fund. This will require approval of the voters.

## Background

The Government Finance Committee will be continuing its study of the above in early September. At the last meeting I indicated to them, based upon our discussion at the last meeting, that PERS would have some thoughts to share with them after having had a chance to review the bill. I would anticipate the committee may have their next meeting the week of September 8 which would be before our next Board meeting. Therefore, if we want to share some thoughts with them, we will need to develop them before the end of the month.

The above bills outline the following process for closing the DB plan to new state employees:

1. Beginning January 2016 all new state employees would be enrolled in the DC plan.
2. Existing employees would be given the opportunity to transfer to the DC plan.
3. Ongoing funding for the plan would come from the same level of contributions by the remaining employees and their employers.
4. The shortfall would be funded by legislative transfers for the Public Employees Retirement System stabilization fund established in Bill LC 189.
5. The funding for the Retirement System stabilization fund would come from transfers from the foundation aid stabilization fund if approved by the voters. This process is proposed in LC 010.

#### Possible Subject Areas for Contributing for the Committee Consideration

1. Funding of the shortfall. No bill should be passed until a firm plan is put in place to fund the large shortfall that will occur in the PERS plan. The above process would pass a bill to close the plan before the funding plan has been approved by the voters. The effective date should be contingent upon approval by the voters. Otherwise, an alternative plan should be adopted which will assure the funding of the large unfunded liability which will be created.
2. Integrity of the trust. As outlined above the funds will not come to the retirement trust until the legislature transfers them to address any unfunded liability. No timeline is established for the transfer, no firm guidelines are established for the management of the stabilization fund except to say that it is a special fund in the state treasury. We may want to say that all funds should be deposited into the retirement trust so they can be managed pursuant to the needs of the funds, are set aside for the exclusive benefit of the members, are not subject to the general creditors of the State of North Dakota, have a prudent person standard established for their management and would insure that plan would be actuarial sound. Jan is reviewing this and will have more information to share with the Board at the next meeting
3. Pension Adequacy. As we have discussed at previous meetings, the existing DC plan may not provide an adequate benefit for its members. That is why PERS has submitted legislation to increase the contribution level of this plan to a total of 16.12% while acknowledging that additional contributions may be needed in the future. To date the legislature has approved increases to 14.12% but provided that it will drop to 12.12% when the DB/Hybrid plan become fully funded. We also have a proposed bill before the legislative Employee Benefits Committee to increase contributions to the plan to 16.12%. We could ask that this bill include provisions to increase contributions and take away the provision that contributions will drop in order that an adequate pension be provided.
4. Ancillary Benefits. In the past we have noted that some ancillary benefits of the DB plan relating to disability and spousal benefits are not provided in the DB plan. We could suggest that any bill to change the plan should provide for benefits in these areas. One method would be to set up a disability policy for each employee in the DC plan and increase the employer paid life insurance benefit.

5. GASB – That any plan to close should insure that the discount rate for the GASB are maintained at the actuarial assumed rate to maximize the states financial position on its financial statements. In order to assure this some entity like the Office of Management and Budget should be authorized to delay implementation or suspend operation of the DC plan until such a plan is assured after consultation with experts in the field. Essentially this would require regular contributions from the Stabilization fund.
6. Contributions - The fourth year of the recovery plan should be passed and the board should be given the authority to set the employer contribution rate. This will assure that in the future sufficient funding for the plan will provided if the transfers from the Stabilization fund are not sufficient.
7. Bill provisions
  - a. Transfer provisions. The bill provides that the transfer amount for existing employees who elect to move to the DC plan will be accumulated contributions plus interest. This was one of two methods used back in 1999 and in 2001. We know that for us to compute these numbers is a lot of effort since a spreadsheet needs to be set up for each member, filled with the necessary data and a calculation completed. We are researching the average time that would be necessary per member but if it was ½ hour per member then for 10,000 members it would be 5,000 hours or 30 months of effort. Last time this was for about 600 members, this time it would be for 10,000 members. This would be very difficult for us to do accurately and within the timelines outlined in the bill. Staff is working on some options for your consideration
  - b. Other legislation changes. Please see the attached matrix in attachment #2

**Defined Contribution Retirement Bill**  
**2015 Session**  
**LC 15.0176.01000**

<b>Proposed Legislation</b>	<b>Reason</b>	<b>Comments</b>
<p>A BILL for an Act to create and enact section 54-52.6-02.1 of the North Dakota Century Code, relating to a defined contribution retirement plan for state employees; and to amend and reenact sections 54-52-01, 54-52-02.5, 54-52-02.9, 54-52.6-01, 54-52.6-02, and 54-52.6-03 of the North Dakota Century Code, relating to a defined contribution retirement plan for state employees.</p> <p><b>BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA: SECTION 1. AMENDMENT.</b></p> <p>Section 54-52-01 of the North Dakota Century Code is amended and reenacted as follows:  <b>54-52-01. (<del>Effective through July 31, 2017</del>) Definition of terms.</b>  As used in this chapter, unless the context otherwise requires:</p> <ol style="list-style-type: none"> <li>1. "Account balance" means the total contributions made by the employee, vested employer contributions under section 54-52-11.1, the vested portion of the vesting fund as of June 30, 1977, and interest credited thereon at the rate established by the board.</li> <li>2. "Beneficiary" means any person in receipt of a benefit provided by this plan or any person designated by a participating member to receive benefits.</li> <li>3. "Correctional officer" means a participating member who is employed as a correctional officer by a political subdivision.</li> <li>4. "Eligible employee" means all permanent employees who <u>are first employed before January 1, 2016, and who meet all of the eligibility requirements set by this chapter and who are eighteen years or more of age, and includes appointive and elective officials under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12 first employed before January 1, 2016,</u> and nonteaching employees of the superintendent of public instruction, including the superintendent of public instruction, who <del>elect</del> <u>elect</u> to transfer from the</li> </ol>		<p>Change:</p> <p>4. "Eligible employee" means all permanent employees who are participating members before January 1, 2016, and who</p> <p>...Elective officials...who are participating members before January 1, 2016</p>

Proposed Legislation	Reason	Comments
<p>teachers' fund for retirement to the public employees retirement system under section 54-52-02.13, and employees of the state board for career and technical education who <del>elect</del> <u>elect</u> to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.14. Eligible employee does not include state employees who <del>elect to become members of the retirement plan established under chapter 54-52.6</del> <u>are first employed after December 31, 2015, but does include supreme court judges and district court judges ; employees eligible to participate in the national guard retirement plan or a law enforcement retirement plan; employees of a political subdivision; and employees of the board of higher education and state institutions under the jurisdiction of the board first employed before January 1, 2016, and who are not participating in the teachers' insurance and annuity association of America - college retirement equities fund retirement plan.</u></p> <p>5. "Employee" means any person employed by a governmental unit, whose compensation is paid out of the governmental unit's funds, or funds controlled or administered by a governmental unit, or paid by the federal government through any of its executive or administrative officials; licensed employees of a school district means those employees eligible to participate in the teachers' fund for retirement who, except under subsection 2 of section 54-52-17.2, are not eligible employees under this chapter.</p> <p>6. "Employer" means a governmental unit.</p> <p>7. "Funding agent" or "agents" means an investment firm, trust bank, or other financial institution which the retirement board may select to hold and invest the employers' and members' contributions.</p> <p>8. "Governmental unit" means the state of North Dakota, except the highway patrol for members of the retirement plan created under chapter 39-03.1, or a participating political subdivision thereof.</p> <p>9. "National guard security officer or firefighter" means a participating member who is:</p> <p>a. A security police employee of the North Dakota national guard; or</p> <p>b. A firefighter employee of the North Dakota national guard.</p> <p>10. "Participating member" means all eligible employees who through payment into the plan have established a claim against the plan.</p> <p>11. "Peace officer" means a participating member who is a peace officer as</p>		<p>Add "Eligible employee does not include state employees who are first employed after December 31, 2015 and are not participating members, but does include... (rest okay)</p> <p>This is written to exclude higher education that is not under TIAA-CREF?</p>

Proposed Legislation	Reason	Comments
<p>defined in section 12-63-01 and is employed as a peace officer by the bureau of criminal investigation or by a political subdivision and, notwithstanding subsection 12, for persons employed after August 1, 2005, is employed thirty-two hours or more per week and at least twenty weeks each year of employment. Participating members of the law enforcement retirement plan created by this chapter who begin employment after August 1, 2005, are ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system.</p> <p>12. "Permanent employee" means a governmental unit employee whose services are not limited in duration and who is filling an approved and regularly funded position in an eligible governmental unit, and is employed twenty hours or more per week and at least twenty weeks each year of employment.</p> <p>13. "Prior service" means service or employment prior to July 1, 1966.</p> <p>14. "Prior service credit" means such credit toward a retirement benefit as the retirement board may determine under the provisions of this chapter.</p> <p>15. "Public employees retirement system" means the retirement plan and program established by this chapter.</p> <p>16. "Retirement" means the acceptance of a retirement allowance under this chapter upon either termination of employment or termination of participation in the retirement plan and meeting the normal retirement date.</p> <p>17. "Retirement board" or "board" means the seven persons designated by this chapter as the governing authority for the retirement system created.</p> <p>18. "Seasonal employee" means a participating member who does not work twelve months a year.</p> <p>19. "Service" means employment on or after July 1, 1966.</p> <p>20. "Service benefit" means the credit toward retirement benefits as determined by the retirement board under the provisions of this chapter.</p> <p>21. "Temporary employee" means a governmental unit employee who is not eligible to participate as a permanent employee, who is at least eighteen years old and not actively contributing to another employer-sponsored pension fund, and, if employed by a school district, occupies a noncertified teacher's position.</p> <p>22. "Wages" and "salaries" means the member's earnings in eligible employment under this chapter reported as salary on the member's federal income tax withholding statements plus any salary reduction or salary deferral</p>		

Proposed Legislation	Reason	Comments
<p>amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as payments for unused sick leave, personal leave, vacation leave paid in a lump sum, overtime, housing allowances, transportation expenses, early retirement incentive pay, severance pay, medical insurance, workforce safety and insurance benefits, disability insurance premiums or benefits, or salary received by a member in lieu of previously employer-provided fringe benefits under an agreement between the member and participating employer. Bonuses may be considered as salary under this section if reported and annualized pursuant to rules adopted by the board.</p> <p><b>(Effective after July 31, 2017) Definition of terms.</b> As used in this chapter, unless the context otherwise requires:</p> <ol style="list-style-type: none"> <li>1. "Account balance" means the total contributions made by the employee, vested employer contributions under section 54-52-11.1, the vested portion of the vesting fund as of June 30, 1977, and interest credited thereon at the rate established by the board.</li> <li>2. "Beneficiary" means any person in receipt of a benefit provided by this plan or any person designated by a participating member to receive benefits.</li> <li>3. "Correctional officer" means a participating member who is employed as a correctional officer by a political subdivision.</li> <li>4. "Eligible employee" means all permanent employees who meet all of the eligibility requirements set by this chapter and who are eighteen years or more of age, and includes appointive and elective officials under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12, and nonteaching employees of the superintendent of public instruction, including the superintendent of public instruction, who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.13, and employees of the state board for career and technical education who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.14. Eligible employee does not include nonclassified state employees who elect to become members of the retirement plan established under chapter 54-52.6 but does include employees of the judicial branch and employees of the board of higher education and state institutions under the jurisdiction of the board.</li> </ol>		

Proposed Legislation	Reason	Comments
<p>5. "Employee" means any person employed by a governmental unit, whose compensation is paid out of the governmental unit's funds, or funds controlled or administered by a governmental unit, or paid by the federal government through any of its executive or administrative officials; licensed employees of a school district means those employees eligible to participate in the teachers' fund for retirement who, except under subsection 2 of section 54-52-17.2, are not eligible employees under this chapter.</p> <p>6. "Employer" means a governmental unit.</p> <p>7. "Funding agent" or "agents" means an investment firm, trust bank, or other financial institution which the retirement board may select to hold and invest the employers' and members' contributions.</p> <p>8. "Governmental unit" means the state of North Dakota, except the highway patrol for members of the retirement plan created under chapter 39-03.1, or a participating political subdivision thereof.</p> <p>9. "National guard security officer or firefighter" means a participating member who is:</p> <p>a. A security police employee of the North Dakota national guard; or</p> <p>b. A firefighter employee of the North Dakota national guard.</p> <p>10. "Participating member" means all eligible employees who through payment into the plan have established a claim against the plan.</p> <p>11. "Peace officer" means a participating member who is a peace officer as defined in section 12-63-01 and is employed as a peace officer by the bureau of criminal investigation or by a political subdivision and, notwithstanding subsection 12, for persons employed after August 1, 2005, is employed thirty-two hours or more per week and at least twenty weeks each year of employment. Participating members of the law enforcement retirement plan created by this chapter who begin employment after August 1, 2005, are ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system.</p> <p>12. "Permanent employee" means a governmental unit employee whose services are not limited in duration and who is filling an approved and regularly funded position in an eligible governmental unit, and is employed twenty hours or more per week and at least twenty weeks each year of employment.</p>		

