

# NDPERS BOARD MEETING

# Agenda

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

**December 18, 2014**

**Time: 8:30 AM**

## **I. MINUTES**

- A. November 20, 2014
- B. December 4, 2014

## **II. GROUP INSURANCE**

- A. Quarterly Executive Summary – BCBS (Information)

## **III. RETIREMENT**

- A. Retiree Health Insurance Credit Implementation – Sharon (Board Action)
- B. Proposed Legislation – Sparb (Board Action)

## **IV. MISCELLANEOUS**

- A. Open Meetings Opinion – Jan Murtha (Information)
- B. PERS Update – Kathy (Information)
- C. Audit Committee Minutes – (Information)
- D. Audit Committee Charter Revisions – (Board Action)

## **V. EXECUTIVE SESSION**

- A. \* Group Health Insurance Bids Update – Sparb
- B. \*\* Retirement Benefit Issue - Sparb

\*Executive Session pursuant to NDCC §44-04-19.1(9) and §44-04-19.2 to discuss negotiating strategy or provide negotiating instructions to its attorney or other negotiator.

\*\* Executive Session pursuant to NDCC §44-04-19.2(1), 44-04-19.2(2) and 54-52-26 to discuss confidential records or confidential member information. No motion needed to go into Executive Session.

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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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# Memorandum

**TO:** PERS Board  
**FROM:** Sparb  
**DATE:** December 12, 2014  
**SUBJECT:** BCBS Quarterly Executive Summary

Because of the full agenda for the December meeting, BCBS staff will review only the dashboard and financial/trend analysis portions of the quarterly executive summary with the Board.

If you have any questions relating to other topics on the summary, please review with BCBS staff at the meeting.

# NDPERS

# Executive Summary

Q3 | Presented November 2014

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Restricted and/or Confidential



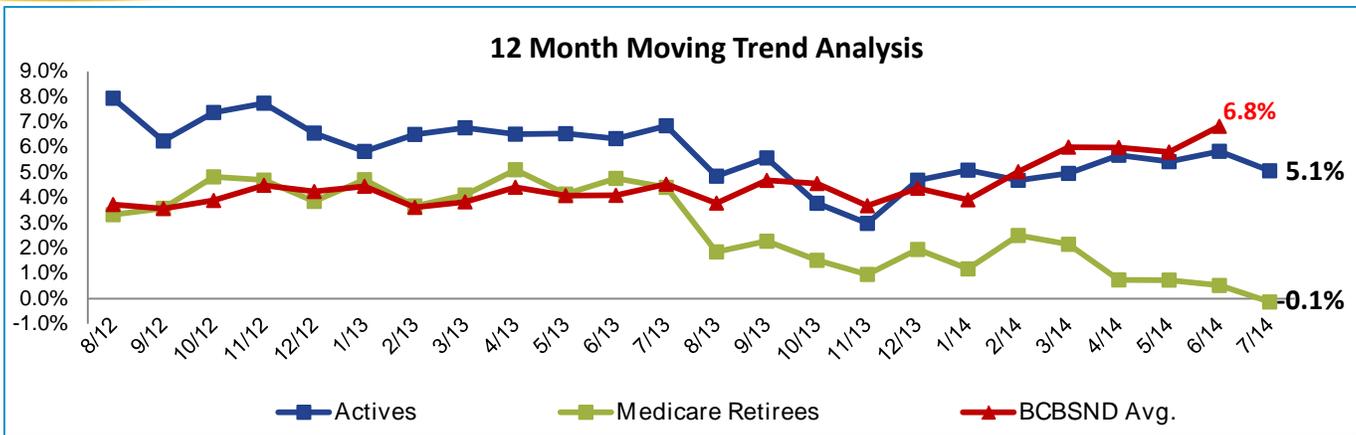
NORTH DAKOTA  
PUBLIC EMPLOYEES  
RETIREMENT SYSTEM



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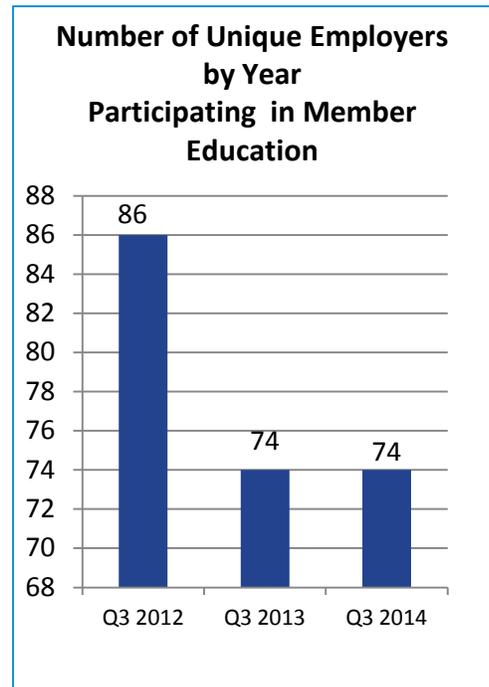
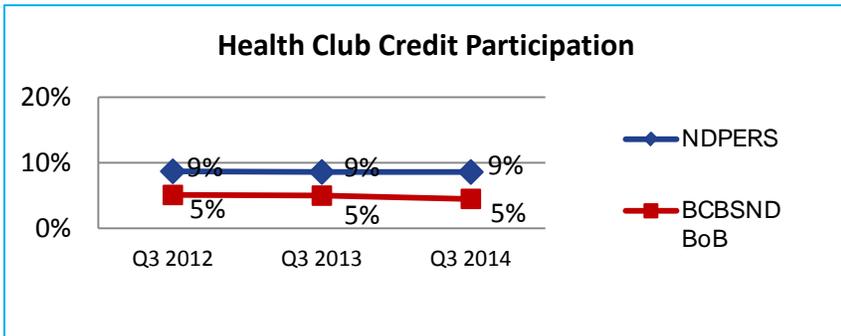
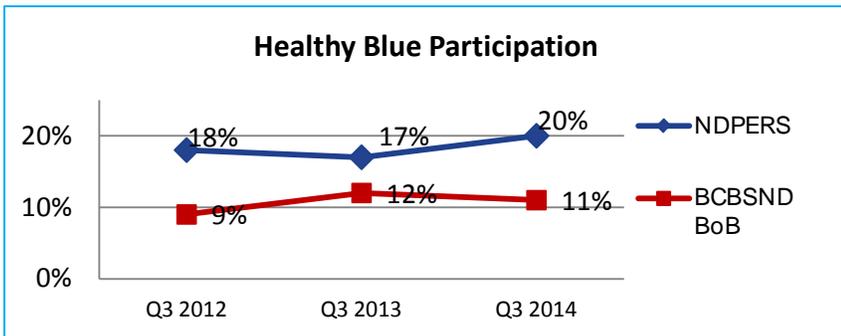
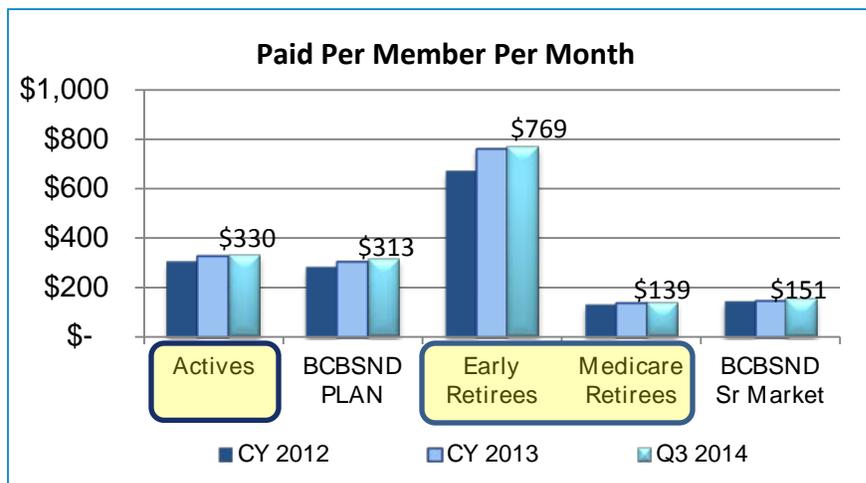
Blue Cross Blue Shield of North Dakota is an independent licensee of the Blue Cross & Blue Shield Association

Noridian Mutual Insurance Company



### Membership Comparison

	CY 2013	Q3 2014
Actives	54,813	55,750
Early Retirees	1,242	1,198
Medicare Retirees	7,854	8,245



Actives include Political Subs and State Employees

Quarters are cumulative since beginning of year

## NDPERS Biennium Comparison Paid through September 30, 2014

Incurred	Premium	Admin Fee	Interest on Surplus	Estimated Incurred Claims	Gain (Loss)	Gain (Loss) as % of Premium	Full Biennium Gain (loss)	% of Premium
July 09 - Jul 10	227,322	12,020	216	189,197	26,321	11.6%	38,094	9.0%
July 11 - Jul 12	252,181	13,410	55	226,635	12,191	4.8%	10,521	2.2%
July 13 - Jul 14	294,383	22,397	77	263,978	8,085	2.7%	N/A	N/A

Note: Reported in thousands

The July 11 - June 13 biennium is reporting a gain of \$10.5 million with fifteen months of claims run out. Biennium gain(losses) are prior to risk sharing. It is important to note that the biennium beginning with July 13 includes estimated claim reserves. Actual claims runout may vary from original reserve estimates.

It is expected that premiums will exceed claims in the first few months of the biennium. This is due to stable premium levels throughout the entire biennium and increasing claims during the biennium. At the mid-point of the biennium claims would be expected to be equal to premiums less admin fees and during the last months of the biennium, claims would be expected to exceed premiums.