Proposed Legislation	Reason	Comments
<p>13. <del>"Prior service" means service or employment prior to July 1, 1966.</del></p> <p>14. <del>"Prior service credit" means such credit toward a retirement benefit as the retirement board may determine under the provisions of this chapter.</del></p> <p>15. <del>"Public employees retirement system" means the retirement plan and program established by this chapter.</del></p> <p>16. <del>"Retirement" means the acceptance of a retirement allowance under this chapter upon either termination of employment or termination of participation in the retirement plan and meeting the normal retirement date.</del></p> <p>17. <del>"Retirement board" or "board" means the seven persons designated by this chapter as the governing authority for the retirement system created.</del></p> <p>18. <del>"Seasonal employee" means a participating member who does not work twelve months a year.</del></p> <p>19. <del>"Service" means employment on or after July 1, 1966.</del></p> <p>20. <del>"Service benefit" means the credit toward retirement benefits as determined by the retirement board under the provisions of this chapter.</del></p> <p>21. <del>"Temporary employee" means a governmental unit employee who is not eligible to participate as a permanent employee, who is at least eighteen years old and not actively contributing to another employer-sponsored pension fund, and, if employed by a school district, occupies a noncertified teacher's position.</del></p> <p>22. <del>"Wages" and "salaries" means the member's earnings in eligible employment under this chapter reported as salary on the member's federal income tax withholding statements plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as payments for unused sick leave, personal leave, vacation leave paid in a lump sum, overtime, housing allowances, transportation expenses, early retirement incentive pay, severance pay, medical insurance, workforce safety and insurance benefits, disability insurance premiums or benefits, or salary received by a member in lieu of previously employer-provided fringe benefits under an agreement between the member and participating employer. Bonuses may be considered as salary under this section if reported and annualized pursuant to rules adopted by the board.</del></p>		
<p><b>SECTION 2. AMENDMENT.</b> Section 54-52-02.5 of the North Dakota Century Code is amended and reenacted as follows:  <b>54-52-02.5. Newly elected and appointed state officials.</b></p>		<p>"after December 31, 2015 add, an individual elected or appointed to a state</p>

Proposed Legislation	Reason	Comments
<p>After December 31, 1999, <del>a person</del> <u>and before January 1, 2016, an individual</u> elected or appointed to a state office for the first time must, from and after the date that <del>person</del> <u>individual</u> qualifies and takes office, be a participating member of the public employees retirement system unless that <del>person</del> <u>individual</u> makes an election at any time during the first six months after the date the <del>person</del> <u>individual</u> takes office to participate in the retirement plan established under chapter 54-52.6. <u>After December 31, 2015, an individual elected or appointed to a state office for the first time must, from and after the date the individual qualifies and takes office, be a participating member of the retirement plan established under chapter 54-52.6.</u> As used in this section, the phrase "for the first time" means <del>a person</del> <u>an individual</u> appointed, who, after December 31, 1999, does not hold office as an appointed official at the time of that <del>person's</del> <u>individual's</u> appointment.</p>		<p>office for the first time must be a participating member of 52-52-.6" takes away the elected official's 6 months election period to join a NDPERS retirement plan or waive participation, it participation in DC mandatory</p> <p>Sentence 2: Take out "for the first time". insert "unless they are a participating member under this chapter"</p>
<p><b>SECTION 3. AMENDMENT.</b> Section 54-52-02.9 of the North Dakota Century Code is amended and reenacted as follows:  <b>54-52-02.9. Participation by temporary employees.</b>  A <u>Before January 1, 2016,</u> a temporary employee may elect, within one hundred eighty days of beginning employment, to participate in the public employees retirement system under this chapter and receive credit for service after enrollment. The temporary employee shall pay monthly to the fund an amount equal to <del>eight</del> <u>fourteen</u> and twelve-hundredths percent times the temporary employee's present monthly salary. <del>The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and with an additional two percent increase, beginning with the reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014.</del> The temporary employee shall also pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be</p>		

Proposed Legislation	Reason	Comments
<p>recorded as a member contribution pursuant to section 54-52.1-03.2. An employer may not pay the temporary employee's contributions. A temporary employee <u>who is first employed before January 1, 2016</u>, may continue to participate as a temporary employee in the public employees retirement system until termination of employment or reclassification of the temporary employee as a permanent employee. A temporary employee may not purchase any additional credit, including additional credit under section 54-52-17.4 or past service under section 54-52-02.6.</p>		<p>Change to “ who is a participating member before January 1, 2016”</p>
<p><b>SECTION 4. AMENDMENT.</b> Section 54-52.6-01 of the North Dakota Century Code is amended and reenacted as follows:  <b>54-52.6-01. (Effective through July 31, 2017 <del>December-31, 2015</del>) Definition of terms.</b>  As used in this chapter, unless the context otherwise requires:</p> <ol style="list-style-type: none"> <li>1. "Board" means the public employees retirement system board.</li> <li>2. "Deferred member" means a person who elected to receive deferred vested retirement benefits under chapter 54-52.</li> <li>3. "Eligible employee" means a permanent state employee who elects to participate in the retirement plan under this chapter.</li> <li>4. "Employee" means any person employed by the state, whose compensation is paid out of state funds, or funds controlled or administered by the state or paid by the federal government through any of its executive or administrative officials.</li> <li>5. "Employer" means the state of North Dakota.</li> <li>6. "Participating member" means an eligible employee who elects to participate in the defined contribution retirement plan established under this chapter.</li> <li>7. "Permanent employee" means a state employee whose services are not limited in duration and who is filling an approved and regularly funded position and is employed twenty hours or more per week and at least five months each year.</li> <li>8. "Wages" and "salaries" means earnings in eligible employment under this chapter reported as salary on a federal income tax withholding statement plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as payments for unused sick leave,</li> </ol>		

Proposed Legislation	Reason	Comments
<p>personal leave, vacation leave paid in a lump sum, overtime, housing allowances, transportation expenses, early retirement, incentive pay, severance pay, medical insurance, workforce safety and insurance benefits, disability insurance premiums or benefits, or salary received by a member in lieu of previously employer-provided fringe benefits under an agreement between an employee and a participating employer. Bonuses may be considered as salary under this section if reported and annualized pursuant to rules adopted by the board.</p> <p><b>(Effective after July 31, 2017 December 31, 2015) Definition of terms.</b> As used in this chapter, unless the context otherwise requires:</p> <ol style="list-style-type: none"> <li>1. "Board" means the public employees retirement system board.</li> <li>2. "Deferred member" means a person who elected to receive deferred vested retirement benefits under chapter 54-52.</li> <li>3. "Eligible employee" means a permanent state employee, <del>except an employee of the judicial branch or an employee of the board of higher education and state institutions under the jurisdiction of the board,</del> who is eighteen years or more of age and who is in a position not classified by North Dakota human resource management services. If a participating member loses permanent employee status and becomes a temporary employee, the member may still participate in the defined contribution retirement plan.  <u>"Eligible employee" does not include a supreme court judge or a district court judge, an employee eligible to participate in the national guard retirement plan or a law enforcement retirement plan, an employee of a political subdivision , or an employee of the board of higher education and state institutions under the jurisdiction of the board who is participating in the teachers' insurance and annuity association of America -college retirement equities fund retirement plan.</u></li> <li>4. "Employee" means any person employed by the state, whose compensation is paid out of state funds, or funds controlled or administered by the state or paid by the federal government through any of its executive or administrative officials.</li> <li>5. "Employer" means the state of North Dakota.</li> <li>6. "Participating member" means an eligible employee who <del>elects to Participate</del> <u>participates</u> in the defined contribution retirement plan established under this chapter.</li> </ol>		<p>#3. Needs to be consistent</p> <p>What about deferred who return to work after 1/1/16? Do they remain in DB</p>

Proposed Legislation	Reason	Comments
<p>7. "Permanent employee" means a state employee whose services are not limited in duration and who is filling an approved and regularly funded position and is employed twenty hours or more per week and at least five months each year.</p> <p>8. <u>"Temporary employee" means a governmental unit employee who is not eligible to participate as a permanent employee, who is at least eighteen years old and not actively contributing to another employer - sponsored pension fund, and, if employed by a school district, occupies a noncertified teacher's position.</u></p> <p>8-9. "Wages" and "salaries" means earnings in eligible employment under this chapter reported as salary on a federal income tax withholding statement plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as payments for unused sick leave, personal leave, vacation leave paid in a lump sum, overtime, housing allowances, transportation expenses, early retirement, incentive pay, severance pay, medical insurance, workforce safety and insurance benefits, disability insurance premiums or benefits, or salary received by a member in lieu of previously employer-provided fringe benefits under an agreement between an employee and a participating employer. Bonuses may be considered as salary under this section if reported and annualized pursuant to rules adopted by the board.</p>		
<p><b>SECTION 5. AMENDMENT.</b> Section 54-52.6-02 of the North Dakota Century Code is amended and reenacted as follows:</p> <p><b>54-52.6-02. (Effective through July 31, 2017 December 31, 2015) Election.</b></p> <p>1. The board shall provide an opportunity for eligible employees who are new members of the public employees retirement system under chapter 54-52 to transfer to the defined contribution plan under this chapter pursuant to the rules and policies adopted by the board. An election made by a member of the public employees retirement system under chapter 54-52 to transfer to the defined contribution retirement plan under this chapter is irrevocable. For an individual who elects to transfer membership from the public employees retirement system under chapter 54-52 to the defined contribution retirement plan under this chapter, the board shall transfer a lump sum amount from the public employees retirement system fund to the participating member's account in the defined contribution retirement plan under this chapter. However, if the individual</p>		

Proposed Legislation	Reason	Comments
<p>terminates employment prior to receiving the lump sum transfer under this section, the election made is ineffective and the individual remains a member of the public employees retirement system under chapter 54-52 and retains all the rights and privileges under that chapter. This section does not affect an individual's right to health benefits or retiree health benefits under chapter 54-52.1.</p> <p>2. If the board receives notification from the internal revenue service that this section or any portion of this section will cause the public employees retirement system or the retirement plan established under this chapter to be disqualified for tax purposes under the Internal Revenue Code, then the portion that will cause the disqualification does not apply.</p> <p>3. A participating member who becomes a temporary employee may still participate in the defined contribution retirement plan upon filing an election with the board within one hundred eighty days of transferring to temporary employee status. The participating member may not become a member of the defined benefit plan as a temporary employee. The temporary employee electing to participate in the defined contribution retirement plan shall pay monthly to the fund an amount equal to <del>eight</del> <u>fourteen</u> and twelve-hundredths percent times the temporary employee's present monthly salary. <del>The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of two percent, beginning with the monthly reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014.</del> The temporary employee shall also pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. An employer may not pay the temporary employee's contributions. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee.</p> <p>4. A former participating member who has accepted a retirement distribution pursuant to section 54-52.6-13 and who subsequently becomes employed by an entity different from the employer with which the member was employed at the</p>		

Proposed Legislation	Reason	Comments
<p>time the member retired but which does participate in any state-sponsored retirement plan may, before reenrolling in the defined contribution retirement plan, elect to permanently waive future participation in the defined contribution retirement plan, whatever plan in which the new employing entity participates, and the retiree health program and maintain that member's retirement status. Neither the member nor the employer are required to make any future retirement contributions on behalf of that employee.</p> <p><b>(Effective after July 31, 2017 December 31, 2015) Election.</b></p> <p>1. The board shall provide an opportunity for each eligible employee who is a member of the public employees retirement system on <del>September 30, 2001,</del> and who has not made a written election under this section <del>June 30, 2016,</del> to transfer to the defined contribution retirement plan <del>before October 1, 2001,</del> to elect <del>by electing</del> in writing to terminate membership in the public employees retirement system and elect to become a participating member under this chapter. Except as provided in section 54-52.6-03, an election made by an eligible employee under this section is irrevocable. <del>The board shall accept written elections under this section from eligible employees during the period beginning on July 1, 1999, and ending 12:01 a.m. December 14, 2001.</del> An eligible employee who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. An eligible employee who makes and files a written election <u>transfers to the defined contribution plan</u> under this section ceases to be a member of the public employees retirement system <del>effective twelve midnight December 31, 2001;</del> and becomes a participating member in the defined contribution retirement plan under this chapter <del>effective 12:01 a.m. January 1, 2002;</del> and waives all of that person's rights to a pension, annuity, retirement allowance, insurance benefit, or any other benefit under the public employees retirement system <del>effective December 31, 2001.</del> This section does not affect a person's right to health benefits or retiree health benefits under chapter 54-52.1. An eligible employee who is first employed and entered upon the payroll of that person's employer <del>after September 30, 2001,</del> may make an election to participate in the defined contribution retirement plan established under this chapter at any time during the <del>first six months after the date of</del></p>		<p>After "employee" and before "who" add exclusion from language in section 1, # 4.</p> <p>Will NDPERS need to provide comparisons for existing employees? If so, how will we do this for such a large volume?</p> <p>Are all participating members eligible to transfer including Political Subdivision members, supreme court, judges, Law Enforcement, Higher Ed?</p> <p>Does eligible employee include temporary employees?</p>

Proposed Legislation	Reason	Comments
<p>employment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window period beginning July 1, 2016, and ending <u>December 31, 2016.</u></p> <p>2. If an individual who is a deferred member of the public employees retirement system on <del>September 30, 2004</del><u>December 31, 2015</u>, is reemployed and by virtue of that employment is again eligible for membership in the public employees retirement system under chapter 54-52, the individual may elect in writing to remain a member of the public employees retirement system or if eligible to participate in the defined contribution retirement plan established under this chapter to terminate membership in the public employees retirement system and become a participating member in the defined contribution retirement plan established under this chapter. An election made by a deferred member under this section is irrevocable. The board shall accept written elections under this section from a deferred member during the period beginning on the date of the individual's reemployment and ending upon the expiration of six months after the date of that reemployment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window. A deferred member who makes and files a written election to remain a member of the public employees retirement system retains all rights and is subject to all conditions as a member of that retirement system. A deferred member who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. A deferred member who makes and files a written election to terminate membership in the public employees retirement system ceases to be a member of the public employees retirement system effective on the last day of the payroll period that includes the date of the election; becomes a participating member in the defined contribution retirement plan under this chapter effective the first day of the payroll immediately following the date of the</p>		<p>December 31, 2016 is a Saturday, needs to be a date that we are open and should also state 5:00 p.m.</p>

Proposed Legislation	Reason	Comments
<p>election; and waives all of that person's rights to a pension, an annuity, a retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective the last day of the payroll that includes the date of the election. This section does not affect any right to health benefits or retiree health benefits to which the deferred member may otherwise be entitled.</p> <p>3. An eligible employee who elects to participate in the retirement plan established under this chapter must remain a participant even if that employee <del>returns to the classified service or</del> becomes employed by a political subdivision that participates in the public employees retirement system. The contribution amount must be as provided in this chapter, regardless of the position in which the employee is employed. Notwithstanding the irrevocability provisions of this chapter, if a member who elects to participate in the retirement plan established under this chapter becomes a supreme or district court judge, becomes a member of the highway patrol, becomes employed in a position subject to teachers' fund for retirement membership, or becomes an employee of the board of higher education or state institution under the jurisdiction of the board who is eligible to participate in an alternative retirement program established under subsection 6 of section 15-10-17, the member's status as a member of the defined contribution retirement plan is suspended, and the member becomes a new member of the retirement plan for which that member's new position is eligible. The member's account balance remains in the defined contribution retirement plan, but no new contributions may be made to that account. The member's service credit and salary history that were forfeited as a result of the member's transfer to the defined contribution retirement plan remain forfeited, and service credit accumulation in the new retirement plan begins from the first day of employment in the new position. If the member later returns to employment that is eligible for the defined contribution plan, the member's suspension must be terminated, the member again becomes a member of the defined contribution retirement plan, and the member's account resumes accepting contributions. At the member's option, and pursuant to rules adopted by the board, the member may transfer any available balance as determined by the provisions of the alternate retirement plan into the member's account under this chapter.</p>		

Proposed Legislation	Reason	Comments
<p>4. After consultation with its actuary, the board shall determine the method by which a participating member or deferred member may make a written election under this section. If the participating member or deferred member is married at the time of the election, the election is not effective unless the election is signed by the individual's spouse. However, the board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.</p> <p>5. If the board receives notification from the internal revenue service that this section or any portion of this section will cause the public employees retirement system or the retirement plan established under this chapter to be disqualified for tax purposes under the Internal Revenue Code, then the portion that will cause the disqualification does not apply.</p> <p>6. A participating member who becomes a temporary employee may still participate in the defined contribution retirement plan upon filing an election with the board within one hundred eighty days of transferring to temporary employee status. The participating member may not become a member of the defined benefit plan as a temporary employee. The temporary employee electing to participate in the defined contribution retirement plan shall pay monthly to the fund an amount equal to <del>eight</del> <u>fourteen</u> and twelve-hundredths percent times the temporary employee's present monthly salary. <del>The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of two percent, beginning with the monthly reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014.</del> The temporary employee shall also pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. An employer may not pay the temporary employee's contributions. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee.</p> <p>7. A former participating member who has accepted a retirement distribution pursuant to section 54-52.6-13 and who subsequently becomes employed by an</p>		

Proposed Legislation	Reason	Comments
<p>entity different from the employer with which the member was employed at the time the member retired but which does participate in any state-sponsored retirement plan may, before reenrolling in the defined contribution retirement plan, elect to permanently waive future participation in the defined contribution retirement plan, whatever plan in which the new employing entity participates, and the retiree health program and maintain that member's retirement status. Neither the member nor the employer are required to make any future retirement contributions on behalf of that employee.</p>		
<p><b>SECTION 6.</b> Section 54-52.6-02.1 of the North Dakota Century Code is created and enacted as follows:  <b>54 - 52.6 - 02.1. (Effective January 1, 2016) Membership .</b>  <u>1. All eligible employees are participating members.</u>  <u>2. A temporary employee may elect, within one hundred eighty days of beginning employment, to participate in the defined contribution retirement plan under this chapter. The temporary employee electing to participate in the defined contribution retirement plan shall pay monthly to the fund an amount equal to fourteen and twelve hundredths percent times the temporary employee's present monthly salary. The temporary employee shall also pay the required monthly contribution of the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. An employer may not pay the temporary employee's contributions. A temporary employee may continue to participate as a temporary employee in the public employees retirement system until termination of employment.</u></p>		
<p><b>SECTION 7. AMENDMENT.</b> Section 54-52.6-03 of the North Dakota Century Code is amended and reenacted as follows:  <b>54-52.6-03. (Suspended from October 1, 2013, through July 31, 2017 December 31, 2015) Transfer of accumulated fund balances.</b>  For an individual who elects to terminate membership in the public employees retirement system under chapter 54-52, the board shall transfer a lump sum amount from the retirement fund to the participating member's account in the defined contribution retirement plan under this chapter. However, if the individual terminates employment prior to receiving the lump sum transfer under this section, the election made under section 54-52.6-02 is ineffective and the</p>		<p>What about EE contributions (regular EE contributions, purchases, etc)?</p> <p>Is PEP nullified here or is there any different reporting we have to do for those with</p>

Proposed Legislation	Reason	Comments
<p>individual remains a member of the public employees retirement system under chapter 54-52 and retains all the rights and benefits provided under that chapter. The board shall calculate the amount to be transferred for persons employed before October 1, 2001, using the two following formulas, and shall transfer the greater of the two amounts obtained:</p> <p>1. The actuarial present value of the individual's accumulated benefit obligation under the public employees retirement system based on the assumption that the individual will retire under the earliest applicable normal retirement age, plus interest from January 1, 2001, to the date of transfer, at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election; or</p> <p>2. The formula of the actual employer contribution made, less vested employer contributions made pursuant to section 54-52-11.1, plus compound interest at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election plus the employee account balance. The board shall calculate the amount to be transferred for persons employed after September 30, 2001, using only the formula contained in subsection 2.</p>		PEP?

15.0176.01000

Sixty-fourth  
Legislative Assembly  
of North Dakota

FIRST DRAFT:  
Prepared by the Legislative Council staff for the  
Government Finance Committee  
August 2014

Introduced by

1 A BILL for an Act to create and enact section 54-52.6-02.1 of the North Dakota Century Code,  
2 relating to a defined contribution retirement plan for state employees; and to amend and reenact  
3 sections 54-52-01, 54-52-02.5, 54-52-02.9, 54-52.6-01, 54-52.6-02, and 54-52.6-03 of the North  
4 Dakota Century Code, relating to a defined contribution retirement plan for state employees.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 54-52-01 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **54-52-01. (~~Effective through July 31, 2017~~) Definition of terms.**

9 As used in this chapter, unless the context otherwise requires:

- 10 1. "Account balance" means the total contributions made by the employee, vested  
11 employer contributions under section 54-52-11.1, the vested portion of the vesting  
12 fund as of June 30, 1977, and interest credited thereon at the rate established by the  
13 board.
- 14 2. "Beneficiary" means any person in receipt of a benefit provided by this plan or any  
15 person designated by a participating member to receive benefits.
- 16 3. "Correctional officer" means a participating member who is employed as a correctional  
17 officer by a political subdivision.
- 18 4. "Eligible employee" means all permanent employees who are first employed before  
19 January 1, 2016, and who meet all of the eligibility requirements set by this chapter  
20 and who are eighteen years or more of age, and includes appointive and elective  
21 officials under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12 first employed  
22 before January 1, 2016, and nonteaching employees of the superintendent of public  
23 instruction, including the superintendent of public instruction, who ~~electelected~~ to  
24 transfer from the teachers' fund for retirement to the public employees retirement

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- 1 system under section 54-52-02.13, and employees of the state board for career and  
2 technical education who ~~elect~~elect to transfer from the teachers' fund for retirement  
3 to the public employees retirement system under section 54-52-02.14. Eligible  
4 employee does not include state employees who ~~elect to become members of the~~  
5 ~~retirement plan established under chapter 54-52.6~~are first employed after  
6 December 31, 2015, but does include supreme court judges and district court judges;  
7 employees eligible to participate in the national guard retirement plan or a law  
8 enforcement retirement plan; employees of a political subdivision; and employees of  
9 the board of higher education and state institutions under the jurisdiction of the board  
10 first employed before January 1, 2016, and who are not participating in the teachers'  
11 insurance and annuity association of America - college retirement equities fund  
12 retirement plan.
- 13 5. "Employee" means any person employed by a governmental unit, whose  
14 compensation is paid out of the governmental unit's funds, or funds controlled or  
15 administered by a governmental unit, or paid by the federal government through any of  
16 its executive or administrative officials; licensed employees of a school district means  
17 those employees eligible to participate in the teachers' fund for retirement who, except  
18 under subsection 2 of section 54-52-17.2, are not eligible employees under this  
19 chapter.
- 20 6. "Employer" means a governmental unit.
- 21 7. "Funding agent" or "agents" means an investment firm, trust bank, or other financial  
22 institution which the retirement board may select to hold and invest the employers' and  
23 members' contributions.
- 24 8. "Governmental unit" means the state of North Dakota, except the highway patrol for  
25 members of the retirement plan created under chapter 39-03.1, or a participating  
26 political subdivision thereof.
- 27 9. "National guard security officer or firefighter" means a participating member who is:  
28 a. A security police employee of the North Dakota national guard; or  
29 b. A firefighter employee of the North Dakota national guard.
- 30 10. "Participating member" means all eligible employees who through payment into the  
31 plan have established a claim against the plan.

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- 1       11. "Peace officer" means a participating member who is a peace officer as defined in  
2           section 12-63-01 and is employed as a peace officer by the bureau of criminal  
3           investigation or by a political subdivision and, notwithstanding subsection 12, for  
4           persons employed after August 1, 2005, is employed thirty-two hours or more per  
5           week and at least twenty weeks each year of employment. Participating members of  
6           the law enforcement retirement plan created by this chapter who begin employment  
7           after August 1, 2005, are ineligible to participate concurrently in any other retirement  
8           plan administered by the public employees retirement system.
- 9       12. "Permanent employee" means a governmental unit employee whose services are not  
10          limited in duration and who is filling an approved and regularly funded position in an  
11          eligible governmental unit, and is employed twenty hours or more per week and at  
12          least twenty weeks each year of employment.
- 13       13. "Prior service" means service or employment prior to July 1, 1966.
- 14       14. "Prior service credit" means such credit toward a retirement benefit as the retirement  
15          board may determine under the provisions of this chapter.
- 16       15. "Public employees retirement system" means the retirement plan and program  
17          established by this chapter.
- 18       16. "Retirement" means the acceptance of a retirement allowance under this chapter upon  
19          either termination of employment or termination of participation in the retirement plan  
20          and meeting the normal retirement date.
- 21       17. "Retirement board" or "board" means the seven persons designated by this chapter as  
22          the governing authority for the retirement system created.
- 23       18. "Seasonal employee" means a participating member who does not work twelve  
24          months a year.
- 25       19. "Service" means employment on or after July 1, 1966.
- 26       20. "Service benefit" means the credit toward retirement benefits as determined by the  
27          retirement board under the provisions of this chapter.
- 28       21. "Temporary employee" means a governmental unit employee who is not eligible to  
29          participate as a permanent employee, who is at least eighteen years old and not  
30          actively contributing to another employer-sponsored pension fund, and, if employed by  
31          a school district, occupies a noncertified teacher's position.

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1       22. "Wages" and "salaries" means the member's earnings in eligible employment under  
2       this chapter reported as salary on the member's federal income tax withholding  
3       statements plus any salary reduction or salary deferral amounts under 26 U.S.C. 125,  
4       401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as  
5       payments for unused sick leave, personal leave, vacation leave paid in a lump sum,  
6       overtime, housing allowances, transportation expenses, early retirement incentive pay,  
7       severance pay, medical insurance, workforce safety and insurance benefits, disability  
8       insurance premiums or benefits, or salary received by a member in lieu of previously  
9       employer-provided fringe benefits under an agreement between the member and  
10      participating employer. Bonuses may be considered as salary under this section if  
11      reported and annualized pursuant to rules adopted by the board.

12      ~~(Effective after July 31, 2017) Definition of terms. As used in this chapter, unless the~~  
13      ~~context otherwise requires:~~

- 14      ~~1. "Account balance" means the total contributions made by the employee, vested~~  
15      ~~employer contributions under section 54-52-11.1, the vested portion of the vesting~~  
16      ~~fund as of June 30, 1977, and interest credited thereon at the rate established by the~~  
17      ~~board.~~
- 18      ~~2. "Beneficiary" means any person in receipt of a benefit provided by this plan or any~~  
19      ~~person designated by a participating member to receive benefits.~~
- 20      ~~3. "Correctional officer" means a participating member who is employed as a correctional~~  
21      ~~officer by a political subdivision.~~
- 22      ~~4. "Eligible employee" means all permanent employees who meet all of the eligibility~~  
23      ~~requirements set by this chapter and who are eighteen years or more of age, and~~  
24      ~~includes appointive and elective officials under sections 54-52-02.5, 54-52-02.11, and~~  
25      ~~54-52-02.12, and nonteaching employees of the superintendent of public instruction,~~  
26      ~~including the superintendent of public instruction, who elect to transfer from the~~  
27      ~~teachers' fund for retirement to the public employees retirement system under section~~  
28      ~~54-52-02.13, and employees of the state board for career and technical education who~~  
29      ~~elect to transfer from the teachers' fund for retirement to the public employees~~  
30      ~~retirement system under section 54-52-02.14. Eligible employee does not include~~  
31      ~~nonclassified state employees who elect to become members of the retirement plan~~

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- 1           ~~established under chapter 54-52.6 but does include employees of the judicial branch-~~  
2           ~~and employees of the board of higher education and state institutions under the~~  
3           ~~jurisdiction of the board.~~
- 4           5.   ~~"Employee" means any person employed by a governmental unit, whose~~  
5           ~~compensation is paid out of the governmental unit's funds, or funds controlled or~~  
6           ~~administered by a governmental unit, or paid by the federal government through any of~~  
7           ~~its executive or administrative officials; licensed employees of a school district means~~  
8           ~~those employees eligible to participate in the teachers' fund for retirement who, except~~  
9           ~~under subsection 2 of section 54-52-17.2, are not eligible employees under this~~  
10           ~~chapter.~~
- 11          6.   ~~"Employer" means a governmental unit.~~
- 12          7.   ~~"Funding agent" or "agents" means an investment firm, trust bank, or other financial~~  
13           ~~institution which the retirement board may select to hold and invest the employers' and~~  
14           ~~members' contributions.~~
- 15          8.   ~~"Governmental unit" means the state of North Dakota, except the highway patrol for~~  
16           ~~members of the retirement plan created under chapter 39-03.1, or a participating~~  
17           ~~political subdivision thereof.~~
- 18          9.   ~~"National guard security officer or firefighter" means a participating member who is:~~  
19           a.   ~~A security police employee of the North Dakota national guard; or~~  
20           b.   ~~A firefighter employee of the North Dakota national guard.~~
- 21          10.   ~~"Participating member" means all eligible employees who through payment into the~~  
22           ~~plan have established a claim against the plan.~~
- 23          11.   ~~"Peace officer" means a participating member who is a peace officer as defined in~~  
24           ~~section 12-63-01 and is employed as a peace officer by the bureau of criminal~~  
25           ~~investigation or by a political subdivision and, notwithstanding subsection 12, for~~  
26           ~~persons employed after August 1, 2005, is employed thirty-two hours or more per~~  
27           ~~week and at least twenty weeks each year of employment. Participating members of~~  
28           ~~the law enforcement retirement plan created by this chapter who begin employment~~  
29           ~~after August 1, 2005, are ineligible to participate concurrently in any other retirement~~  
30           ~~plan administered by the public employees retirement system.~~