## NDPERS Quarterly Trend Analysis Paid through September 30, 2014

Incurred Month	Twelve Month Moving Average		Annual Trend	
	Est. Incurred Claim/Contract Actives	Med Retirees	Actives	Med Retirees
9/12	782.29	177.85	6.2%	3.6%
10/12	794.14	179.82	7.4%	4.8%
11/12	801.72	179.68	7.7%	4.7%
12/12	799.75	179.02	6.6%	3.9%
1/13	800.60	179.88	5.8%	4.7%
2/13	807.32	178.64	6.5%	3.7%
3/13	810.93	178.96	6.8%	4.1%
4/13	812.96	181.03	6.5%	5.1%
5/13	817.17	181.39	6.5%	4.1%
6/13	819.16	181.78	6.3%	4.8%
7/13	827.60	182.79	6.8%	4.4%
8/13	821.55	180.68	4.9%	1.8%
9/13	825.91	181.89	5.6%	2.3%
10/13	824.13	182.55	3.8%	1.5%
11/13	825.60	181.40	3.0%	1.0%
12/13	837.28	182.50	4.7%	1.9%
1/14	841.35	182.00	5.1%	1.2%
2/14	845.17	183.10	4.7%	2.5%
3/14	851.17	182.81	5.0%	2.2%
4/14	859.14	182.37	5.7%	0.7%
5/14	861.52	182.72	5.4%	0.7%
6/14	866.98	182.72	5.8%	0.5%
7/14	869.52	182.54	5.1%	-0.1%

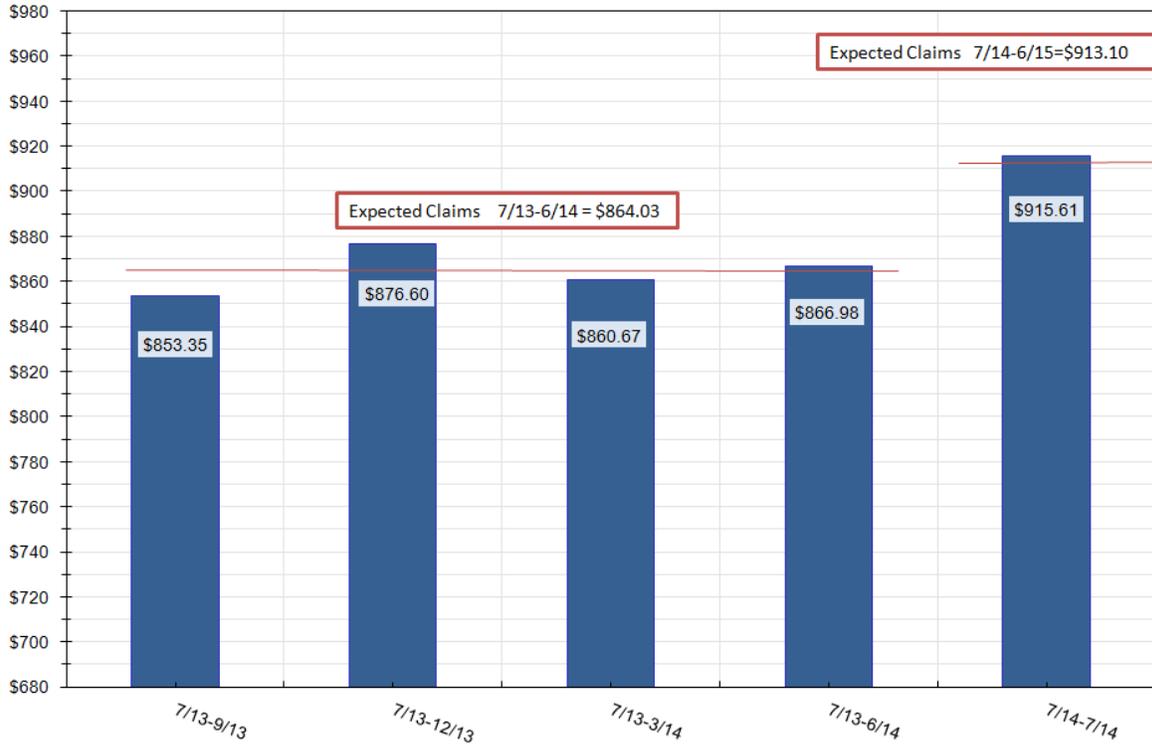
The 5.8% twelve month rolling trend for NDPERS Actives through June 2014 is less than the Blue Cross Blue Shield overall trend of 6.8%.

A 6.68% trend was used in rating the first year of the biennium beginning July 2013.

**NDPERS Quarterly Trend Analysis**  
Paid through September 30, 2014

**NDPERS - Actives**

AVERAGE MONTHLY INCURRED CLAIMS PER CONTRACT



**NDPERS - Medicare Retirees**

AVERAGE MONTHLY INCURRED CLAIMS PER CONTRACT



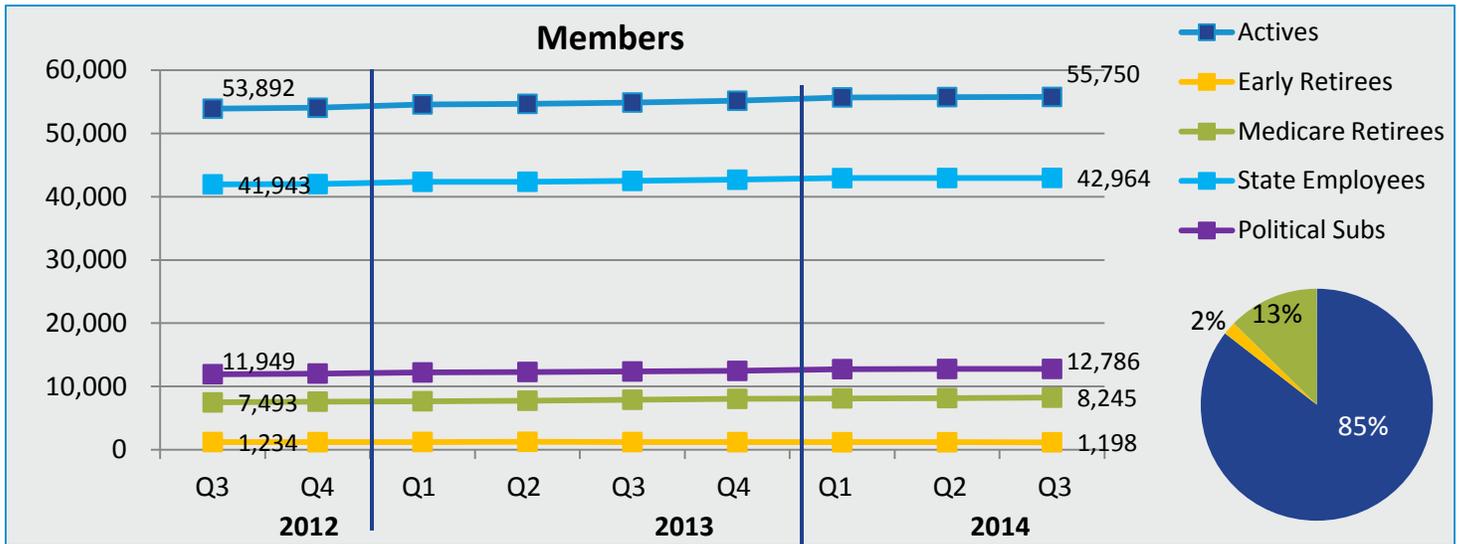
# Membership & Health Utilization Summary

Paid each Calendar Year (Q1 through 3/31/2014)

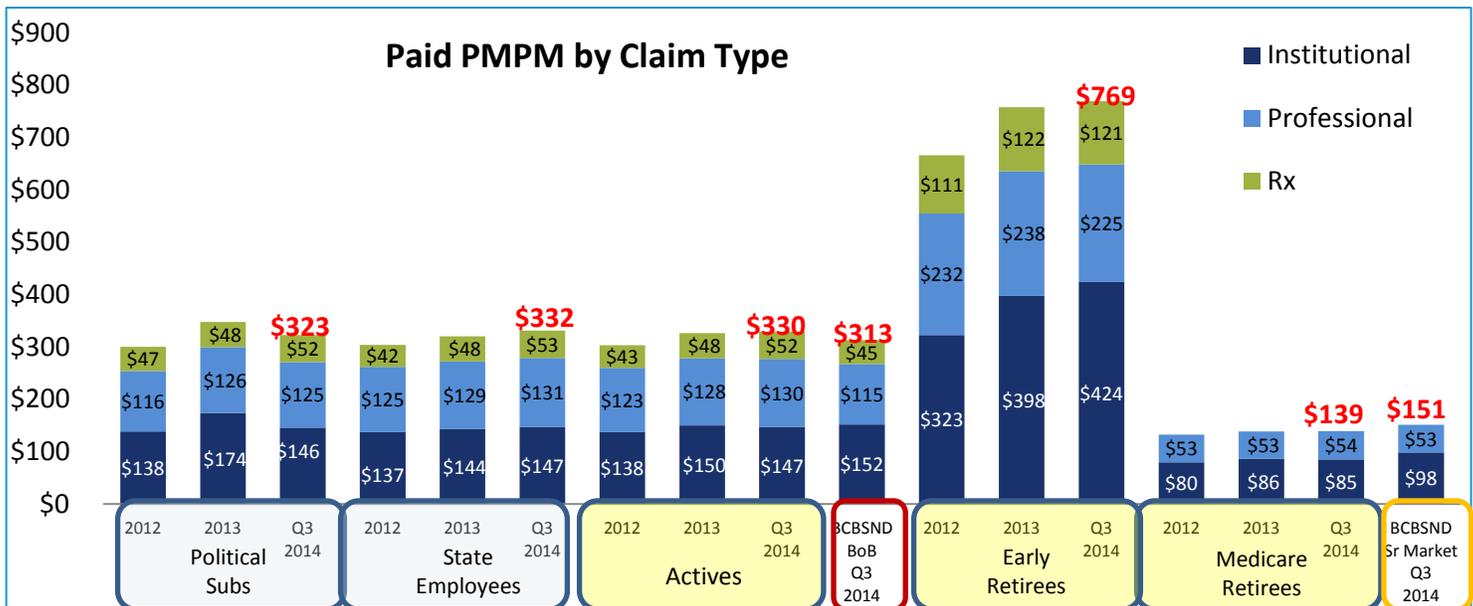
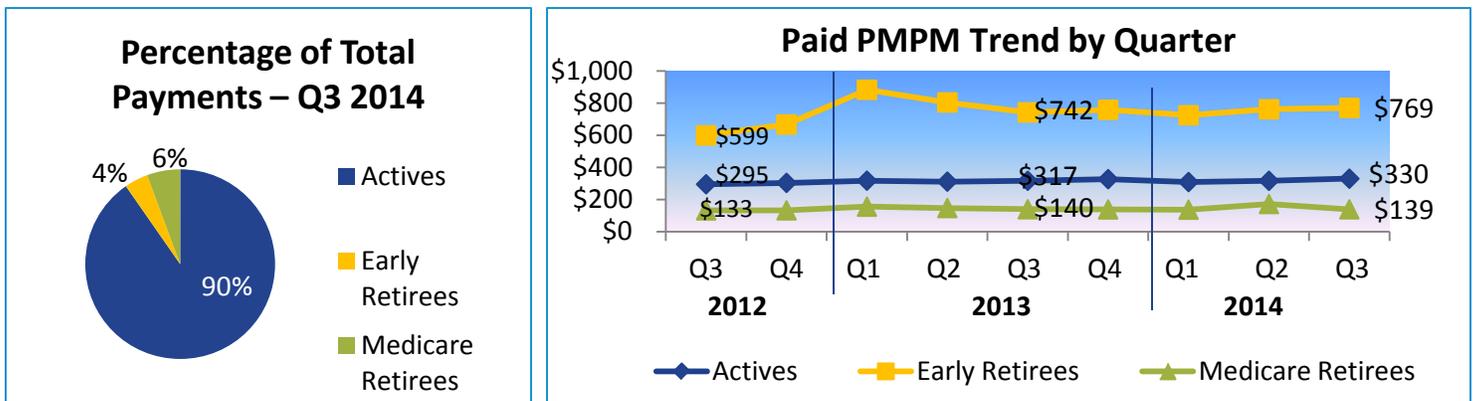