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- 1        12: ~~"Permanent employee" means a governmental unit employee whose services are not~~  
2            ~~limited in duration and who is filling an approved and regularly funded position in an~~  
3            ~~eligible governmental unit, and is employed twenty hours or more per week and at~~  
4            ~~least twenty weeks each year of employment.~~
- 5        13: ~~"Prior service" means service or employment prior to July 1, 1966.~~
- 6        14: ~~"Prior service credit" means such credit toward a retirement benefit as the retirement~~  
7            ~~board may determine under the provisions of this chapter.~~
- 8        15: ~~"Public employees retirement system" means the retirement plan and program~~  
9            ~~established by this chapter.~~
- 10       16: ~~"Retirement" means the acceptance of a retirement allowance under this chapter upon~~  
11           ~~either termination of employment or termination of participation in the retirement plan~~  
12           ~~and meeting the normal retirement date.~~
- 13       17: ~~"Retirement board" or "board" means the seven persons designated by this chapter as~~  
14           ~~the governing authority for the retirement system created.~~
- 15       18: ~~"Seasonal employee" means a participating member who does not work twelve~~  
16           ~~months a year.~~
- 17       19: ~~"Service" means employment on or after July 1, 1966.~~
- 18       20: ~~"Service benefit" means the credit toward retirement benefits as determined by the~~  
19           ~~retirement board under the provisions of this chapter.~~
- 20       21: ~~"Temporary employee" means a governmental unit employee who is not eligible to~~  
21           ~~participate as a permanent employee, who is at least eighteen years old and not~~  
22           ~~actively contributing to another employer sponsored pension fund, and, if employed by~~  
23           ~~a school district, occupies a noncertified teacher's position.~~
- 24       22: ~~"Wages" and "salaries" means the member's earnings in eligible employment under~~  
25           ~~this chapter reported as salary on the member's federal income tax withholding~~  
26           ~~statements plus any salary reduction or salary deferral amounts under 26 U.S.C. 125,~~  
27           ~~401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as~~  
28           ~~payments for unused sick leave, personal leave, vacation leave paid in a lump sum,~~  
29           ~~overtime, housing allowances, transportation expenses, early retirement incentive pay,~~  
30           ~~severance pay, medical insurance, workforce safety and insurance benefits, disability~~  
31           ~~insurance premiums or benefits, or salary received by a member in lieu of previously~~

1           ~~employer-provided fringe benefits under an agreement between the member and~~  
2           ~~participating employer. Bonuses may be considered as salary under this section if~~  
3           ~~reported and annualized pursuant to rules adopted by the board.~~

4           **SECTION 2. AMENDMENT.** Section 54-52-02.5 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6           **54-52-02.5. Newly elected and appointed state officials.**

7           ~~After December 31, 1999, a person~~ and before January 1, 2016, an individual elected or  
8 appointed to a state office for the first time must, from and after the date that ~~person~~individual  
9 qualifies and takes office, be a participating member of the public employees retirement system  
10 unless that ~~person~~individual makes an election at any time during the first six months after the  
11 date the ~~person~~individual takes office to participate in the retirement plan established under  
12 chapter 54-52.6. After December 31, 2015, an individual elected or appointed to a state office  
13 for the first time must, from and after the date the individual qualifies and takes office, be a  
14 participating member of the retirement plan established under chapter 54-52.6. As used in this  
15 section, the phrase "for the first time" means ~~a person~~ an individual appointed, who, after  
16 December 31, 1999, does not hold office as an appointed official at the time of that  
17 ~~person's~~individual's appointment.

18           **SECTION 3. AMENDMENT.** Section 54-52-02.9 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20           **54-52-02.9. Participation by temporary employees.**

21           ~~A~~Before January 1, 2016, a temporary employee may elect, within one hundred eighty days  
22 of beginning employment, to participate in the public employees retirement system under this  
23 chapter and receive credit for service after enrollment. The temporary employee shall pay  
24 monthly to the fund an amount equal to ~~eight~~fourteen and twelve-hundredths percent times the  
25 temporary employee's present monthly salary. ~~The amount required to be paid by a temporary~~  
26 ~~employee increases by two percent times the temporary employee's present monthly salary~~  
27 ~~beginning with the monthly reporting period of January 2012, and with an additional two percent~~  
28 ~~increase, beginning with the reporting period of January 2013, and with an additional increase~~  
29 ~~of two percent, beginning with the monthly reporting period of January 2014.~~ The temporary  
30 employee shall also pay the required monthly contribution to the retiree health benefit fund  
31 established under section 54-52.1-03.2. This contribution must be recorded as a member

1 contribution pursuant to section 54-52.1-03.2. An employer may not pay the temporary  
2 employee's contributions. A temporary employee who is first employed before January 1, 2016,  
3 may continue to participate as a temporary employee in the public employees retirement  
4 system until termination of employment or reclassification of the temporary employee as a  
5 permanent employee. A temporary employee may not purchase any additional credit, including  
6 additional credit under section 54-52-17.4 or past service under section 54-52-02.6.

7 **SECTION 4. AMENDMENT.** Section 54-52.6-01 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **54-52.6-01. (Effective through July 31, 2017December 31, 2015) Definition of terms.**

10 As used in this chapter, unless the context otherwise requires:

- 11 1. "Board" means the public employees retirement system board.
- 12 2. "Deferred member" means a person who elected to receive deferred vested retirement  
13 benefits under chapter 54-52.
- 14 3. "Eligible employee" means a permanent state employee who elects to participate in  
15 the retirement plan under this chapter.
- 16 4. "Employee" means any person employed by the state, whose compensation is paid  
17 out of state funds, or funds controlled or administered by the state or paid by the  
18 federal government through any of its executive or administrative officials.
- 19 5. "Employer" means the state of North Dakota.
- 20 6. "Participating member" means an eligible employee who elects to participate in the  
21 defined contribution retirement plan established under this chapter.
- 22 7. "Permanent employee" means a state employee whose services are not limited in  
23 duration and who is filling an approved and regularly funded position and is employed  
24 twenty hours or more per week and at least five months each year.
- 25 8. "Wages" and "salaries" means earnings in eligible employment under this chapter  
26 reported as salary on a federal income tax withholding statement plus any salary  
27 reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or  
28 457. "Salary" does not include fringe benefits such as payments for unused sick leave,  
29 personal leave, vacation leave paid in a lump sum, overtime, housing allowances,  
30 transportation expenses, early retirement, incentive pay, severance pay, medical  
31 insurance, workforce safety and insurance benefits, disability insurance premiums or

1 benefits, or salary received by a member in lieu of previously employer-provided fringe  
2 benefits under an agreement between an employee and a participating employer.  
3 Bonuses may be considered as salary under this section if reported and annualized  
4 pursuant to rules adopted by the board.

5 **(Effective after ~~July 31, 2017~~December 31, 2015) Definition of terms.** As used in this  
6 chapter, unless the context otherwise requires:

- 7 1. "Board" means the public employees retirement system board.
- 8 2. "Deferred member" means a person who elected to receive deferred vested retirement  
9 benefits under chapter 54-52.
- 10 3. "Eligible employee" means a permanent state employee, ~~except an employee of the~~  
11 ~~judicial branch or an employee of the board of higher education and state institutions~~  
12 ~~under the jurisdiction of the board~~; who is eighteen years or more of age and who is in  
13 a position not classified by North Dakota human resource management services. If a  
14 participating member loses permanent employee status and becomes a temporary  
15 employee, the member may still participate in the defined contribution retirement plan.  
16 "Eligible employee" does not include a supreme court judge or a district court judge,  
17 an employee eligible to participate in the national guard retirement plan or a law  
18 enforcement retirement plan, an employee of a political subdivision, or an employee of  
19 the board of higher education and state institutions under the jurisdiction of the board  
20 who is participating in the teachers' insurance and annuity association of America -  
21 college retirement equities fund retirement plan.
- 22 4. "Employee" means any person employed by the state, whose compensation is paid  
23 out of state funds, or funds controlled or administered by the state or paid by the  
24 federal government through any of its executive or administrative officials.
- 25 5. "Employer" means the state of North Dakota.
- 26 6. "Participating member" means an eligible employee who elects to  
27 ~~participate~~participates in the defined contribution retirement plan established under  
28 this chapter.
- 29 7. "Permanent employee" means a state employee whose services are not limited in  
30 duration and who is filling an approved and regularly funded position and is employed  
31 twenty hours or more per week and at least five months each year.

1       8. "Temporary employee" means a governmental unit employee who is not eligible to  
2       participate as a permanent employee, who is at least eighteen years old and not  
3       actively contributing to another employer-sponsored pension fund, and, if employed by  
4       a school district, occupies a noncertified teacher's position.

5       8-9. "Wages" and "salaries" means earnings in eligible employment under this chapter  
6       reported as salary on a federal income tax withholding statement plus any salary  
7       reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or  
8       457. "Salary" does not include fringe benefits such as payments for unused sick leave,  
9       personal leave, vacation leave paid in a lump sum, overtime, housing allowances,  
10      transportation expenses, early retirement, incentive pay, severance pay, medical  
11      insurance, workforce safety and insurance benefits, disability insurance premiums or  
12      benefits, or salary received by a member in lieu of previously employer-provided fringe  
13      benefits under an agreement between an employee and a participating employer.  
14      Bonuses may be considered as salary under this section if reported and annualized  
15      pursuant to rules adopted by the board.

16      **SECTION 5. AMENDMENT.** Section 54-52.6-02 of the North Dakota Century Code is  
17      amended and reenacted as follows:

18      **54-52.6-02. (Effective through July 31, 2017December 31, 2015) Election.**

19      1. The board shall provide an opportunity for eligible employees who are new members  
20      of the public employees retirement system under chapter 54-52 to transfer to the  
21      defined contribution plan under this chapter pursuant to the rules and policies adopted  
22      by the board. An election made by a member of the public employees retirement  
23      system under chapter 54-52 to transfer to the defined contribution retirement plan  
24      under this chapter is irrevocable. For an individual who elects to transfer membership  
25      from the public employees retirement system under chapter 54-52 to the defined  
26      contribution retirement plan under this chapter, the board shall transfer a lump sum  
27      amount from the public employees retirement system fund to the participating  
28      member's account in the defined contribution retirement plan under this chapter.  
29      However, if the individual terminates employment prior to receiving the lump sum  
30      transfer under this section, the election made is ineffective and the individual remains  
31      a member of the public employees retirement system under chapter 54-52 and retains

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- 1 all the rights and privileges under that chapter. This section does not affect an  
2 individual's right to health benefits or retiree health benefits under chapter 54-52.1.
- 3 2. If the board receives notification from the internal revenue service that this section or  
4 any portion of this section will cause the public employees retirement system or the  
5 retirement plan established under this chapter to be disqualified for tax purposes  
6 under the Internal Revenue Code, then the portion that will cause the disqualification  
7 does not apply.
- 8 3. A participating member who becomes a temporary employee may still participate in  
9 the defined contribution retirement plan upon filing an election with the board within  
10 one hundred eighty days of transferring to temporary employee status. The  
11 participating member may not become a member of the defined benefit plan as a  
12 temporary employee. The temporary employee electing to participate in the defined  
13 contribution retirement plan shall pay monthly to the fund an amount equal to  
14 ~~eight~~fourteen and twelve-hundredths percent times the temporary employee's present  
15 monthly salary. ~~The amount required to be paid by a temporary employee increases~~  
16 ~~by two percent times the temporary employee's present monthly salary beginning with~~  
17 ~~the monthly reporting period of January 2012, and with an additional increase of two~~  
18 ~~percent, beginning with the monthly reporting period of January 2013, and with an~~  
19 ~~additional increase of two percent, beginning with the monthly reporting period of~~  
20 ~~January 2014.~~ The temporary employee shall also pay the required monthly  
21 contribution to the retiree health benefit fund established under section 54-52.1-03.2.  
22 This contribution must be recorded as a member contribution pursuant to section  
23 54-52.1-03.2. An employer may not pay the temporary employee's contributions. A  
24 temporary employee may continue to participate as a temporary employee until  
25 termination of employment or reclassification of the temporary employee as a  
26 permanent employee.
- 27 4. A former participating member who has accepted a retirement distribution pursuant to  
28 section 54-52.6-13 and who subsequently becomes employed by an entity different  
29 from the employer with which the member was employed at the time the member  
30 retired but which does participate in any state-sponsored retirement plan may, before  
31 reenrolling in the defined contribution retirement plan, elect to permanently waive

1 future participation in the defined contribution retirement plan, whatever plan in which  
2 the new employing entity participates, and the retiree health program and maintain  
3 that member's retirement status. Neither the member nor the employer are required to  
4 make any future retirement contributions on behalf of that employee.

5 **(Effective after ~~July 31, 2017~~December 31, 2015) Election.**

6 1. The board shall provide an opportunity for each eligible employee who is a member of  
7 the public employees retirement system on ~~September 30, 2001, and who has not~~  
8 ~~made a written election under this section~~June 30, 2016, to transfer to the defined  
9 contribution retirement plan before ~~October 1, 2001, to elect~~by electing in writing to  
10 terminate membership in the public employees retirement system and elect to become  
11 a participating member under this chapter. Except as provided in section 54-52.6-03,  
12 an election made by an eligible employee under this section is irrevocable. ~~The board~~  
13 ~~shall accept written elections under this section from eligible employees during the~~  
14 ~~period beginning on July 1, 1999, and ending 12:01 a.m. December 14, 2001. An~~  
15 ~~eligible employee who does not make a written election or who does not file the~~  
16 ~~election during the period specified in this section continues to be a member of the~~  
17 ~~public employees retirement system. An eligible employee who makes and files a~~  
18 ~~written election~~transfers to the defined contribution plan under this section ceases to  
19 be a member of the public employees retirement system effective ~~twelve midnight~~  
20 ~~December 31, 2001;~~and becomes a participating member in the defined contribution  
21 retirement plan under this chapter effective ~~12:01 a.m. January 1, 2002;~~ and waives all  
22 of that person's rights to a pension, annuity, retirement allowance, insurance benefit,  
23 or any other benefit under the public employees retirement system effective  
24 ~~December 31, 2001~~. This section does not affect a person's right to health benefits or  
25 retiree health benefits under chapter 54-52.1. An eligible employee who is first  
26 employed and entered upon the payroll of that person's employer after ~~September 30,~~  
27 ~~2001,~~ may make an election to participate in the defined contribution retirement plan  
28 established under this chapter at any time during the ~~first six months after the date of~~  
29 ~~employment. If the board, in its sole discretion, determines that the employee was not~~  
30 ~~adequately notified of the employee's option to participate in the defined contribution~~  
31 ~~retirement plan, the board may provide the employee a reasonable time within which~~

- 1           to make that election, which may extend beyond the original six-month decision-  
2           window period beginning July 1, 2016, and ending December 31, 2016.
- 3           2. If an individual who is a deferred member of the public employees retirement system  
4           on ~~September 30, 2004~~ December 31, 2015, is reemployed and by virtue of that  
5           employment is again eligible for membership in the public employees retirement  
6           system under chapter 54-52, the individual may elect in writing to remain a member of  
7           the public employees retirement system or if eligible to participate in the defined  
8           contribution retirement plan established under this chapter to terminate membership in  
9           the public employees retirement system and become a participating member in the  
10          defined contribution retirement plan established under this chapter. An election made  
11          by a deferred member under this section is irrevocable. The board shall accept written  
12          elections under this section from a deferred member during the period beginning on  
13          the date of the individual's reemployment and ending upon the expiration of six  
14          months after the date of that reemployment. If the board, in its sole discretion,  
15          determines that the employee was not adequately notified of the employee's option to  
16          participate in the defined contribution retirement plan, the board may provide the  
17          employee a reasonable time within which to make that election, which may extend  
18          beyond the original six-month decision window. A deferred member who makes and  
19          files a written election to remain a member of the public employees retirement system  
20          retains all rights and is subject to all conditions as a member of that retirement system.  
21          A deferred member who does not make a written election or who does not file the  
22          election during the period specified in this section continues to be a member of the  
23          public employees retirement system. A deferred member who makes and files a  
24          written election to terminate membership in the public employees retirement system  
25          ceases to be a member of the public employees retirement system effective on the  
26          last day of the payroll period that includes the date of the election; becomes a  
27          participating member in the defined contribution retirement plan under this chapter  
28          effective the first day of the payroll immediately following the date of the election; and  
29          waives all of that person's rights to a pension, an annuity, a retirement allowance,  
30          insurance benefit, or any other benefit under the public employees retirement system  
31          effective the last day of the payroll that includes the date of the election. This section

1 does not affect any right to health benefits or retiree health benefits to which the  
2 deferred member may otherwise be entitled.

3 3. An eligible employee who elects to participate in the retirement plan established under  
4 this chapter must remain a participant even if that employee ~~returns to the classified-~~  
5 ~~service or~~ becomes employed by a political subdivision that participates in the public  
6 employees retirement system. The contribution amount must be as provided in this  
7 chapter, regardless of the position in which the employee is employed.

8 Notwithstanding the irrevocability provisions of this chapter, if a member who elects to  
9 participate in the retirement plan established under this chapter becomes a supreme  
10 or district court judge, becomes a member of the highway patrol, becomes employed  
11 in a position subject to teachers' fund for retirement membership, or becomes an  
12 employee of the board of higher education or state institution under the jurisdiction of  
13 the board who is eligible to participate in an alternative retirement program established  
14 under subsection 6 of section 15-10-17, the member's status as a member of the  
15 defined contribution retirement plan is suspended, and the member becomes a new  
16 member of the retirement plan for which that member's new position is eligible. The  
17 member's account balance remains in the defined contribution retirement plan, but no  
18 new contributions may be made to that account. The member's service credit and  
19 salary history that were forfeited as a result of the member's transfer to the defined  
20 contribution retirement plan remain forfeited, and service credit accumulation in the  
21 new retirement plan begins from the first day of employment in the new position. If the  
22 member later returns to employment that is eligible for the defined contribution plan,  
23 the member's suspension must be terminated, the member again becomes a member  
24 of the defined contribution retirement plan, and the member's account resumes  
25 accepting contributions. At the member's option, and pursuant to rules adopted by the  
26 board, the member may transfer any available balance as determined by the  
27 provisions of the alternate retirement plan into the member's account under this  
28 chapter.

29 4. After consultation with its actuary, the board shall determine the method by which a  
30 participating member or deferred member may make a written election under this  
31 section. If the participating member or deferred member is married at the time of the

1 election, the election is not effective unless the election is signed by the individual's  
2 spouse. However, the board may waive this requirement if the spouse's signature  
3 cannot be obtained because of extenuating circumstances.

4 5. If the board receives notification from the internal revenue service that this section or  
5 any portion of this section will cause the public employees retirement system or the  
6 retirement plan established under this chapter to be disqualified for tax purposes  
7 under the Internal Revenue Code, then the portion that will cause the disqualification  
8 does not apply.

9 6. A participating member who becomes a temporary employee may still participate in  
10 the defined contribution retirement plan upon filing an election with the board within  
11 one hundred eighty days of transferring to temporary employee status. The  
12 participating member may not become a member of the defined benefit plan as a  
13 temporary employee. The temporary employee electing to participate in the defined  
14 contribution retirement plan shall pay monthly to the fund an amount equal to  
15 ~~eight~~fourteen and twelve-hundredths percent times the temporary employee's present  
16 monthly salary. ~~The amount required to be paid by a temporary employee increases~~  
17 ~~by two percent times the temporary employee's present monthly salary beginning with~~  
18 ~~the monthly reporting period of January 2012, and with an additional increase of two~~  
19 ~~percent, beginning with the monthly reporting period of January 2013, and with an~~  
20 ~~additional increase of two percent, beginning with the monthly reporting period of~~  
21 ~~January 2014.~~ The temporary employee shall also pay the required monthly  
22 contribution to the retiree health benefit fund established under section 54-52.1-03.2.  
23 This contribution must be recorded as a member contribution pursuant to section  
24 54-52.1-03.2. An employer may not pay the temporary employee's contributions. A  
25 temporary employee may continue to participate as a temporary employee until  
26 termination of employment or reclassification of the temporary employee as a  
27 permanent employee.

28 7. A former participating member who has accepted a retirement distribution pursuant to  
29 section 54-52.6-13 and who subsequently becomes employed by an entity different  
30 from the employer with which the member was employed at the time the member  
31 retired but which does participate in any state-sponsored retirement plan may, before

1           reenrolling in the defined contribution retirement plan, elect to permanently waive  
2           future participation in the defined contribution retirement plan, whatever plan in which  
3           the new employing entity participates, and the retiree health program and maintain  
4           that member's retirement status. Neither the member nor the employer are required to  
5           make any future retirement contributions on behalf of that employee.

6           **SECTION 6.** Section 54-52.6-02.1 of the North Dakota Century Code is created and  
7   enacted as follows:

8           **54-52.6-02.1. (Effective January 1, 2016) Membership.**

- 9           1. All eligible employees are participating members.  
10          2. A temporary employee may elect, within one hundred eighty days of beginning  
11           employment, to participate in the defined contribution retirement plan under this  
12           chapter. The temporary employee electing to participate in the defined contribution  
13           retirement plan shall pay monthly to the fund an amount equal to fourteen and twelve-  
14           hundredths percent times the temporary employee's present monthly salary. The  
15           temporary employee shall also pay the required monthly contribution of the retiree  
16           health benefit fund established under section 54-52.1-03.2. This contribution must be  
17           recorded as a member contribution pursuant to section 54-52.1-03.2. An employer  
18           may not pay the temporary employee's contributions. A temporary employee may  
19           continue to participate as a temporary employee in the public employees retirement  
20           system until termination of employment.

21          **SECTION 7. AMENDMENT.** Section 54-52.6-03 of the North Dakota Century Code is  
22   amended and reenacted as follows:

23          **54-52.6-03. (Suspended from October 1, 2013, through July 31, 2017December 31,**  
24          **2015) Transfer of accumulated fund balances.**

25          For an individual who elects to terminate membership in the public employees retirement  
26          system under chapter 54-52, the board shall transfer a lump sum amount from the retirement  
27          fund to the participating member's account in the defined contribution retirement plan under this  
28          chapter. However, if the individual terminates employment prior to receiving the lump sum  
29          transfer under this section, the election made under section 54-52.6-02 is ineffective and the  
30          individual remains a member of the public employees retirement system under chapter 54-52  
31          and retains all the rights and benefits provided under that chapter. The board shall calculate the

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- 1 amount to be transferred for persons employed before October 1, 2001, using the two following  
2 formulas, and shall transfer the greater of the two amounts obtained:
- 3 1. The actuarial present value of the individual's accumulated benefit obligation under the  
4 public employees retirement system based on the assumption that the individual will  
5 retire under the earliest applicable normal retirement age, plus interest from January 1,  
6 2001, to the date of transfer, at the rate of one-half of one percent less than the  
7 actuarial interest assumption at the time of the election; or
  - 8 2. The formula of the actual employer contribution made, less vested employer  
9 contributions made pursuant to section 54-52-11.1, plus compound interest at the rate  
10 of one-half of one percent less than the actuarial interest assumption at the time of the  
11 election plus the employee account balance.
- 12 ~~The board shall calculate the amount to be transferred for persons employed after~~  
13 ~~September 30, 2001, using only the formula contained in subsection 2.~~

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FIRST DRAFT:

Prepared by the Legislative Council staff for the  
Government Finance Committee  
August 2014

Introduced by

1 A BILL for an Act to create and enact a new section to chapter 15.1-36 of the North Dakota  
2 Century Code, relating to a school construction assistance loan fund; to create and enact a new  
3 section to chapter 54-52 of the North Dakota Century Code, relating to a public employee  
4 retirement stabilization fund; to provide for transfers; and to provide for a contingent effective  
5 date.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1.** A new section to chapter 15.1-36 of the North Dakota Century Code is created  
8 and enacted as follows:

9 **School construction assistance loan fund.**

10 The school construction assistance loan fund is a special fund in the state treasury. Moneys  
11 in the fund may be used only for low-interest school construction loans as designated by the  
12 legislative assembly. Any interest or other fund earnings must be deposited in the fund.

13 **SECTION 2.** A new section to chapter 54-52 of the North Dakota Century Code is created  
14 and enacted as follows:

15 **Public employee retirement stabilization fund.**

16 The public employee retirement stabilization fund is a special fund in the state treasury.  
17 Moneys in the fund may be used by the legislative assembly only for the purpose of addressing  
18 any unfunded retirement benefit obligations of public employee retirement plans. Any interest or  
19 other fund earnings must be deposited in the fund.

20 **SECTION 3. TRANSFER - FOUNDATION AID STABILIZATION FUND TO SCHOOL**

21 **CONSTRUCTION ASSISTANCE LOAN FUND.** During the period beginning July 1, 2016, and  
22 ending June 30, 2017, the office of management and budget shall transfer the sum of  
23 \$\_\_\_\_\_ from the foundation aid stabilization fund to the school construction assistance  
24 loan fund.

1       **SECTION 4. TRANSFER - FOUNDATION AID STABILIZATION FUND TO PUBLIC**  
2       **EMPLOYEE RETIREMENT STABILIZATION FUND.** During the period beginning July 1, 2016,  
3       and ending June 30, 2017, the office of management and budget shall transfer the sum of  
4       \$\_\_\_\_\_ from the foundation aid stabilization fund to the public employee retirement  
5       stabilization fund.

6       **SECTION 5. CONTINGENT EFFECTIVE DATE.** Sections 3 and 4 of this Act are contingent  
7       on the passage of \_\_\_\_\_ Concurrent Resolution No. \_\_\_\_\_ by the sixty-fourth  
8       legislative assembly and approval of that resolution by the voters of this state. If Sections 3  
9       and 4 of this Act take effect, the sections become effective on July 1, 2016.

15.3010.02000

Sixty-fourth  
Legislative Assembly  
of North Dakota

FIRST DRAFT:  
Prepared by the Legislative Council staff  
for the Government Finance Committee  
August 2014

Introduced by

1 A concurrent resolution to amend and reenact section 24 of article X of the Constitution of North  
2 Dakota, relating to the foundation aid stabilization fund.

3 **STATEMENT OF INTENT**

4 This measure provides for additional purposes for the foundation aid stabilization fund.

5 **BE IT RESOLVED BY THE** **OF NORTH DAKOTA, THE**  
6 **CONCURRING THEREIN:**

7 That the following proposed amendment to section 24 of article X of the Constitution of  
8 North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the  
9 primary election to be held in June 2016, in accordance with section 16 of article IV of the  
10 Constitution of North Dakota.