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## Membership

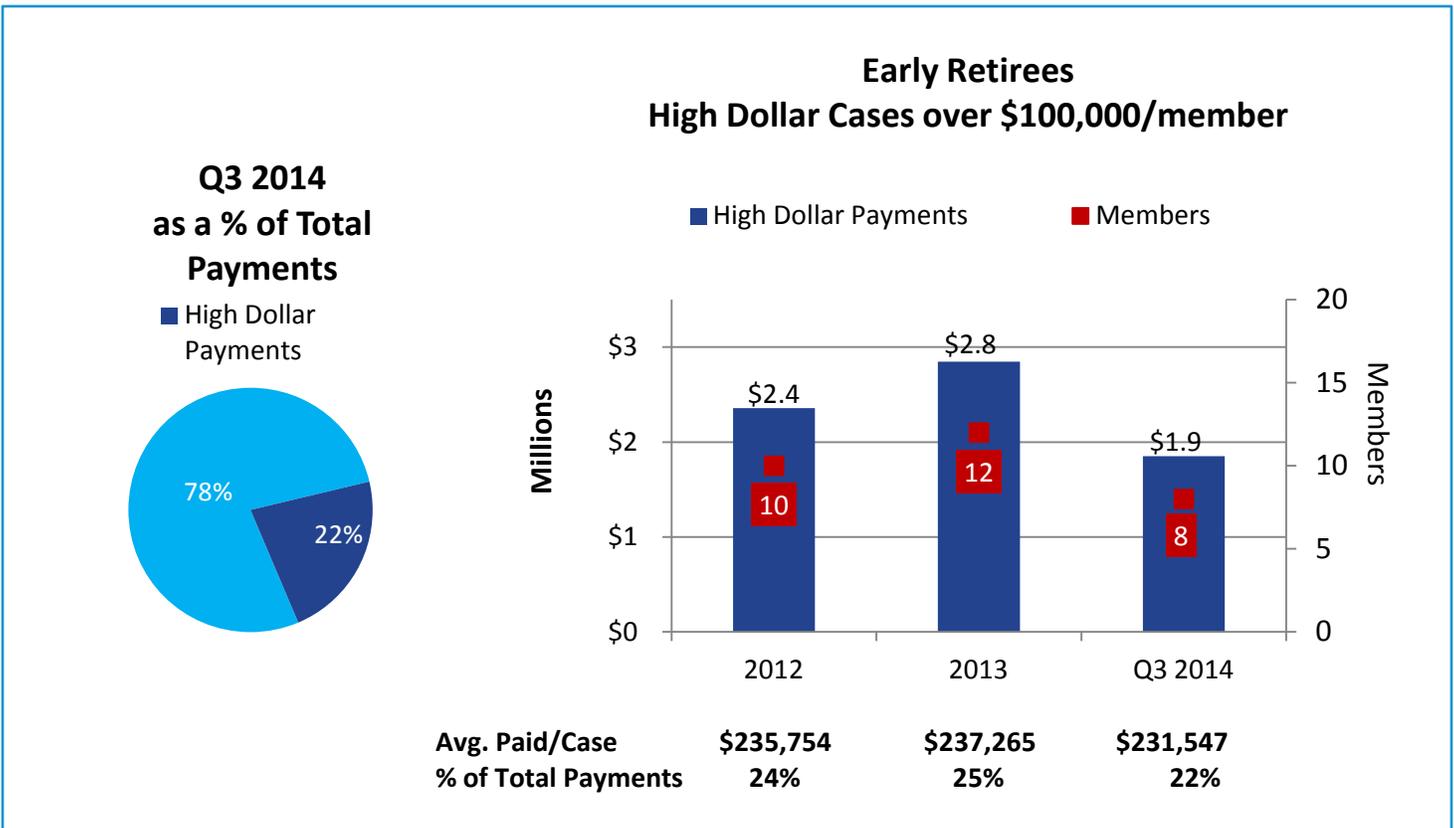
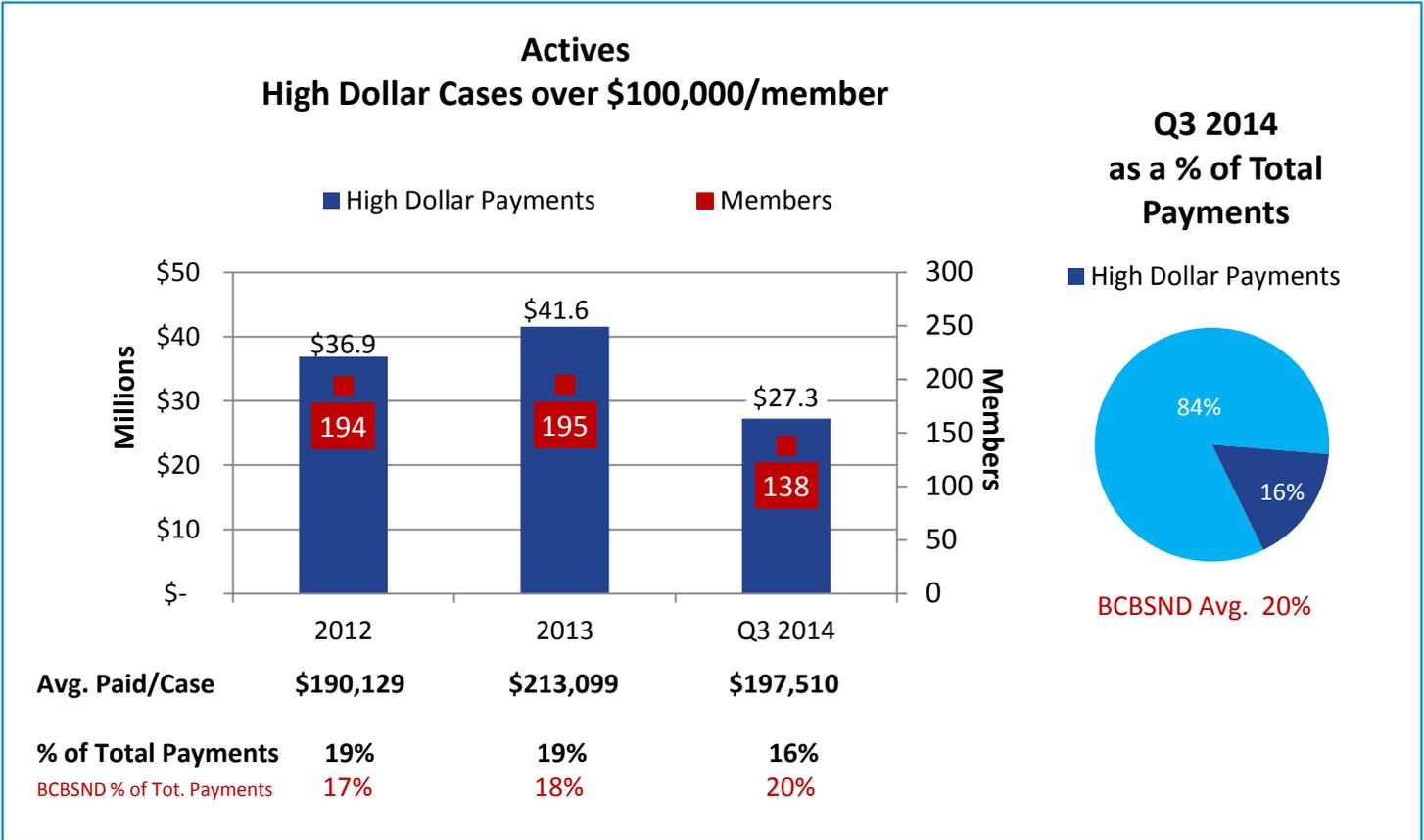


## Claims Paid Per Member Per Month (PMPM)



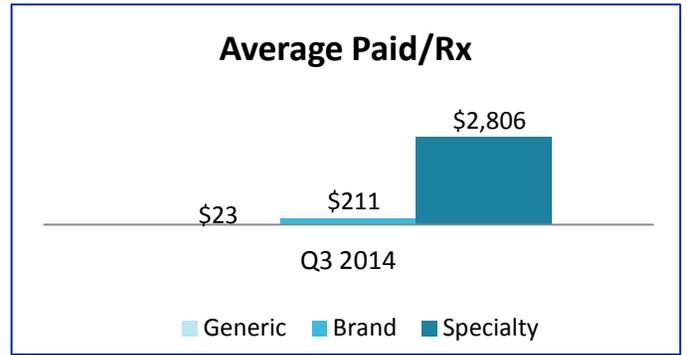
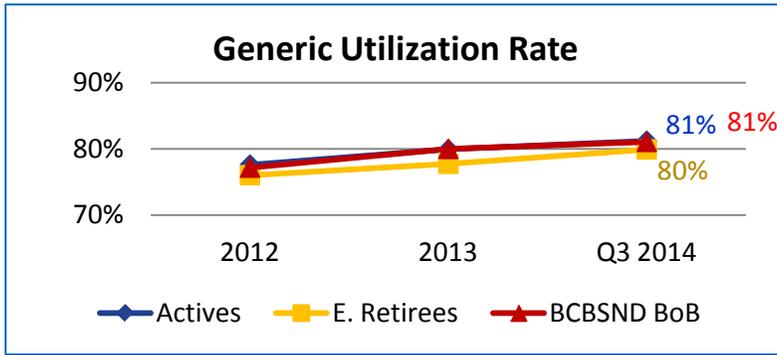
Actives include Political Subs and State Employees  
 Quarters are cumulative to calendar year end  
 BoB = Book of Business

## High Dollar Cases

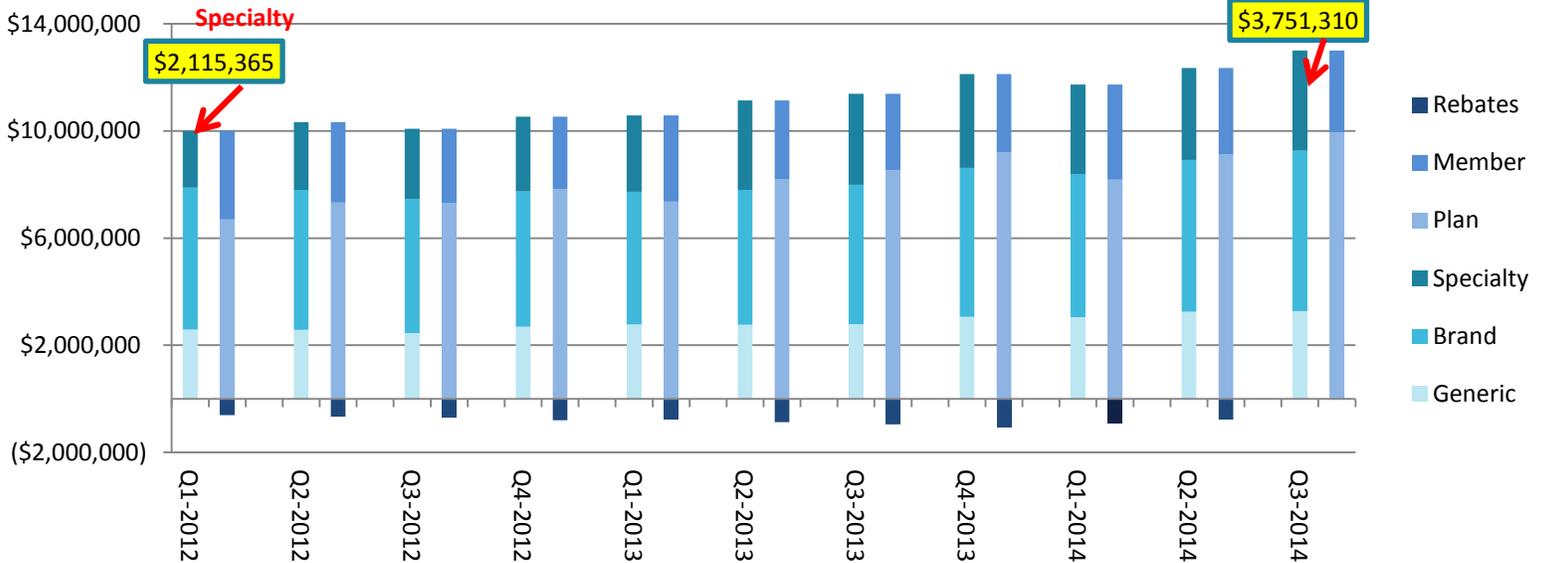




## Prescription Drugs

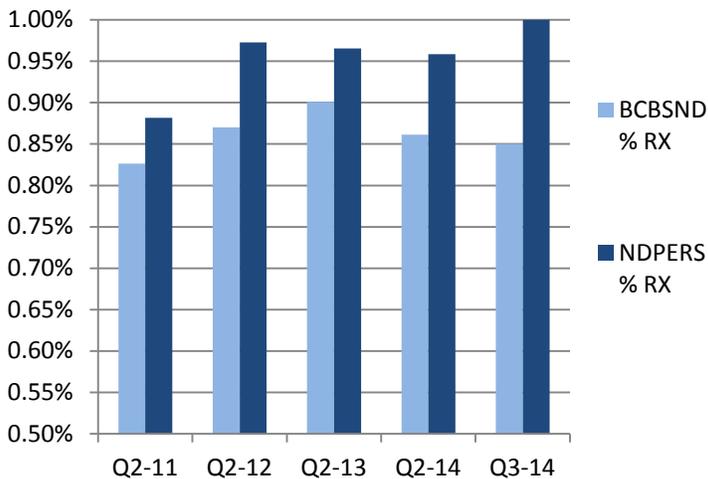


## Quarterly Drug Spending and Payment Trend

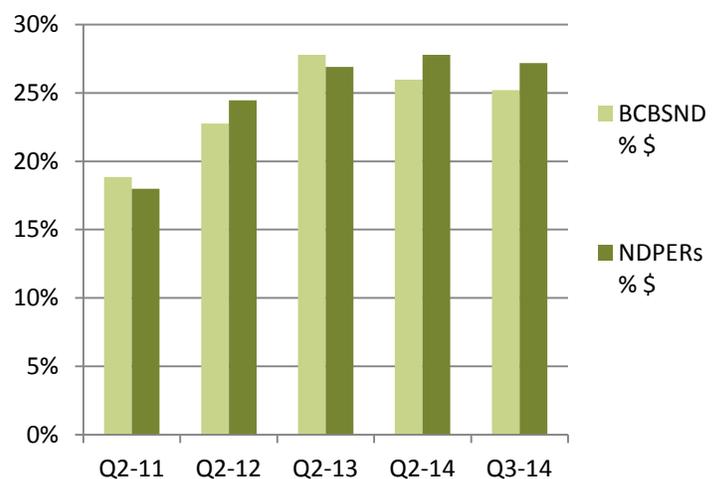


- Specialty spend continues to increase
- NDPERS costs are increasing – benefit design may not be keeping up with inflation
- Rebates have also increased

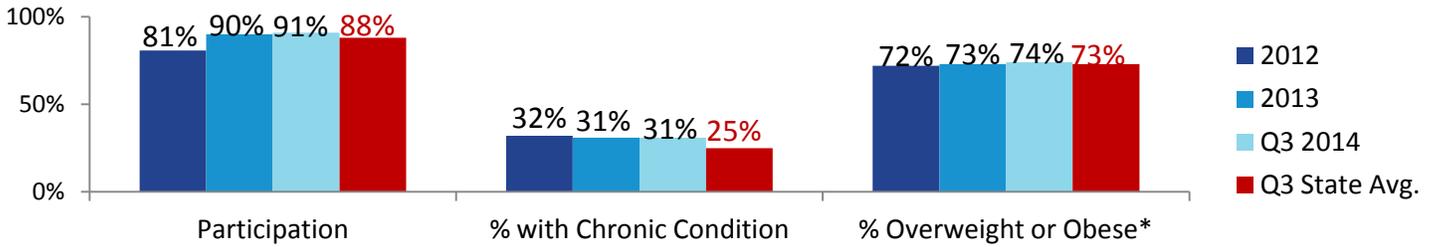
## Specialty Claims (%)



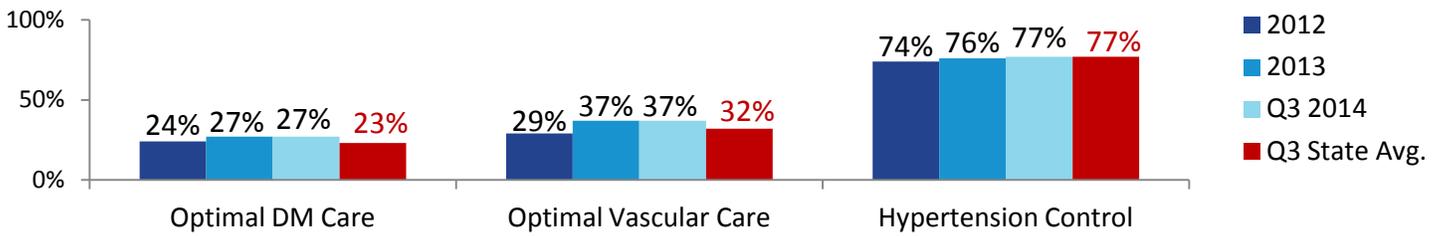
## Specialty Spend (%)



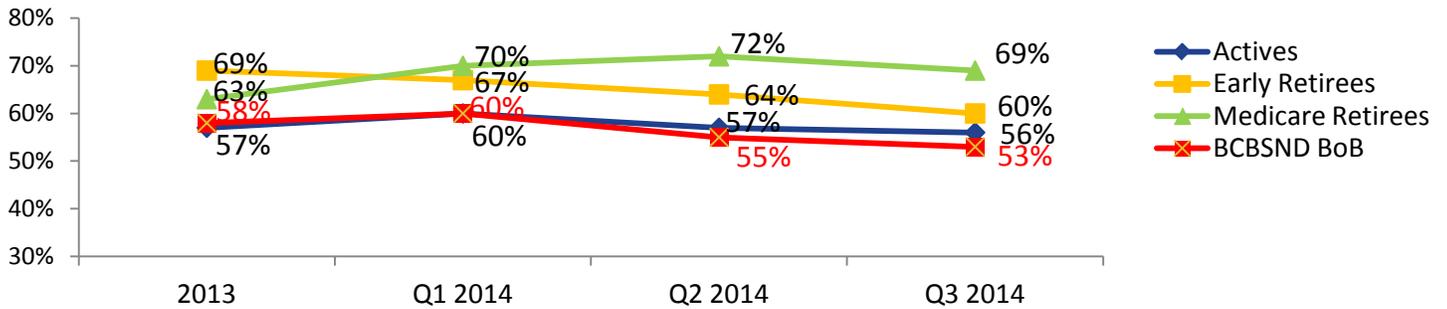
## MediQHome Key Measures



## MediQHome Outcome Measures



## AccordantCare Participation – Rare and Complex Disease Management



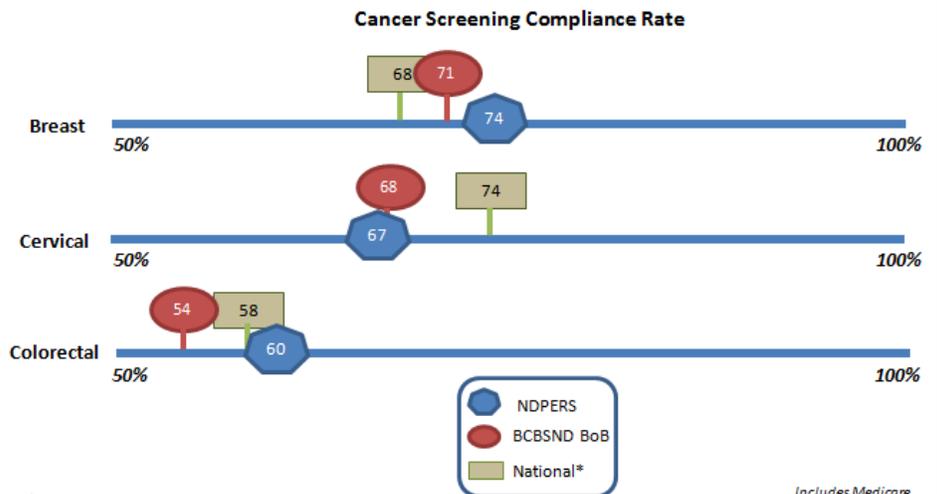
- 551 eligible, 317 participating (overall average participation 58%)
- Overall participation % is currently at what it was in 2013
  - Due to small population of the retirees, addition or decline of a few members could change participation percentage significantly

## Preventive Cancer Screenings

•NDPERS **breast** cancer screening compliance is higher than both National and BCBSND book of business (BoB)

•NDPERS **cervical** cancer screening compliance is lower than National avg. and BCBSND BoB

•NDPERS **colorectal** cancer screening compliance is higher than both National and BCBSND BoB

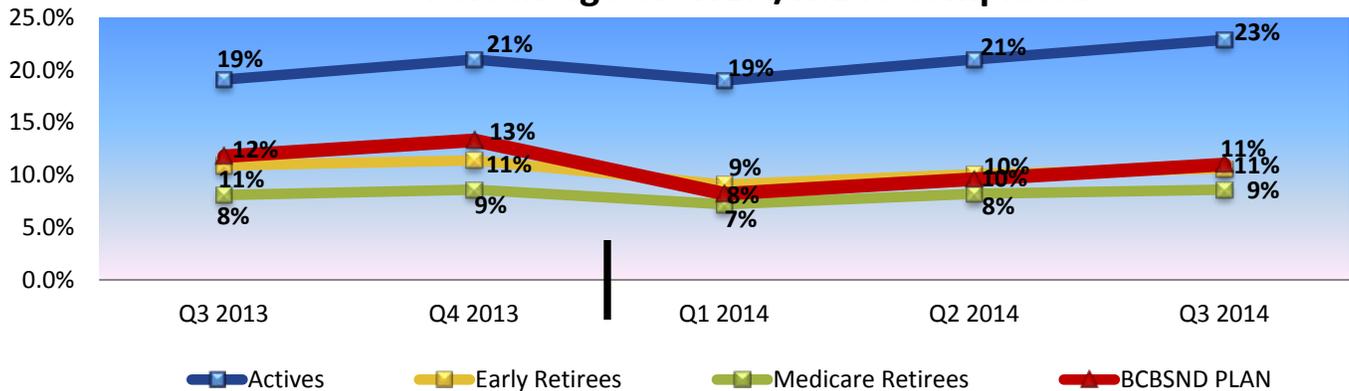


Through Q2 2014 (Jan-Jun), there was a total of 44,344 members eligible for the wellness programs, HealthyBlue and Health Club Credit. NDPERS member participation in both wellness programs is higher than the BCBSND Plan average.