11 **SECTION 1. AMENDMENT.** Section 24 of article X of the Constitution of North Dakota is  
12 amended and reenacted as follows:

13 **Section 24.** Twenty percent of the revenue from oil extraction taxes from taxable oil  
14 produced in this state must be allocated as follows:

- 15 1. Fifty percent must be deposited in the common schools trust fund.
- 16 2. Fifty percent must be deposited in the foundation aid stabilization fund in the state  
17 treasury, the interest income of which must be transferred to the state general fund on  
18 July first of each year. The principal of the foundation aid stabilization fund may be  
19 expended only upon order of the governor, who may direct such a transfer only to  
20 offset foundationstate school aid reductions that were made by executive action  
21 pursuant to law due to a revenue shortage. Whenever the principal balance of the  
22 foundation aid stabilization fund exceeds fifteen percent of the general fund  
23 appropriation for state school aid for the most recently completed biennium as  
24 determined by the state treasurer, the legislative assembly may appropriate or transfer  
25 any excess principal balance for the purpose of making low-interest loans for school

Sixty-fourth  
Legislative Assembly

- 1 construction projects, addressing existing or anticipated unfunded benefit obligations.
- 2 of state retirement funds, or other education-related purposes.



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# Memorandum

**TO:** PERS Board  
**FROM:** Sparb  
**DATE:** August 15, 2014  
**SUBJECT:** Windsor Decision

Attached is a memo from Ice Miller on the effect of the Windsor Decision on the PERS plan. They have been working with Jan and PERS staff. Jan will review this with the Board at the next meeting and talk about our options for going forward.

Since the next Employee Benefits Committee (LEBC) Meeting will be before our next meeting, we will need to decide on a plan of action for any amendments we need to request at this meeting or at a special meeting before the LEBC meeting.

**MEMORANDUM**

**TO:** Sparb Collins, Jan Murtha  
**FROM:** Mary Beth Braitman, Tiffany A. Sharpley, and Malaika Caldwell  
**DATE:** August \_\_, 2014  
**RE:** North Dakota PERS Compliance With Respect to *U.S. v. Windsor*

---

This Memorandum focuses on our analysis of the impact of the U.S. Supreme Court's *U.S. v. Windsor* ("*Windsor*") decision and Rev. Rul. 2013-17, subsequently issued by the Internal Revenue Service ("IRS") on the North Dakota Public Employees Retirement System ("NDPERS").

**BACKGROUND ON WINDSOR**

In *Windsor*, the Supreme Court ruled that section 3 of the Defense of Marriage Act ("DOMA") was unconstitutional. The holding by the Supreme Court provided that same-sex spouses who were married in a state that recognizes same-sex marriage as well as in states that do not, must receive the same treatment as opposite-sex spouses for purposes of federal law. The primary effect of this decision for NDPERS is that for federal tax purposes, a same-sex spouse must be treated the same as an opposite-sex spouse. The Supreme Court did not address section 2 of DOMA, which allows a state to continue to decline to recognize the validity of same-sex marriages legally performed in other states for limited state purposes. This means that North Dakota can continue to distinguish same-sex spouses from opposite-sex spouses for certain benefit design purposes. In Rev. Ruling 2013-17, the IRS has taken the position that for federal tax purposes, the terms "husband and wife," "husband," "wife," "spouse," and "marriage," wherever used in the Internal Revenue Code ("Code") must be interpreted to include both same-sex spouses and same-sex marriages. In its ruling, the IRS adopted a "place of celebration" test for determining the validity of same-sex marriage for federal tax purposes.

We were asked to consider how the federal tax rules have changed in ways which impact NDPERS. NDPERS is required to follow federal tax law in order to maintain its status as a qualified governmental plan.

**NDPERS' TAX QUALIFICATION**

The primary advantages in NDPERS retaining its tax qualification status under Code Section 401(a) are that:

- Employer contributions are not taxable to members as they are made (or even vested); taxation only occurs when plan distributions occur;
- Earnings and income are not taxed to the trust of the member (until distribution);

- Certain favorable tax treatment may be available to members when they receive plan distributions, e.g., ability to rollover eligible distributions; and
- Employers and members do not pay employment taxes (even if the positions are Social Security covered) when contributions are made or when benefits are paid.
- PERS is currently exempt from many costly and cumbersome Employee Retirement Income Security Act of 1974 ("ERISA") nondiscrimination testing requirements;
- PERS may "pick up" employee contributions so that they are pre-tax when made; and
- PERS has favorable grandfathering and transitional rules under much IRS guidance.

### **BASIS FOR OUR WINDSOR REPORT**

We prepared our Report and analysis using the North Dakota materials provided by Ms. Murtha on July 3, 2014. For the review of the NDPERS, this included the following:

- North Dakota Constitution, Article X, Section 12(1);
- N.D.C.C. ("Century Code") Chapter 54-52;
- N.D.A.C. Article 71-02;
- AG Letter Opinion 2013-L-06; and
- N.D.C.C. Sections 14-03-01 through 14-03-08.

Our Report entailed an analysis of the impact of *Windsor* on the following NDPERS provisions. Each of these provisions involved situations where North Dakota law provides for certain benefits or rights for spouses of members of NDPERS. In each case, we were looking for scenarios in which the provision could remain as it is currently, versus when it was affected by federal tax law, and thus by the *Windsor* decision.

- Beneficiary Designation Rules;
- Plan Rollovers;
- Benefit Limitations under Code Section 415;
- Record Confidentiality;
- Survivor & Death Benefits;
- Qualified Domestic Relations Orders (QDROs); and
- Required Minimum Distributions (RMDs).

## I. Areas of Immediate Compliance

During our review of these area, we broke our analysis down into three types of provisions – those governed by: (i) pure federal law; (ii) pure North Dakota state law; and (iii) a combination of both federal and state law. This review identified the need for NDPERS to make few **immediate** compliance changes. However, as you may be aware, there are court cases pending in all circuits that raise certain issues that we will not address here, because these issues have not been decided by the U.S. Supreme Court. There are areas described in our review that may need to be revisited depending on the outcome of pending litigation cases. These are not discussed further in this memorandum. Our recommendations identify only those areas for the NDPERS Board to consider for immediate action.

### A. Benefit Limitations

N.D.C.C § 54-52-28(1) – Internal Revenue Code Compliance. We recommend a revision to the following provision to remove the date reference, which appears to limit the reference to the Internal Revenue Code section to a specific date and time, which could raise questions since that date is after the effective date imposed by the *Windsor* decision.

The board shall administer the plan in compliance with the following sections of the Internal Revenue Code ~~in effect on August 1, 2013~~, as it applies for governmental plans . . .

(1) Section 415, including the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code . . .

*Windsor* requires that the benefit limitations be administered to treat all spouses the same for purposes of applying these limits.

### B. Required Minimum Distribution

N.D.C.C § 54-52-28(2) – Internal Revenue Code Compliance. We recommend a revision to the following provision to remove the date reference, which appears to limit the reference to the Internal Revenue Code section to a specific date and time, which could raise questions since that date is after the effective date imposed by the *Windsor* decision.

The board shall administer the plan in compliance with the following sections of the Internal Revenue Code ~~in effect on August 1, 2013~~, as it applies for governmental plans . . .

The minimum distribution rules under section 401(a)(9) of the Internal Revenue Code, including the incidental death benefit requirements under section 401(a)(9)(G), and the regulations issued under that provision to the extent applicable to governmental plans. Accordingly, benefits must be distributed or

begin to be distributed no later than a member's required beginning date, and the required minimum distribution rules override any inconsistent provision of this chapter. A member's required beginning date is April first of the calendar year following the later of the calendar year in which the member attains age seventy and one-half or terminates employment.

The minimum distribution rules require distributions from a qualified plan to be made at certain times. Those times vary depending on whether the benefit is payable to a spouse or a non-spouse. *Windsor* requires that all spouses (both same-sex and opposite-sex) be treated the same for this timing issue.

### **C. Rollovers**

N.D.C.C § 54-52-28(4) – Internal Revenue Code Compliance. We recommend a revision to the following provision to remove the date reference, which appears to limit the reference to the Internal Revenue Code sections to a specific date and time, which could raise questions since that date is after the effective date imposed by the *Windsor* decision.

The board shall administer the plan in compliance with the following sections of the Internal Revenue Code ~~in effect on August 1, 2013~~, as it applies for governmental plans . . .

The rollover rules under section 401(a)(31) of the Internal Revenue Code. Accordingly, a distributee may elect to have an eligible rollover distribution, as defined in section 402(c)(4) of the Internal Revenue Code, paid in a direct rollover to an eligible retirement plan, as defined in section 402(c)(8)(B) of the Internal Revenue Code, specified by the distributee.

Under the current language, all spouses would not have broad rollover rights. *Windsor* requires those broad rollover rights to be made available to same-sex spouses as of the effective date of the *Windsor* decision, as well as opposite-sex spouses.

### **ADDITIONAL COMMENTS**

In addition to the immediate areas of compliance described above, we also identified several administrative tools that NDPERS may want to consider revising. These include potential changes to 415 testing, tax notices, retirement and survivor forms, and QDRO forms.



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# Memorandum

**TO:** PERS Board

**FROM:** Sparb

**DATE:** August 14, 2014

**SUBJECT:** House Bill 1058 (Retiree Health Insurance Credit)

## Background

This last session, HB 1058 was passed relating to a Pre-Medicare retiree's participation in the NDPERS group health plan and the Retiree Health Insurance Credit (RHIC) for NDPERS retirees.

Section 1 of the bill amends Section 54-52.1-02 (1) which authorizes retired employees not eligible for Medicare the option to participate in the NDPERS Health Plan. Historically, this option was available to ensure that retiring employees would be able to find health coverage when they retired without having to be exposed to medical underwriting requirements or pre-existing condition provisions. The Affordable Care Act (ACA) has provisions in the bill that provide access to insurance without having to be concerned with being medically underwritten or having pre-existing condition provisions. Consequently, the primary reason that PERS has offered this coverage no longer applies or is needed. Therefore Section 1 of the bill closes the Pre-Medicare Plan to retirees who first retire after the effective date of the act. However once a member is eligible for Medicare they may be able to rejoin the NDPERS plan. Since retirement is defined as receiving a retirement benefit, this means that those Pre Medicare retiree members who are not receiving a retirement benefit on June 30 will no longer be able to stay on the NDPERS plan after their COBRA period. A member who desires to be receiving a retirement benefit on June 30 will need to be terminated by the end of April and begin drawing a benefit for May, paid June 2015.

Pre-Medicare retiree members already in the NDPERS Pre-Medicare plan may remain on the plan until they get to Medicare age. Once they become Medicare eligible, they may stay on NDPERS under the Dakota Retiree Plan if they choose.

The primary disadvantage of this change for our Pre Medicare retirees is that at this time the NDPERS Retiree Health Insurance Credit (RHIC) is not portable. A retiree loses the benefit of the RHIC by electing to carry other non NDPERS Pre-Medicare coverage. That is why Sections 2 & 3 of this bill was passed. These sections allow the RHIC to be applied to health insurance premiums from other carriers other than NDPERS. In addition these sections allow the credit to be used to offset the cost of NDPERS Dental, Vision or Long Term Care (LTC) coverage. Administrative procedures are now being developed relating to how a member can file for this reimbursement. The effect of this change is to provide NDPERS retirees more choice on the health plans they can purchase and the type of health coverage they desire. This is accomplished while still maintaining access to coverage.

In summary, HB 1058 closes the NDPERS Pre-Medicare plan to retirees not receiving a retirement benefit by June 30, 2015. The bill also now allows NDPERS retirees to use their Pre-Medicare health insurance credit for health plans other than NDPERS and for NDPERS Dental, Vision and LTC coverage

### **Implementation Options**

Staff has been reviewing the options for implementation of this bill. What we know is:

1. Similar to the flex program we can reimburse the credit only for a qualified expense.
2. The expense will need to be documented and sent for review and verification to determine qualification.
3. Once reviewed and approved the expense can be reimbursed to the member
4. With up to 9,000 members being eligible the number of transactions could be significant each month.
5. Criteria will need to be established for approval.
6. A process will need to be set up for the above to occur.

With the above guidance, staff has examined the following methods:

1. To have PERS staff do the review, approval and reimbursement. The primary concerns with this approach is that PERS does not have an existing process to do this, which means we would need to develop it, test it and implement it. Also from a staffing point of view, we would need to have existing staff take on additional responsibility for this program. As noted above, the number of transactions could be significant each month.
2. Contract this to a vendor that has an existing system in place. To determine if this is feasible we talked with ADP, our existing flex vendor since this is similar. They indicated they could administer such a program and the estimated cost would be \$2.65 per member per month. Assuming we had 9,000 active members this would be \$23,850 per month or \$286,200 per year. The retiree health program has a monthly contribution of 1.14% of payroll. The 2013 valuation showed the actuarial required contribution is .77% of payroll. The bill analysis showed the effect of HB 1058 was to increase the required contribution by .19% of payroll giving a total required contribution of .96% of payroll. The administrative cost of this method based on the

ADP numbers would be about .03 of payroll. Adding this to the actuarial required contribution required amount of .96% the total would be .99% of payroll which is still below the existing 1.14%.

### **Approach**

Given the above information staff is seeking your direction on how to proceed. Should we pursue option #1 or #2? Staff is suggesting that we do option #2 at this point. It provides us an existing business system to use that would be reliable and it is affordable within the programs existing funding. Based upon your direction staff will refine the approach further and bring that information back to you at a future meeting.

### **Board Action Requested**

Select option #1 or #2 for further consideration.



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# Memorandum

**TO: NDPERS Board**

**FROM: Kathy**

**DATE: August 4, 2014**

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

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

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

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

The last legislative assembly increased each agencies budget by an average of 3% for the second year of the 2013-15 biennium. The North Dakota Highway Patrol leadership is recommending that deferred members in its system have their final average salary indexed by 3%. Currently there are 23 members in the system in a deferred status.

The current assumption for indexing of deferred members is 5%. Therefore, an increase of 3% will result in a small actuarial gain to the plan as confirmed by our consultant, The Segal Company.

For your information, listed below are the legislative increases granted, as well as the increase percentages set for indexing purposes by the Board since 1993 when the factor was first established.