## HealthyBlue

- 20% (up 2% from Q2) of total eligible members have completed a Health Risk Assessment (8,859 members).
  - BCBSND Plan HRA completion rate was 11% (up 1% from Q2)
- Point redemption through Q3 2014 - \$300,195 in redeemed prizes

### Percentage of WBA/HRA's completed



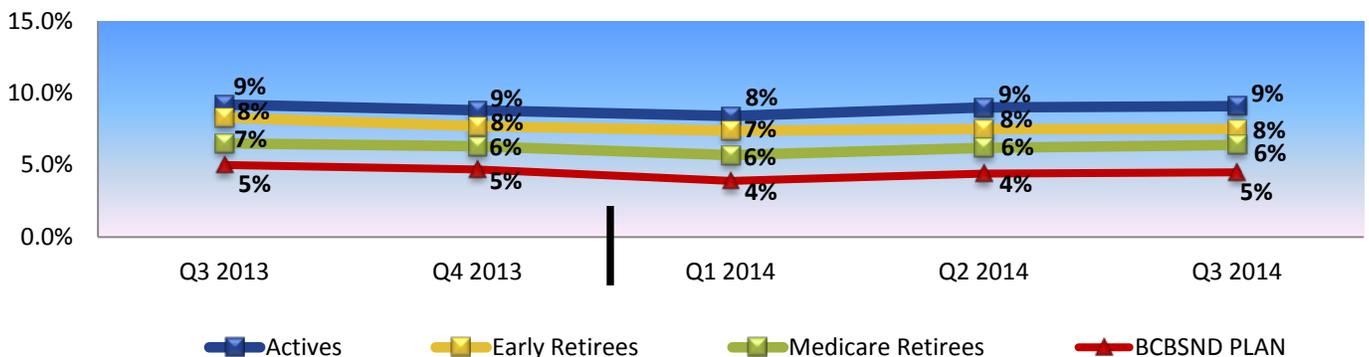
Q1 2014 begins over due to annual HRA completion requirement.

Quarters are cumulative to calendar year end

## Health Club Credit

- 9% (no change from Q2) participate in the Health Club Credit Program (3,811 members)
  - BCBSND Plan average is 5% (up 1% from Q2)
- Members receiving credit 54% (down from 57% Q2) - those participating in HCC exercise 12 or more days per month (2,057 members)
  - BCBSND Plan average is 54% (also down from 57% Q2)
- Health club credits paid through Q3 2014 - \$365,887

### HCC Member Participation



Quarters are cumulative to calendar year end



## Member Engagement

Member Education Representatives introduce programs that provide employees with valuable information and engages them in their health care. Along with making more informed health care decisions, these programs include valuable life skills.

Presentations are available for the following programs:

- Take Care of Yourself
- Walking Works
- Strength Training
- Beat The Bug
- Summer Safety
- Stress Management
- Medication Education
- Tobacco Cessation
- Wellness Programs  
(HealthyBlue/Health Club Credit)
- Nutrition Basics for a Healthier You
- **NEW! “CPR and First Aid Basics”**

2014 through Q3, 74 employer groups have held these educational programs and 31 employer groups have had a benefit overview meeting.

	Number of Employers	Member Education Programs & Benefit Overview	Member Attendance
<b>Q3 2014</b>	14	HealthyBlue /HCC	305
	11	Other	302
	14	Benefit Overview	

## NDPERS Wellness Specialist

- 430 members participated in the Fruit & Veggie challenge in August
- Lt. Governor’s Award awarded to 24 NDPERS worksites at the Worksite Wellness Summit in Fargo on October 6<sup>th</sup>.
  - 1 Gold – ND Department of Health
  - 6 Silver
  - 16 Bronze
- Healthy North Dakota Worksite Wellness Summit was in October – 4 NDPERS Wellness Coordinators were asked to be a part of a panel breakout session
- HealthyBlue now has additional compatibility with the FitBit
- NDPERS Wellness Coordinator Points and voucher points were uploaded to HealthyBlue
- Duncan’s Digest – the quarterly online presentation in HealthyBlue ; Q3 was a video promoting the flu vaccination
- Planning for Holiday Physical Activity Challenge



Measure	Goal	9/30/2014
<b>Cost Management</b> <i>(goal completion of 12/31/14)</i>		
HRA Completions	17%	20%
HRA Score	5% point increase in the 2013 NDPERS group aggregate HRA wellness score Goal = 55	
HealthyBlue – incentives paid	10% increase over 2013 incentives paid Goal = \$581,798	\$300,195
Health Club Credit – members receiving credit	10% increase over 2013 members receiving credit Goal = 2,177	2,057
<b>Health Outcomes:</b>		
Members enrolled in a Medical Home	80%	91%
Breast Cancer Screening Rates*	80%	74%
Cervical Cancer Screening Rates*	85%	67%
Colorectal Cancer Screening Rates*	60%	60%
<b>Operational Performance:</b>		
Claims Financial Accuracy	99%	99.9%
Payment Incident Accuracy	97%	98%
Claim Timeliness	99%	99%
Average Speed of Answer (in seconds)	30 seconds or less	20
Call Abandonment Rate	5% or less	1%
<b>Provider Network Management:</b>		
NDPERS PPO network	92% (or more) participation	99.7%
Provider Discount (non-Medicare contracts)	30% or more	52%

**Green – meeting goal**

**Red – below goal**

\*Cancer screening rate calculation changed to use data from Health Intelligence tool only

## Completed

- ACA Statewide meetings
- Lt. Governor's Award awarded to 24 worksites at the Wellness Summit.
- Healthy North Dakota Worksite Wellness Summit
- Fruit & Veggie Challenge
- HealthyBlue - additional compatibility with the Fitbit
- Voucher Points were uploaded to HealthyBlue
- Mammogram reminder postcards sent
- Retiree Health Fair

## Ongoing Activities

- There are currently 11 members in the Member Advocacy Program (MAP)
- Bi-monthly HealthyBlue Highlights
- Monthly NDPERS Wellness Coordinator calls and newsletters
- Monthly NDPERS Wellness Star
- Quarterly Duncan's Digest
- Case Management proactive outreach to members/providers
- Specialty Pharmacy
  - NDPERS enrollment in Prime Specialty Pharmacy Care Management
  - Targeted mailings continue to identify new specialty users
- Accordant Care – continue to identify newly eligibly members



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# Memorandum

**TO:** PERS Board  
**FROM:** Kathy and Sharon  
**DATE:** December 12, 2014  
**SUBJECT:** Retiree Health Insurance Credit Portability Implementation

Staff has conducted an in depth review of the administrative implications of HB 1058 which makes the Retiree Health Insurance Credit (RHIC) portable. Some areas are policy decisions which require direction from the Board. Following are the items that require your consideration:

1. Administration for premiums that are paid for coverage that is not based on a calendar month. For example, coverage is from the 15<sup>th</sup> of one month to the 15<sup>th</sup> of the following month. How will the RHIC be applied?

Considerations:

- a) Eligibility for the RHIC is determined each month, based on whether or not the retiree received a retirement benefit for that month. (NDCC 54-52.1-03.3, subsection 1)
- b) The RHIC is applied to the payment of monthly premiums. This is currently limited to the PERS sponsored health plan, for which premiums are based on a calendar month. HB 1058 expands this to include medical and prescription drug coverage under any health insurance program. (NDCC 54-52.1-03.3, subsection 3).
- c) Members that are using the credit for other insurance coverage will file their claims directly with the vendor. PERS will provide the vendor with each member's eligible RHIC amount each month. The vendor will be responsible for confirming that the member has incurred an eligible premium expense for the month and has an available RHIC amount to be reimbursed for that month. For premiums that are for a coverage period that is not a calendar month, there is not clear direction for the vendor to determine the eligible reimbursement.

**Proposed Policy: The RHIC will apply to the month in which the coverage period begins. Example: If the coverage is from 9/15 to 10/15, the RHIC for September will apply for the premium for this coverage period. The October RHIC will apply to the premium for the 10/15 to 11/15 coverage period, etc.**

2. Administration of over/under payments of benefits. Since the RHIC will be reimbursed directly to the member through a 3<sup>rd</sup> party vendor, how will adjustments to the RHIC benefit resulting in either an overpayment or underpayment to the member be handled?

Considerations:

- a) Currently, the RHIC can only be applied to the PERS health insurance premium. Therefore, any adjustments to either increase or decrease the RHIC amount that has been applied to a health insurance premium is handled through the group insurance billing process on PERSLink. If there is an underpayment of RHIC, it is paid to the member in a lump sum pursuant to NDAC 71-03-05-07 and 71-06-01-06. If there is an overpayment of RHIC, the member must repay it in either a lump sum or installments subject to approval by the executive director, pursuant to NDAC 71-03-05-08.
- b) A process will need to be established for PERS to notify the vendor of any adjustments to the monthly RHIC amount so the vendor can 'reprocess' any reimbursement claims that have been made to the member for the month(s) impacted by the adjustment. The vendor will need to establish whether the member is owed additional reimbursement or whether the member has been overpaid. However, since the RHIC benefit will have been paid directly to the member and not offset against a premium payment, the guidance for over/under payments provided in the NDAC referenced above will no longer be applicable.

**Proposed Policy (contingent on ability of selected vendor to accommodate):**

1. **Underpayment of Benefits – If an adjustment occurs that results in an underpayment of RHIC benefits to a member, the vendor will reprocess any claims for the months impacted by the adjustment and pay any additional reimbursement due to the member in a lump sum.**
2. **Overpayment of Benefits – If an adjustment occurs that results in an overpayment of RHIC benefits to a member, then**
  - a. **The amount of the overpayment will be offset against future monthly RHIC benefits until the overpayment has been recovered, or**
  - b. **If the member is no longer eligible for RHIC benefits (return to work, suspended DC payment), the member will be notified of the overpayment and given the repayment options (lump sum or installments) that are currently defined in NDAC 70-03-05-08**
  - c. **If the member is deceased and there is a surviving spouse to whom the RHIC benefit continues to, the overpayment would be offset against the surviving spouse benefit until the overpayment has been recovered, or**
  - d. **If the member is deceased and no further benefits are payable, PERS would notify the estate of amount of the overpayment and request payment in a lump sum.**
3. Deminimus RHIC benefits. Should the vendor establish a reimbursement account for every member who is eligible for the RHIC benefit, regardless of the amount of the monthly RHIC benefit?

Considerations:

- a) The RFP to select a vendor to process the RHIC reimbursements asks that the vendor provide a per member per month fee for providing this service. We are aware of some members accruing RHIC benefits that are less than a dollar/month (members automatically vest at age 65 regardless of years of service). We are expecting that the monthly fee to maintain a reimbursement account may be at least \$2/month.

**Policy decision: Should a reimbursement account be established automatically for RHIC benefits that are less than the monthly servicing fee?**

4. Validating payment of PERS premiums. When should premium payments be reported to the vendor?

Considerations:

- a) PERS will provide the vendor with monthly premium payment information for members who have the PERS health, dental or vision plans. This will be used by the vendor to process the reimbursement to the member, without the need for the member to file a claim for reimbursement each month.
- b) Premiums are received through various payment methods (PERS pension deduction, TFFR pension deduction, ACH and personal check) throughout the month.
- c) It's possible that a member could cancel their insurance plan during the month, after the premium has been paid, and receive a refund of that premium. This could result in a member receiving reimbursement of their RHIC from the vendor for a premium that was subsequently refunded. A process would have to be established to notify the vendor so the reimbursement claim could be 'reprocessed' and the overpayment recovered.

**Proposed Policy: Validation of monthly premium payments of PERS premiums will be sent to the vendor at the end of the coverage period. For example, validation of the payment for November premium would not be sent to the vendor until December 1. (Note: This would result in the member experiencing a one month delay receiving their initial RHIC reimbursement)**

**Board Action Requested: Provide guidance on proposed policy decisions.**



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# Memorandum

**TO:** PERS Board

**FROM:** Sparb

**DATE:** December 11, 2014

**SUBJECT:** DEFINED CONTRIBUTION BILL PROPOSED LEGISLATION

Attached is the defined contribution bill, Legislative Council review of the bill, and Segal review of the bill.

We will need to discuss and determine what the position of the Board will be and will discuss several options with you at the meeting.

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 participating members  
19 before January 1, 2016, and who meet all of the eligibility requirements set by this  
20 chapter and who are eighteen years or more of age, and includes appointive and  
21 elective officials under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12 who are  
22 participating members before January 1, 2016, and nonteaching employees of the  
23 superintendent of public instruction, including the superintendent of public instruction,  
24 who ~~elect~~electelected to transfer from the teachers' fund for retirement to the public

1 employees retirement system under section 54-52-02.13, and employees of the state  
2 board for career and technical education who ~~elect~~elect to transfer from the  
3 teachers' fund for retirement to the public employees retirement system under section  
4 54-52-02.14. Eligible employee does not include state employees who ~~elect to~~  
5 ~~become members of the retirement plan established under chapter 54-52.6~~are first  
6 employed after December 31, 2015, and are not participating members, but does  
7 include supreme court judges and district court judges; employees eligible to  
8 participate in the national guard retirement plan or a law enforcement retirement plan;  
9 and employees of a political subdivision.

- 10 5. "Employee" means any person employed by a governmental unit, whose  
11 compensation is paid out of the governmental unit's funds, or funds controlled or  
12 administered by a governmental unit, or paid by the federal government through any of  
13 its executive or administrative officials; licensed employees of a school district means  
14 those employees eligible to participate in the teachers' fund for retirement who, except  
15 under subsection 2 of section 54-52-17.2, are not eligible employees under this  
16 chapter.
- 17 6. "Employer" means a governmental unit.
- 18 7. "Funding agent" or "agents" means an investment firm, trust bank, or other financial  
19 institution which the retirement board may select to hold and invest the employers' and  
20 members' contributions.
- 21 8. "Governmental unit" means the state of North Dakota, except the highway patrol for  
22 members of the retirement plan created under chapter 39-03.1, or a participating  
23 political subdivision thereof.
- 24 9. "National guard security officer or firefighter" means a participating member who is:  
25 a. A security police employee of the North Dakota national guard; or  
26 b. A firefighter employee of the North Dakota national guard.
- 27 10. "Participating member" means all eligible employees who through payment into the  
28 plan have established a claim against the plan.
- 29 11. "Peace officer" means a participating member who is a peace officer as defined in  
30 section 12-63-01 and is employed as a peace officer by the bureau of criminal  
31 investigation or by a political subdivision and, notwithstanding subsection 12, for

- 1 persons employed after August 1, 2005, is employed thirty-two hours or more per  
2 week and at least twenty weeks each year of employment. Participating members of  
3 the law enforcement retirement plan created by this chapter who begin employment  
4 after August 1, 2005, are ineligible to participate concurrently in any other retirement  
5 plan administered by the public employees retirement system.
- 6 12. "Permanent employee" means a governmental unit employee whose services are not  
7 limited in duration and who is filling an approved and regularly funded position in an  
8 eligible governmental unit, and is employed twenty hours or more per week and at  
9 least twenty weeks each year of employment.
- 10 13. "Prior service" means service or employment prior to July 1, 1966.
- 11 14. "Prior service credit" means such credit toward a retirement benefit as the retirement  
12 board may determine under the provisions of this chapter.
- 13 15. "Public employees retirement system" means the retirement plan and program  
14 established by this chapter.
- 15 16. "Retirement" means the acceptance of a retirement allowance under this chapter upon  
16 either termination of employment or termination of participation in the retirement plan  
17 and meeting the normal retirement date.
- 18 17. "Retirement board" or "board" means the seven persons designated by this chapter as  
19 the governing authority for the retirement system created.
- 20 18. "Seasonal employee" means a participating member who does not work twelve  
21 months a year.
- 22 19. "Service" means employment on or after July 1, 1966.
- 23 20. "Service benefit" means the credit toward retirement benefits as determined by the  
24 retirement board under the provisions of this chapter.
- 25 21. "Temporary employee" means a governmental unit employee who is not eligible to  
26 participate as a permanent employee, who is at least eighteen years old and not  
27 actively contributing to another employer-sponsored pension fund, and, if employed by  
28 a school district, occupies a noncertified teacher's position.
- 29 22. "Wages" and "salaries" means the member's earnings in eligible employment under  
30 this chapter reported as salary on the member's federal income tax withholding  
31 statements plus any salary reduction or salary deferral amounts under 26 U.S.C. 125,

1 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as  
2 payments for unused sick leave, personal leave, vacation leave paid in a lump sum,  
3 overtime, housing allowances, transportation expenses, early retirement incentive pay,  
4 severance pay, medical insurance, workforce safety and insurance benefits, disability  
5 insurance premiums or benefits, or salary received by a member in lieu of previously  
6 employer-provided fringe benefits under an agreement between the member and  
7 participating employer. Bonuses may be considered as salary under this section if  
8 reported and annualized pursuant to rules adopted by the board.

9 **(Effective after July 31, 2017) Definition of terms.** As used in this chapter, unless the  
10 context otherwise requires:

- 11 1. ~~"Account balance" means the total contributions made by the employee, vested-~~  
12 ~~employer contributions under section 54-52-11.1, the vested portion of the vesting-~~  
13 ~~fund as of June 30, 1977, and interest credited thereon at the rate established by the-~~  
14 ~~board.~~
- 15 2. ~~"Beneficiary" means any person in receipt of a benefit provided by this plan or any-~~  
16 ~~person designated by a participating member to receive benefits.~~
- 17 3. ~~"Correctional officer" means a participating member who is employed as a correctional-~~  
18 ~~officer by a political subdivision.~~
- 19 4. ~~"Eligible employee" means all permanent employees who meet all of the eligibility-~~  
20 ~~requirements set by this chapter and who are eighteen years or more of age, and~~  
21 ~~includes appointive and elective officials under sections 54-52-02.5, 54-52-02.11, and~~  
22 ~~54-52-02.12, and nonteaching employees of the superintendent of public instruction,-~~  
23 ~~including the superintendent of public instruction, who elect to transfer from the-~~  
24 ~~teachers' fund for retirement to the public employees retirement system under section-~~  
25 ~~54-52-02.13, and employees of the state board for career and technical education who~~  
26 ~~elect to transfer from the teachers' fund for retirement to the public employees-~~  
27 ~~retirement system under section 54-52-02.14. Eligible employee does not include-~~  
28 ~~nonclassified state employees who elect to become members of the retirement plan-~~  
29 ~~established under chapter 54-52.6 but does include employees of the judicial branch-~~  
30 ~~and employees of the board of higher education and state institutions under the-~~  
31 ~~jurisdiction of the board.~~

Sixty-fourth  
Legislative Assembly

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

Sixty-fourth  
Legislative Assembly

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

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

3       **54-52-02.5. Newly elected and appointed state officials.**

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

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

17       **54-52-02.9. Participation by temporary employees.**

18       A ~~Before January 1, 2016,~~ a temporary employee may elect, within one hundred eighty days  
19 of beginning employment, to participate in the public employees retirement system under this  
20 chapter and receive credit for service after enrollment. The temporary employee shall pay  
21 monthly to the fund an amount equal to ~~eight~~fourteen and twelve-hundredths percent times the  
22 temporary employee's present monthly salary. ~~The amount required to be paid by a temporary-~~  
23 ~~employee increases by two percent times the temporary employee's present monthly salary-~~  
24 ~~beginning with the monthly reporting period of January 2012, and with an additional two percent~~  
25 ~~increase, beginning with the reporting period of January 2013, and with an additional increase-~~  
26 ~~of two percent, beginning with the monthly reporting period of January 2014.~~ The temporary  
27 employee shall also pay the required monthly contribution to the retiree health benefit fund  
28 established under section 54-52.1-03.2. This contribution must be recorded as a member  
29 contribution pursuant to section 54-52.1-03.2. An employer may not pay the temporary  
30 employee's contributions. A temporary employee who is a participating member before  
31 January 1, 2016, may continue to participate as a temporary employee in the public employees

1 retirement system until termination of employment or reclassification of the temporary employee  
2 as a permanent employee. A temporary employee may not purchase any additional credit,  
3 including additional credit under section 54-52-17.4 or past service under section 54-52-02.6.

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

6 **54-52.6-01. (Effective through July 31, 2017December 31, 2015) Definition of terms.**

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

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

1 Bonuses may be considered as salary under this section if reported and annualized  
2 pursuant to rules adopted by the board.

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

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

1           actively contributing to another employer-sponsored pension fund, and, if employed by  
2           a school district, occupies a noncertified teacher's position.

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

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

16       **54-52.6-02. (Effective through July 31, 2017December 31, 2015) Election.**

17       1. The board shall provide an opportunity for eligible employees who are new members  
18       of the public employees retirement system under chapter 54-52 to transfer to the  
19       defined contribution plan under this chapter pursuant to the rules and policies adopted  
20       by the board. An election made by a member of the public employees retirement  
21       system under chapter 54-52 to transfer to the defined contribution retirement plan  
22       under this chapter is irrevocable. For an individual who elects to transfer membership  
23       from the public employees retirement system under chapter 54-52 to the defined  
24       contribution retirement plan under this chapter, the board shall transfer a lump sum  
25       amount from the public employees retirement system fund to the participating  
26       member's account in the defined contribution retirement plan under this chapter.  
27       However, if the individual terminates employment prior to receiving the lump sum  
28       transfer under this section, the election made is ineffective and the individual remains  
29       a member of the public employees retirement system under chapter 54-52 and retains  
30       all the rights and privileges under that chapter. This section does not affect an  
31       individual's right to health benefits or retiree health benefits under chapter 54-52.1.

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

1           that member's retirement status. Neither the member nor the employer are required to  
2           make any future retirement contributions on behalf of that employee.

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

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

1            ~~may extend beyond the original six-month decision window~~period beginning July 1,  
2            2016, and ending 5:00 p.m. December 30, 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

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 actual employer contribution made, less vested employer contributions made  
9 pursuant to section 54-52-11.1, plus compound interest at the rate of one-half of one  
10 percent less than the actuarial interest assumption at the time of the election plus the  
11 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.~~

14 **SECTION 8. AMENDMENT.** Section 54-52.6-10 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16 **54-52.6-10. Vesting.**

17 A participating member is immediately one hundred percent vested in that member's  
18 contributions made to that member's account under this chapter. A participating member ~~vests~~  
19 one hundred percent vested in the employer contributions made on that member's behalf ~~to an~~  
20 ~~account under this chapter according to the following schedule:~~

21 1. ~~Upon~~upon completion of ~~two years~~one year of service, fifty percent.