	<b>Legislative Increase %</b>	<b>Board Approved Index %</b>
1993	3.00	3.57
1994	2.00	3.00
1995	2.00	2.00
1996	2.00+ 1.00 discretionary	2.00
1997	Average 3.00	3.00
1998	Average 3.00	1.80
1999	2.00 (min \$35)	1.26
2000	2.00 (min \$35)	2.00
2001	3.00 (min \$35)	1.81
2002	3.00 (min \$35)	1.73
2003	None authorized	-0-
2004	None authorized	-0-
2005	4.00	4.00
2006	4.00	4.00
2007	4.00	4.00
2008	4.00	4.00
2009	5.00	5.00
2010	5.00	5.00
2011	3.00	2.00
2012	3.00	2.00
2013	3.00	3.00

As illustrated above, the Board has generally approved an indexing percentage, as recommended by the Highway Patrol leadership, that is the same or slightly lower than the salary increases granted to state employees.

**Board Action Requested:**

Accept or reject the Highway Patrol's recommendation.



# North Dakota Highway Patrol



Colonel Michael T. Gerhart, Jr., Superintendent  
State Capitol, 600 E Boulevard Ave. Dept. 504  
Bismarck, ND 58505-0240  
Telephone: 701-328-2455

Jack Dalrymple  
Governor  
State of North Dakota

August 1, 2014

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

Dear Kathy:

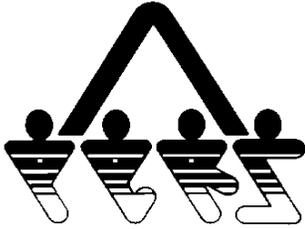
We recommend that the members of the North Dakota Highway Patrol Retirement System who participate in the Deferred Vested Benefit provision have their final average salary indexed by 3 percent July 1, 2014.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron R. Hummel".

AARON R. HUMMEL  
Captain, NDHP  
Administrative Services Division Commander

arh/bic



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# Memorandum

**TO: NDPERS Board**

**FROM: Kathy**

**DATE: August 14, 2014**

**SUBJECT: Mid-Career Financial Education Workshop**

The purpose of this memo is to provide the Board with some background on a new program NDPERS is proposing for our members. At this time, we sponsor the Pre-Retirement Education Programs (PREPS) which provide members with information about NDPERS insurance and retirement benefits, financial planning, Social Security and Medicare benefits and legal planning. The On-Site Benefit Counseling Program (OSBC) is a site specific service that is conducted upon request by the employer and involves PERS staff being on-site to conduct one-on-one counselling sessions for interested members. These programs are in addition to the one-on-one member counselling provided through our office. All these services are targeted for members who are planning or preparing for retirement. However, we don't offer financial guidance to members that are in the early to mid-career stages of their lives.

Staff, in conjunction with TIAA-CREF, has been researching ideas for a program targeting these members with the objective of assisting them to get on track with their financial planning and retirement savings goals. This research was prompted by evaluation responses from attendees of our PREP programs over the past several years. Attendees many times write that they wish they would have known about the deferred compensation plan as a supplemental savings plan earlier in their career or that they didn't know about other aspects of their pension plan, which could have benefited them in their planning.

Our Mid-career Financial Essentials Workshop (FEW) will focus on the fact that few people are confident in their financial preparations for retirement, how to integrate financial planning and goal setting into your lifestyle, and how personal savings can make a big difference

when you diversify investments and compound returns. The workshop will provide an overview of the defined benefit and defined contribution plans, Portability Enhancement Provision (PEP), and 457 deferred compensation plan. Other topics that are being reviewed include College Save programs, estate planning /wills, borrowing and debt elimination, long-term care plans, and saving for healthcare in retirement.

We plan to conduct a pilot workshop in October which we will organize by inviting Human Resource assistants/administrators of targeted agencies. We will also suggest they bring two staff members to attend. Attendees will be asked to evaluate the program so we can assess the feasibility of adding the workshop to the other member services provided by NDPERS. We will report the results back to the Board at a future meeting. If continued, the workshop would be available to state agency and participating political subdivision locations upon the request of the employer. NDPERS may also consider conducting the workshop at various locations on an annual or some other pre-determined interval.

We are available for any feedback or to answer any questions.



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# Memorandum

**TO:** PERS Board

**FROM:** Bryan

**DATE:** August 8, 2014

**SUBJECT:** Defined Contribution Plan Reporting

Here is a summary of the DC 401(a) enrollments. The plan opened up to all new State employees in October 2013. Employees are initially enrolled in the DB plan and have 180 days to make an irrevocable election to transfer to the DC plan.

The first table shows that 422 members have elected the DC plan since it started in 2000. Of these, the second table shows that 224 are still active (53%). With the DC plan now open to all new employees, the graph shows a big increase in the number eligible for the plan. The bottom table shows only 19 members (out of 955 since 10/2013) have elected the DC 401(a) plan through July 2014.

If you have any questions, we will be available at the Board meeting.

## Defined Contribution Reporting - July 2014

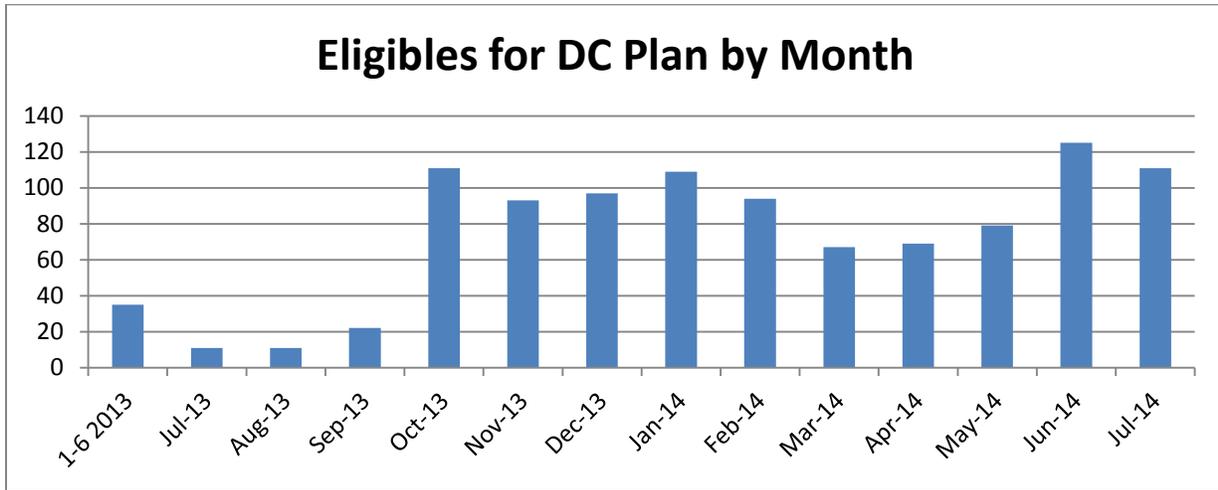
DC Enrollment			
Start Date		Frequency	Percent
Before	2013/07	399	94.55
	2013/08	1	0.24
	2013/09	2	0.47
	2013/10	2	0.47
	2013/11	1	0.24
	2014/01	1	0.24
	2014/02	1	0.24
	2014/03	2	0.47
	2014/05	5	1.18
	2014/06	2	0.47
	2014/07	6	1.42
<b>Total</b>		<b>422</b>	<b>100</b>

<b>Current Status</b>	<b>Frequency</b>	<b>Percent</b>	<b>Cumulative Frequency</b>	<b>Cumulative Percent</b>
<b>Enrolled</b>	224	53.08	224	53.08
<b>Retired</b>	14	3.32	238	56.40
<b>Suspended</b>	61	14.45	299	70.85
<b>Withdrawn</b>	123	29.15	422	100.00

53.08% of those electing the DC 401(a) plan are still active.

NDPERS DC 401(a) Active MEMBERS – July 2014
---

<b>Agency</b>	<b>Frequency</b>	<b>Percent</b>	<b>Cumulative Frequency</b>	<b>Cumulative Percent</b>
<b>Workforce Safety &amp; Insurance</b>	82	36.28	82	36.28
<b>Adjutant General ND National Guard</b>	18	7.96	100	44.25
<b>Legislative Council</b>	12	5.31	112	49.56
<b>Department Of Commerce</b>	9	3.98	121	53.54
<b>Information Technology Dept</b>	9	3.98	130	57.52
<b>Others (46 groups)</b>	94	41.96	224	100.00



<u>New employee DB/DC estimates sent out</u>	<u>Eligible</u>	<u>Elections to Date (180 days to elect)</u>
2013 October - 110	111	1
2013 November - 75	93	6
2013 December - 53	97	1
2014 January - 84	109	2
2014 February - 81	94	2
2014 March - 53	67	1
2014 April - 57	69	2
2014 May - 67	79	2
2014 June - 99	125	2
2014 July - 103	111	0



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# Memorandum

**TO:** PERS Board  
**FROM:** Sparb  
**DATE:** August 14, 2014  
**SUBJECT:** DC Plan Member Survey

A little over a year ago we sent the attached survey to our 457 and 401(a) plan members and discussed sending a second survey this fall. After reviewing the results of the last survey we talked with TIAA-CREF about developing an action plan to respond to the concerns mentioned. They have implemented that plan at the beginning of this year.

As you may recall the results of the 457 plan survey were positive, whereas the results on the 401(a) were not. I would suggest that we do the next survey this spring. This would provide more time to see if the action plan is working and for us to get data from new DC plan members that have come on the plan since the expanded eligibility this last October.

## Board Action Requested

Determine when the next survey should be conducted.



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# Memorandum

**TO:** NDPERS Board

**FROM:** Deb Knudsen

**DATE:** August 14, 2014

**SUBJECT:** IRS Cycle E Filing for HP and Hybrid Retirement Plans

As discussed at last December's Board meeting, staff will soon be working with the Segal Company to prepare a filing to the IRS for the above plans under a Cycle E filing.

You may recall that staff is submitting our new filing in Cycle E, rather than C like last time, because we know we have a deficiency and that is a requirement relating to the Heart Act. Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act), requires that all qualified retirement plans treat participants who die while in qualified military service as if they had returned to active employment before their death for purposes of death-related benefits under the plan (e.g., special death benefits for active employees and vesting service towards death benefits for the period of military service). This Act does not require that plans provide for benefit accruals for the period of military service to such participants who die in military service, but plans may choose to provide such accruals as an optional benefit. The death benefit provisions of the HEART Act were retroactively effective for deaths occurring on or after January 1, 2007.

Governmental plans were required to amend their plan documents for HEART Act provisions by the end of the 2012 plan year. However, if the plan did not make an amendment for HEART Act provisions by the end of 2012, they may correct this in Cycle E using the IRS Voluntary Compliance Program (VCP) for a reduced fee of \$375 (instead of the regular VCP fees which are \$25,000 for plans with 10,000 or more participants). This remedy could be addressed by either promulgating new rules or amending proposed legislation. Since promulgating rules is a lengthy, somewhat costly process and there is still the opportunity to amend our legislation, staff believes the legislative process is more expedient. We plan to address this in the 2015 legislative session with the attached proposed bill amendments.

In addition to the above provision, Melanie Walker, from the Segal Company, told us that with other retirement plans she has worked with, a different HEART related issue has been arising relating to military differential wages as compensation for IRC 415 purposes. She suggested that we may want to adopt this provision as well, although it is not presently required. She provided suggested language, which staff also provided to Jan for inclusion in proposed amendments.

**Board Action Requested:**

Direct staff to proceed with submitting proposed amendments to legislation and to move forward with Cycle E filing.

PROPOSED AMENDMENTS TO Bill NO. 15.0136.01000

Page 1, line 1, replace “section” with “sections 39-03.1-10.3 and”

Page 1, line 4, remove the second “and”

Page 1, line 4, after “54-52.1-18” insert “, and 54-52.6-09.4”

Page 1, line 5, replace “and” with a comma

Page 1, line 6, replace “system’s” with “system defined benefit and defined contribution plan”

Page 1, after line 12, insert:

**“SECTION 2. AMENDMENT.** Section 39-03.1-10.3 of the North Dakota Century Code is amended and reenacted as follows:

**39-03.1-10.3. Military service under the Uniformed Services Employment and Reemployment Rights Act – Member retirement credit.**

A member reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333], is entitled to receive retirement credit for the period of qualified military service. The required contribution for the credit, including payment for retiree health benefits, must be made in the same manner and by the same party as would have been made had the employee been continuously employed. If the salary the member would have received during the period of service is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased must be used. Employees must be allowed up to three times the period of military service or five years, whichever is less, to make any required payments. This provision applies to all qualifying periods of military service since October 1, 1994. Effective for years after December 31, 2008, compensation for purposes of Internal Revenue Code section 415 shall include military differential wage payments, as defined in Internal Revenue Code section 3401(f). Any payments made by the member to receive qualifying credit inconsistent with this provision must be refunded. Employees shall make application to the employer for credit and provide a DD Form 214 to verify service. If a participating member dies after December 31, 2006, while performing qualified military service, as defined in section 414(u)(5) of the Internal Revenue Code, the deceased member's beneficiaries are entitled to any death benefits, other than credit for years of service for purposes of benefits, that would have been provided under the plan if the participating member had resumed employment and then terminated employment on account

of death. The period of such member's qualified military service is treated as vesting service under the plan."

Page 6, line 7, after the period add "Effective for years after December 31, 2008, compensation for purposes of Internal Revenue Code section 415 shall include military differential wage payments, as defined in Internal Revenue Code section 3401(f)."