22 2. ~~Upon completion of three years of service, seventy-five percent.~~

23 3. ~~Upon completion of four years of service, one hundred percent.~~

24 A participating member also becomes one hundred percent vested in the employer  
25 contributions upon reaching age sixty-five. A participating member who was a member or  
26 deferred member of the public employees retirement system under chapter 54-52 who makes  
27 an election to participate in the defined contribution retirement plan pursuant to this chapter  
28 must be credited with the years of service accrued under the public employees retirement  
29 system on the effective date of participation in the defined contribution retirement plan for the  
30 purpose of meeting vesting requirements for benefits under this section. Any forfeiture as a

1 result of the failure of a participating member to vest in the employer contribution must be  
2 deposited in the administrative expenses account.

3 **SECTION 9. PUBLIC EMPLOYEES RETIREMENT SYSTEM - ESTIMATE OF**

4 **ACCUMULATED BALANCE TRANSFER.** For the period beginning January 1, 2016, and  
5 ending June 30, 2017, upon the request of an individual who is eligible for termination of  
6 membership in the public employees retirement system under chapter 54-52 as provided for in  
7 Subsection 1 of Section 54-52.6-02, the public employees retirement system shall estimate the  
8 individual's accumulated balance transfer amount by calculating the actuarial present value of  
9 the individual's accumulated benefit obligation under the public employees retirement system  
10 based on the assumption that the individual will retire under the earliest applicable normal  
11 retirement age.

## SUMMARY OF BILL DRAFT [15.0176.04000] - PROPOSED STATE RETIREMENT PLAN CHANGES

This memorandum provides information on the current state retirement plans as well as proposed modifications to the state retirement plans under bill draft [15.0176.04000], which was approved by the Government Finance Committee on October 8, 2014.

### CURRENT STATE RETIREMENT PLANS

The Public Employees Retirement System (PERS) is governed by North Dakota Century Code Chapter 54-52 and includes the PERS main system, judges' retirement system, National Guard retirement system, law enforcement with prior main service, law enforcement without prior main service, an optional defined contribution retirement plan, Highway Patrolmen's retirement system, Job Service North Dakota retirement plan, and retiree health benefits fund.

The Legislative Assembly authorized the use of the optional defined contribution retirement plan effective January 1, 2000. The defined contribution retirement plan is provided for under Chapter 54-52.6. Prior to October 1, 2013, the plan was available to state employees in positions not classified by Human Resource Management Services, excluding employees of the judicial branch and employees under the control of the State Board of Higher Education. Between October 1, 2013, and July 31, 2017, as a result of provisions of 2013 House Bill No. 1452, any new state employee who is eligible may elect to participate in the defined contribution plan. An eligible employee may make an election at any time during the first six months of employment to participate in the defined contribution plan rather than the defined benefit plan under Chapter 54-52. An election to participate in the defined contribution plan is irrevocable.

### STATE RETIREMENT PLANS UNDER THE PROPOSED BILL DRAFT

The proposed bill draft provides for the following:

- An eligible state employee hired for the first time after December 31, 2015, would be required to enroll in the defined contribution plan under Chapter 54-52.6, rather than the defined benefit plan.
- The bill draft would not affect current or future Supreme Court or district court judges, employees eligible to participate in the National Guard retirement plan or the law enforcement plan, employees of a political subdivision, or employees of the State Board of Higher Education and state institutions under the jurisdiction of the board that are participating in the TIAA-CREF retirement plan.
- State employees currently participating in the defined benefit plan and those hired before January 1, 2016, who elect to participate in the defined benefit plan would continue to participate in the defined benefit plan. However, during the last six months of 2016, a state employee participating in the defined benefit plan may elect to transfer to the defined contribution plan. This election is irrevocable.
- The vesting period for employees in the defined contribution plan would be changed to allow employees to become fully vested in employer contributions after one year of service rather than a vesting schedule of 50 percent after two years, 75 percent after three years, and 100 percent after four years.

### SUMMARY OF BILL DRAFT BY SECTION

**Section 1** of the bill draft amends the definition of eligible employee under Section 54-52-01(4) of the **defined benefit plan** to include the following: employees who are participating members before January 1, 2016, Supreme Court judges and district court judges, employees eligible to participate in the National Guard retirement plan or a law enforcement retirement plan, and employees of a political subdivision.

**Section 2** of the bill draft amends Section 54-52-02.5 of the **defined benefit plan** to designate which retirement plan newly elected and appointed state officials may participate in.

**Section 3** of the bill draft amends Section 54-52-02.9 of the **defined benefit plan** to allow temporary employees to elect to participate under the defined benefit plan until December 31, 2015. New temporary employees hired after December 31, 2015, will not be able to elect to participate under the defined benefit plan. A temporary employee who is a participating member before January 1, 2016, may continue under the defined benefit plan. The bill draft also clarifies the contribution percentage of 14.12 percent, which is the sum of the original 8.12 percent plus 2 percent increases in each of 2012, 2013, and 2014.

**Section 4** of the bill draft amends the definition of eligible employee under Section 54-52.6-01(3) of the **defined contribution plan** to include state employees hired after December 31, 2015, except: 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 State Board of Higher Education and state institutions under the jurisdiction of the board who are participating in the TIAA-CREF retirement plan. The bill draft also amends the definition of participating employees under Section 54-52.6-01(6), removing the election requirement for employees to participate under the defined contribution plan. The bill draft also amends Section 54-52.6-01 adding a definition of temporary employee, which includes temporary employees under the defined contribution plan. The new definitions would take effect on January 1, 2016.

**Section 5** of the bill draft amends Section 54-52.6-02 of the **defined contribution plan** and provides that newly hired eligible employees have an option to elect to participate in the defined contribution plan until December 31, 2015. Beginning January 1, 2016, all eligible employees will be participating members under the defined contribution plan without an election.

This section also includes an election for all eligible employees, who are first employed before January 1, 2016, and who are members of PERS on June 30, 2016, to terminate membership under the defined benefit retirement plan and transfer to the defined contribution retirement plan. The election period would begin July 1, 2016, and would end December 30, 2016.

The section also makes clear that the contribution percentage under the section relating to temporary employee contributions is 14.12 percent, which is the sum of the original 8.12 percent plus 2 percent increases in 2012, 2013, and 2014.

**Section 6** of the bill draft creates Section 54-52.6-02.1 under the **defined contribution plan** defining the membership under Chapter 54-52.6 of the defined contribution plan to include all eligible employees, as well as any temporary employees who elect to participate under the defined contribution plan. The effective date of the section would be January 1, 2016.

**Section 7** of the bill draft amends Section 54-52.6-03 of the **defined contribution plan** to adjust the suspension date of the section from July 31, 2017, to December 31, 2015.

**Section 8** of the bill draft amends Section 54-52.6-10 of the **defined contribution plan** and provides a participating member is 100 percent vested in the employer contributions made on the member's behalf upon completion of one year of service.

**Section 9** of the bill draft provides that an employee who is a participating member in the defined benefit plan and is eligible to transfer to the defined contribution plan may request that PERS prepare an estimate of the employee's accumulated balance transfer amount by calculating the actuarial present value of the employee's accumulated benefit obligation.

## **ESTIMATED FISCAL IMPACT OF BILL**

The Government Finance Committee received information regarding the actuarially calculated costs relating to the main defined benefit retirement plan if state employees hired after January 1, 2016, were required to participate in a defined contribution benefit plan.

### **The Segal Company Projections**

The committee received information in March 2014 from The Segal Company, which is the consulting actuary for PERS. Segal reported that if the defined benefit plan was closed to new employees, the state portion of the plan would be able to pay benefits until the year 2046. There would be a projected contribution shortfall of \$3,688,100,000 for future benefits to be paid after 2046. However, a payment of \$162.8 million could be made to the retirement plan on July 1, 2015, to fully offset the state portion of the future projected contribution shortfall. The estimated payment of \$162.8 million needed to fully fund the state portion of the plan is based on an 8 percent investment return. However, the asset allocation of the plan's investments may need to be adjusted by moving the investments to shorter-term investments near the projected end of the plan. The move to more short-term investments near the projected end of the plan could potentially reduce the plan's investment return.

### **Independent Review by Arthur J. Gallagher & Co.**

The committee requested and received approval from the Legislative Management Chairman to enter into an actuarial consulting contract with Arthur J. Gallagher & Co. (Gallagher). Representatives of Gallagher reviewed the July 1, 2013 actuarial valuation of the PERS plan conducted by Segal as well as the March 2014 study conducted by Segal regarding estimated costs to close the main state employee defined benefit retirement plan.

Representatives of Gallagher reviewed assumptions used by Segal and suggested the committee consider reviewing plan projections using alternative assumptions. Suggested alternative assumptions were provided for investment returns, salary increases, payroll growth, employee mortality, and employee retirement rates.

Representatives of Gallagher reported minimal differences resulting from its review of Segal's July 2013 valuation report but did have differences compared to Segal's March 2014 study results. Gallagher estimated that if only the state employees group was closed and separated from nonstate employees, the insolvency date of the plan would be in 30 years as compared to 35 years as determined by Segal. The estimated one-time contribution on July 1, 2015, to fully fund the retirement plan would be \$301 million as calculated by Gallagher compared to \$162.8 million under Segal's projections.

Representatives of Segal provided comments regarding differences in the projected actuarial costs calculated by Segal and by Gallagher to close the main state employee retirement plan to new employees effective January 1, 2016. Segal indicated the major difference in the calculations is due to an adjustment made by Segal to the amount of future benefit payments. Segal inadvertently failed to report the adjustment to the PERS or to Gallagher when disclosing projection assumptions.

### **Method to Address Unfunded Liabilities**

The Government Finance Committee approved a separate bill draft to address any unfunded liabilities of the defined benefit plan resulting from the bill draft to close the defined benefit plan to new state employees. The separate bill draft establishes a school construction assistance loan fund and a public employee retirement stabilization fund. The funds in the public employee retirement stabilization fund would be available to offset any unfunded liability of the main state employee defined benefit retirement plan. The State Investment Board would be responsible for investing the public employee retirement stabilization fund. The bill draft includes a contingency that would make the transfers into these funds from the foundation aid stabilization fund effective only upon approval of a constitutional amendment by the Legislative Assembly in 2015 and by the voters in June 2016 to allow for additional uses of the foundation aid stabilization fund. The bill draft provides for a transfer of \$250 million into the school construction assistance loan fund and a transfer of \$200 million into the public employee retirement stabilization fund.



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November 26, 2014

Senator Dick Dever, Chairman  
Employee Benefits Programs Committee  
North Dakota Legislative Assembly  
600 East Boulevard  
Bismarck, ND 58505-0360

Re: **Technical Comments – Bill Draft No. 15.0176.04000**

Dear Senator Dever:

The following presents our analysis of Bill Draft No. 15.0176.04000:

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

***Summary:*** The proposed legislation would close State employee participation in the PERS Hybrid Plan, which is a defined benefit (DB) plan, requiring new State employees first hired after December 31, 2015 to participate in the Defined Contribution (DC) Plan.

- New employees of political subdivisions would still be eligible to participate in the Hybrid Plan. Currently, political subdivisions represent approximately 50% of the active population of the Main System.
- Temporary State employees hired after December 31, 2015 would only be able to participate in the DC Plan.
- State Employees currently participating in the Hybrid Plan and those hired before January 1, 2016, may make an irrevocable election to transfer to the DC Plan during the last six months of 2016.
- Contribution rates for new State employees in the DC Plan would be the same contribution rate as statutorily required under the defined benefit plan applicable to the appropriate employee group.
- The vesting period for employees in the DC Plan would be changed to 100% vesting after one year of service.