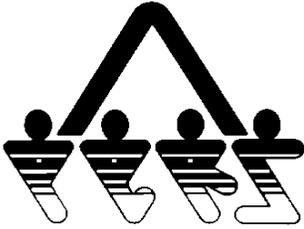
Page 11, after line 8, insert:

**"SECTION 13. AMENDMENT.** Section 54-52.6-09.4 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.6-09.4. Military service under the Uniformed Services Employment and Reemployment Rights Act - Member retirement credit.**

A member reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333], is entitled to receive retirement credit for the period of qualified military service. The required contribution for the credit, including payment for retiree health benefits, must be made in the same manner and by the same party as would have been made had the employee been continuously employed. If the salary the member would have received during the period of service is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased must be used. Employees must be allowed up to three times the period of military service or five years, whichever is less, to make any required payments. This provision applies to all qualifying periods of military service since October 1, 1994. Effective for years after December 31, 2008, compensation for purposes of Internal Revenue Code section 415 shall include military differential wage payments, as defined in Internal Revenue Code section 3401(f). Any payments made by the member to receive qualifying credit inconsistent with this provision must be refunded. Employees shall make application to the employer for credit and provide a DD Form 214 to verify service. If a participating member dies after December 31, 2006, while performing qualified military service, as defined in section 414(u)(5) of the Internal Revenue Code, the deceased member's beneficiaries are entitled to any death benefits, other than credit for years of service for purposes of benefits, that would have been provided under the plan if the participating member had resumed employment and then terminated employment on account of death. The period of such member's qualified military service is treated as vesting service under the plan."

Re-number accordingly.



**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

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# Memorandum

**TO:** PERS Board  
**FROM:** Sparb  
**DATE:** August 14, 2014  
**SUBJECT:** Flex Comp Member Survey

A little over a year ago we sent the attached survey to our flex plan members and discussed sending a second survey this fall. After reviewing the results of the last survey we talked with ADP about developing an action plan to respond to the concerns mentioned. They have implemented that plan this last spring.

I would suggest that we do the next survey this spring. This would provide more time to see if the action plan is working and for us to get data on the upcoming open enrollment.

## Board Action Requested

Determine when the next survey should be conducted.

## MEMORANDUM

**TO:** NDPERs Board  
**FROM:** Jim Smrcka  
**DATE:** July 22, 2014  
**SUBJECT:** Consultant Fees

Attached is a report showing the consulting, investment and administrative fees paid during the quarter ended June 2014.

Attachment

**North Dakota Public Employees Retirement System  
Consulting/Investment/Administrative Fees  
For the Quarter ended June 30, 2014**

Program/Project	Fee Type	Apr-14	May-14	Jun-14	Fees Paid During The Quarter	Fees Paid Fiscal Year-To-Date
<b>Actuary/Consulting Fees:</b>						
Deloitte Consulting	Insurance	Time charges	\$8,154		\$8,154	\$21,866
Mid Dakota Clinic	Retirement Disability	Time charges	\$800	\$400	\$1,200	\$7,700
The Segal Company	Retirement (DB)	Fixed Fee		\$17,750	\$17,750	\$70,300
The Segal Company	Ret Health Credit	Fixed Fee		\$3,275	\$3,275	\$12,975
The Segal Company	FlexComp	Fixed Fee			\$0	\$0
The Segal Company	Job Service	Fixed Fee		\$4,750	\$4,750	\$18,825
The Segal Company	QDRO/Compliance	Time charges	\$5,740	\$1,610	\$6,300	\$65,601
The Segal Company	Legislation	Time charges	\$41,440		\$41,440	\$93,713
The Segal Company	Insurance HSA	Time charges	\$490	\$630	\$1,400	\$2,520
The Segal Company	Def comp	time charges	\$910		\$910	\$4,270
The Segal Company	Flex Comp time charges	Time charges	\$490	\$280	\$770	\$770
The Segal Company	115 TRUST				\$0	\$0
The Segal Company	Dental RFP				\$0	\$0
The Segal Company	Travel Expenses	Actual			\$0	\$0
Nyhart	GASB 45 Disclosures			\$9,000	\$9,000	\$9,000
			\$58,024	\$2,520	\$42,875	\$103,419
						\$307,540
<b>Audit Fees:</b>						
Brady Martz	Annual audit	Fixed Fee			\$0	\$51,250
<b>Legal Fees:</b>						
ND Attorney General	Administrative	Time charges	\$4,731	\$4,731	\$3,197	\$12,659
Calhoun Law Group	Administrative	Time charges	\$0	\$0	\$0	\$0
<b>Investment Fees:</b>						
SIB - Investment Fees	Retirement (DB)	% Allocation	\$247,067	\$583,105	\$667,474	\$1,497,646
SIB - Investment Fees	Ret Health Credit	% Allocation	\$724	\$1,033	\$59,118	\$60,875
SIB - Investment Fees	Insurance	% Allocation	\$344	\$442	\$317	\$1,103
SIB - Administrative Fees	Retirement (DB)	% Allocation	\$31,508	\$26,984	\$21,411	\$79,903
					\$1,639,527	\$7,759,755
<b>Administrative Fee:</b>						
Blue Cross Blue Shield	Health Plan	Fixed fee	\$1,732,861	\$1,733,961	\$1,734,581	\$5,201,403
						\$20,665,052



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# Memorandum

**TO:** PERS Board  
**FROM:** Sharon Schiermeister  
**DATE:** August 14, 2014  
**SUBJECT:** GASB 67 & 68

## **New Pension Standards**

In June 2012, the Governmental Accounting Standards Board (GASB) issued two new standards that will substantially change the accounting and financial reporting of public employee pension plans and the state and local governments that participate in such plans. GASB Statement No. 67, *Financial Reporting for Pension Plans*, revises existing guidance for the financial reports of most governmental pension plans. GASB Statement No. 68, *Accounting and Financial Reporting for Pensions*, revises and establishes new financial reporting requirements for most governments that provide their employees with pension benefits. GASB Statement No. 67 is effective for financial statements for periods beginning after June 15, 2013. GASB Statement No. 68 is effective for financial statements for fiscal years beginning after June 15, 2014.

## **Audit Implications**

Implementation of these two new standards will require additional audit work by our external auditors and require an amendment to the current audit contract. The State Auditor's Office requested Brady Martz to provide a proposal for the additional audit work noted below.

**Employer reporting:**  
For fiscal years 2013 and 2014:

The Firm will be required to form an opinion in accordance with AU-C section 805, *Special Considerations – Audits of Single Financial Statements and Specific Elements, Accounts, or Items of a Financial Statement* on the

applicable pension fund's "Schedule of Employer Allocations" and related notes to the schedule.

For fiscal years 2013 (to the extent necessary to restate beginning balances for fiscal year 2014) and 2014:

The Firm will be required to form an opinion in accordance with AU-C section 805, *Special Considerations – Audits of Single Financial Statements and Specific Elements, Accounts, or Items of a Financial Statement* on the applicable pension fund's "Schedule of Pension Amounts by Employer" and related notes to the schedule.

The Firms will also be required to review the employer note disclosure template for compliance with GASB Statement 68.

**Census data:**

The Office of the State Auditor is requesting proposals relating to the additional costs associated with auditing census data in compliance with SLGEP Pension Whitepaper Series "Single-Employer and Cost-Sharing Multiple-Employer Plans: Issues Associated with Testing Census Data in an Audit of Financial Statements"

Note:

- Firms need to audit census data for the 6-30-14 audit.
- Firm will not be able to rely on employer auditors.
- Firm will not be able to rely on internal auditors for direct assistance.

Attached is the proposal submitted by Brady Martz. They are projecting the fees for this additional work to be in a range not to exceed \$75,000. The current contract sets the audit fee for fiscal year 2014 at a fee not to exceed \$52,750. The State Auditors Office will be amending the audit contract to include this additional work effort.

Attachment



CERTIFIED PUBLIC ACCOUNTANTS  
AND CONSULTANTS

July 8, 2014

Mr. Ronald I. Tolstad Jr. CPA, M. Acc.  
Technical Specialist, Audit Manager  
Office of the State Auditor  
600 E Boulevard Avenue – Dept. 117  
Bismarck, ND 58505-0060

Dear Mr. Tolstad:

As requested, we are presenting this proposal as a contract amendment to the NDPERS contract for audit services for the year ended June 30, 2014. Additional work is required to comply with the provisions of GASB Statement No. 68, *Accounting and Financial Reporting for Pensions*. Specifically, we are required to form an opinion in accordance with AU-C section 805, *Special Considerations – Audits of Single Financial Statements and Specific Elements, Accounts, or Items of a Financial Statement* on the applicable pension fund's "Schedule of Employer Allocations" and related notes to the schedule. We are also required to form an opinion in accordance with AU-C section 805, *Special Considerations – Audits of Single Financial Statements and Specific Elements, Accounts, or Items of a Financial Statement* on the applicable pension fund's "Schedule of Pension Amounts by Employer" and related notes to the schedule. We will also review the employer note disclosure template for compliance with GASB Statement No. 68.

## CURRENT CENSUS AUDIT PROCEDURES

Our audit procedures of the census data for fiscal year 2013 consisted of the following:

- A sample of 40 participants was selected from the preliminary census database, which included Main, Judges, DC, JSND, NDHP, Law Enforcement (with and without) and National Guard. Confirmations were prepared and mailed. Procedures were performed by Internal Audit and BMA randomly selected 5 of the 40 to retest.

- Data confirmed consisted of: last four of SSN, DOB, gender, marital status, spouse DAB, June salary, and service credits.
- Data confirmed was traced to the final census database sent to actuary.
- Review pension contribution detail maintenance on PERSLink, in addition to employer payroll header maintenance.
- Downloaded the preliminary and final census data to data extraction software and reconciled the summaries to the actuary reports.

## PROPOSED AUDIT PLAN

Based on preliminary discussions with PERS personnel, our planned assessed risk of material misstatement over census data will be high. Currently PERS has no processes in place to ensure the information reported by employers, and submitted to the actuary, is complete and accurate. The only procedures performed to ensure accuracy are those noted above during the fiscal yearend audit. Currently internal audit does not test or perform other procedures related to the census data provided to the actuary. Therefore, there will be no reliance on internal audit to reduce control risk related to census data.

Our preliminary analysis of employers participating in defined benefit plans is as follows (size of each employer is determined by covered payroll reported for FY2013):

- North Dakota Highway Patrol is a single-employer plan and will be tested separately.
- Job Service North Dakota is a single-employer plan and will be tested separately.
- BCI-law enforcement and law enforcement with prior service are part of the Main PERS plan but will be treated separately for purposes of testing census data. BCI comprises approximately 22.6% of the covered payroll with three other employers exceeding 10% and one employer exceeding 2%. Our plan would be to test BCI census data on an annual basis, the three employers that exceed 10% would be tested once every three years and the employer exceeding 2% would be tested once every five years. However, we will perform a risk assessment of the employers to determine if further testing is considered necessary.
- Law enforcement without prior service is also part of the Main PERS plan but will be treated separately for purposes of testing census data. There are three employer databases all exceeding 10% with the probability that they would be tested on an annual basis. A risk assessment will be performed to determine if annual testing is necessary for the entire employer database.
- The Main PERS System plan consists of numerous employers with State Central Payroll (including University Systems) exceeding 28% of covered payroll. For purposes of testing census data, State Central Payroll will be considered one

employer and will be tested annually. There are four other employers that individually exceed 2% of covered payroll. All are political subdivisions and our plan is to rotate our testing of their census data once every five years. A risk assessment of the employers will be performed to determine if further testing is considered necessary.

- North Dakota National Guard is also part of the Main PERS plan but will be treated separately for purposes of testing census data. We will annually test the census data for Highway Patrol.

Our plan would not change with respect to the audit testing over contribution revenue and contribution receivables. As documented in our proposal dated March 21, 2012, we will perform the following procedures: "Review and test controls of contributions received and receivable. In part, this will be accomplished through the use of the internal audit department and the work they performed during the fiscal year. Obtain database of participants and using IDEA, reconcile contributions to general ledger, compare current and prior year balances, compare ratio of contribution to number of participants for current and prior year. Test contributions receivable by selecting a sample of subsequent receipts. Review plan documents for changes and amendments. Test sample of purchased service credits for eligibility, amount and collection."

Our audit of the census data and the underlying payroll records of the employers will consist of sampling employees by data base as noted above in the "bullet points". Significant elements of census data will include: date of birth, last 4 digits of SSN, date of hire and/or years of service, marital status, eligible compensation, class of employee, gender, date of termination or retirement, spouse date of birth and employment status. If other attributes are determined significant we will test for those. If the employee is inactive or retired, our plan is to test the documents retained by PERS. Our testing of active employees will include confirmation of the attributes with the selected employee and testing of the underlying payroll records of the employer. Onsite or electronic testing of the records will be determined based on the reliability and sophistication of employer records.

We will conduct a risk assessment of employers beyond the scope of those selected for testing above. Consideration will be given to the qualitative factors discussed in the SLGEP Pension Whitepaper dated February 2014. The size of the employer in relation to the plan: Past errors or control deficiencies of an employer; Length of time since procedures under this section were last performed at an employer; Whether there have been significant changes in the workforce of an employer; Results internal analysis of employer information; New or terminating employer; and Whether the financial statements of participating employers are audited and have received unmodified

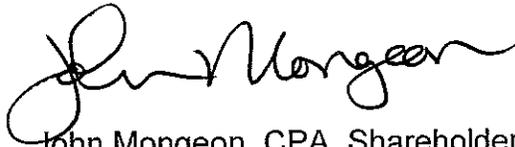
opinions. Because some employers in the Main plan are so insignificant they may never be tested, and we may determine that risk assessment procedures are not considered necessary.

Sample sizes will vary, based on the size of the database. We anticipate, based on preliminary estimates, samples could be as high as 200 for the State Covered Payroll and 5 for the smallest database selected for testing. However, these sample sizes could change based on analyzing the preliminary census data for FY2014.

Our fee for these services will be at our standard hourly rates plus out-of-pocket costs (specifically travel to employer locations) which we anticipate to be in a range not to exceed \$75,000. Our standard hourly rates vary according to the degree of responsibility involved and the experience level of the personnel assigned to the additional audit procedures.

Please call me at 355-5005 if you have any questions concerning our proposal. Thank you for this opportunity to provide these additional audit services.

Sincerely,

A handwritten signature in black ink, appearing to read "John Mongeon". The signature is fluid and cursive, with a large initial "J" and "M".

John Mongeon, CPA, Shareholder  
BRADY, MARTZ & ASSOCIATES, P.C.