- The bill draft would not affect current or future Supreme Court or district court judges, employees eligible to participate in the National Guard retirement plan or the law enforcement plan, employees of a political subdivision, or employees of the State Board of Higher Education and state institutions under the jurisdiction of the board that are participating in the TIAA-CREF retirement plan.
- The proposed bill does not provide for a funding mechanism to address the funding issues for the Hybrid Plan that would be created by the changes made by the bill. According to the report from prepared by Legislative Council staff:

*The Government Finance Committee approved a separate bill draft to address any unfunded liabilities of the defined benefit plan resulting from the bill draft to close the defined benefit plan to new state employees. The separate bill draft establishes a School Construction Assistance Loan Fund and a Public Employee Retirement Stabilization Fund. The funds in the Public Employee Retirement Stabilization Fund would be available to offset any unfunded liability of the Main State Employee Defined Benefit Retirement Plan. The State Investment Board would be responsible for investing the Public Employee Retirement Stabilization Fund. The bill draft includes a contingency that would make the transfers into these funds from the Foundation Aid Stabilization Fund effective only upon approval of a constitutional amendment by the Legislative Assembly in 2015 and by the voters in June 2016 to allow for additional uses of the Foundation Aid Stabilization Fund. The bill draft provides for a transfer of \$250 million into the School Construction Assistance Loan Fund and a transfer of \$200 million into the Public Employee Retirement Stabilization Fund.*

#### ***Actuarial Cost and Technical Analysis:***

The proposed legislation would affect the cost of the PERS Hybrid Plan in a variety of ways. There are a number of variables that will impact the cost. Results on various assumptions are attached in Exhibits A, B & C. Please note that the estimates in these charts are extremely sensitive to the actuarial assumptions used. A brief summary follows.

- If a single lump sum payment is made on January 1, 2016 into the PERS trust fund so that (in addition to ongoing contributions) the Hybrid Plan would be projected to pay all projected benefits due, the amount would be \$92.9 million assuming an 8% rate of return and 40% of current Hybrid Plan members transfer to the DC Plan. However, as indicated in a recent letter from Callan Associates, an 8% return assumption may not be reasonable for a closed plan. If a lower return assumption is used, this amount increases substantially. At a 7% rate of return, the lump sum amount is \$320.1 million; at a 6% rate of return, the lump sum amount is \$600.6 million; at a 5% rate of return, the lump sum is \$953.0 million; at a 4% rate of return, the lump sum is \$1.404 billion (see Exhibit B). The \$92.9 million calculation assumes that this amount is contributed to the trust on January 1, 2016. If the contribution is delayed, the required amount would increase. Based upon the funding mechanism proposed, our understanding is that the most likely date a payment would occur would be July 1, 2017, in which case a lump sum amount of \$104.1 million would be needed, assuming 40% of current DB members transfer and an 8% rate of return assumption. This amount would be

\$354.1 million assuming a 7% rate of return; at a 6% rate of return, the lump sum amount is \$655.1 million; at a 5% rate of return, the lump sum amount is \$1.025 billion; at 4% it is \$1.489 billion. If the number of people transferring from the Hybrid Plan to the DC Plan were to increase, the required lump sum payment needed would increase, and if the number of transfers were to decrease, the required amount needed would decrease.

- If the Statutory Contribution Rate were adjusted so that the Hybrid Plan could pay all projected benefits due, the increase would be higher under the proposed legislation than it would under the current plan. The recommended contribution rate would increase by 3.39% (from 14.12% to 17.51%) effective January 1, 2016 for the Main System (State only), assuming an 8% rate of return assumption and 40% of current Hybrid Plan participants transfer to the DC Plan. At a 7% rate of return, the increase to the recommended contribution rate is 10.93%; at a 6% rate of return, the recommended contribution rate is 19.11%; at a 5% rate of return, the increase to the recommended contribution rate is 28.12%; at a 4% rate of return, the increase to the statutory contribution rate is 38.2%. These calculations assume that the required increase in contributions takes place on January 1, 2016. If the date of increase were delayed, the required contribution increase would also go up. If the number of people transferring from the Hybrid Plan to the DC Plan were to increase, the required contribution increase would go up, and if the number of transfers were to decrease, the required contribution increase would go down. These estimates are for the life of the Hybrid Plan and involve a funding period of 50 years or more. If a 20-year, 30-year, or 40-year timeframe for funding is used, the required contribution increases would all be substantially higher. For example, to fund the Hybrid Plan over 40 years would require a contribution increase of 19.08% as of January 1, 2018 at an 8% rate of return.
- If the Statutory Contribution Rate is not adjusted or a transfer of assets into the fund is not made, the Main System's assets that are allocated to State employees are projected to be exhausted in 2049 assuming an 8% rate of return assumption and 40% transfer of members transfer from the Hybrid Plan to the DC Plan. At that point in time the remaining unfunded liability is projected to be \$1.190 billion. At a 7% return assumption, the projected exhaustion date is 2041 with an unfunded liability of \$1.770 billion; at a 6% return assumption, the projected exhaustion date is 2037 with an unfunded liability of \$2.139 billion; at a 5% return assumption, the exhaustion date is 2034 with an unfunded liability of \$2.515 billion; at a 4% return assumption, the exhaustion date is 2033 with an unfunded liability of \$2.866 billion.
- As Hybrid Plan assets are transferred to the DC Plan and liquidity requirements increase in order to make benefit payments, the Hybrid Plan investment allocation may need to be revisited. If assets are invested so that the expected return on investments is lower than 8%, the contribution rate needed to achieve full funding or pay ongoing benefits will be higher. (See attached letter from Callan Associates).
- The proposed DC Plan does not provide the same level of spouse or disability benefits as the current Hybrid Plan. Also, the proposed DC Plan does not contain the Portability

Enhancement Provision (PEP) that provides an incentive for supplemental retirement savings under the Hybrid Plan.

- If the proposed legislation were adopted, then there will be further challenges to the current approach of providing Ad Hoc adjustments to retiree benefits since contributions to the Hybrid Plan will be reduced.
- Bill 176 shifts the investment risk from the employer to the individual members. Investment education will be needed to help the member with this added responsibility.
- Based upon the experience of the existing DC Plan, the proposed DC Plan is not sufficient to provide the same level of retirement security that current Hybrid Plan members receive. An increase to the DC Plan contribution to provide comparable retirement security would result in a large increase in the cost of the proposed legislation. (See attached study from Segal dated July 17, 2013).

The current bill draft would only close PERS to future State employees. Since roughly 50% of the active population is employed by political subdivisions, the Hybrid Plan could be modeled as if it were an open plan. That is, if the bill were to pass, the Plan would continue to add new entrants, but at a slower rate than under the current Plan. This would create an inequity for the political subdivision employers and members of the Hybrid Plan resulting in State costs being shifted to them.

Since the Plan is funded with contributions that are a percent of active payroll, the political subdivisions, by continuing to add active members, would assume a larger and larger share of the burden of paying off the Unfunded Actuarial Accrued Liability (UAAL). Although the bill does not prevent the political subdivisions from adding new entrants, there is no reason to assume they would continue to do so if it meant they would be responsible for more than their fair share of the cost of the Plan. These subdivisions could choose to stop adding new entrants and could withdraw from PERS at any time, in which case they would only be responsible for paying off the UAAL for their own participants.

The only practical way the Plan could continue as an open plan would be if the Main System were divided so that State employees made up a single cost group. This would mean the State would be responsible for paying off the UAAL associated with State employees and would become a closed plan. We have assumed that if the bill passed, State employees would make up a separate cost group as of January 1, 2016. By doing this we can accurately reflect the State's funding obligation, which would then be independent from that of the political subdivisions. However, if PERS does not establish and maintain separate cost groups for State employee members and political subdivision members, in response to enactment of this proposed legislation, it is likely political subdivision employers will reconsider continuing participation in the Hybrid Plan. Should political subdivision employers choose to stop adding new entrants and withdraw from the Hybrid Plan, the impact of this proposed legislation on the Hybrid Plan's funded status, as detailed herein, would be further exaggerated.

### **Impact on the Systems' Assets**

If the Main System were closed to new State employees, the State employees' segment of the assets would be exhausted if the current statutory contribution rate were left unchanged. Closing the Hybrid Plan to new members and allowing current participants to opt into the DC Plan reduces the Hybrid Plan's future liabilities, but it also removes an important funding source. These do not counterbalance each other. Plan assets and contributions to the Hybrid Plan are reduced as soon as members and their associated contributions are diverted to the DC Plan, but benefit payments for the Hybrid Plan participants continue to be due for many years. It will become increasingly difficult to make up the funding shortfall as the payroll of active members decreases.

While the total value of all benefits to be earned in the future is smaller under Bill 176, there are two important points to note. First, the Hybrid Plan shortfall is nearly as big as it is under the current Hybrid Plan, but the Hybrid Plan payroll is declining under Bill 176, so it may be more difficult to make up the shortfall. Secondly, since current members who opt to transfer to the DC Plan will take the greater of the actuarial present value of the accumulated benefit obligation or the accumulated employer and employee contributions, the net liability shortfall will grow.

### **Impact on Contribution Requirements**

One way to measure the effect of the bill on the cost of the Hybrid Plan is to calculate the contribution rate to fully fund the Plan so that assets will be sufficient to pay all benefits. Note that this rate is different than the actual contribution rate, which is set in statute and may not reflect the true cost of the Plan. The proposed bill would increase the immediate cost of the plan, primarily due to the fact that the Unfunded Actuarial Accrued Liability (UAAL) could no longer be amortized over the same future payroll that would be expected under the current open group.

The following table shows the total contribution requirements as of July 1, 2014. The "Current Plan" uses amortization of the UAAL over 20 years as a level percent of payroll, which is assumed to increase 4.5% per annum. The "Closed Plan" amortizes the UAAL as a percent of projected payroll of the group that is closed as of December 31, 2015.

**Estimated Total\* Contribution Requirements to Achieve 100% Funding (MVA) in 20  
Years**

	Current Plan	
	Amount (000's)	Percentage of Payroll
1. Main System (State Only) Current System with costs shared by Political Subdivisions	\$193,400	16.74%
2. Closed Plan (State Only) With no DB to DC transfers	\$330,800	22.56%
3. Closed Plan (State Only) With 40% of DB participants transferring to DC	\$376,400	28.86%
4. Closed Plan (State Only) With 80% of DB participants transferring to DC	\$422,100	49.69%

\* *Employer plus member contributions as of January 1, 2016*

Note that the costs of the defined benefit plans are projected to increase in the future for the following reasons:

- Closing the Hybrid Plan will ultimately require changes in asset allocation that will likely produce lower investment returns. This will increase the UAAL and the actuarial contribution requirement. Note that in the summary we have not taken any asset reallocation into account in this analysis and have instead used an 8% long-term expected rate of return for the projection period. Results on alternative investment allocation bases are shown in the attached Exhibits A, B and C. (Also see the attached letter from Callan Associates).
- For the Main System, the statutory contribution rate is currently less than the actuarially determined contribution rate, which leads to increased actuarial costs unless offset by experience gains.

**Impact on Reporting (GASB 67 & 68)**

The Governmental Accounting Standards Board Statements Nos. 67 & 68 set up new disclosure requirements for public pension plans. Since this bill sets forth no funding method for the Hybrid Plan, it will increase the unfunded liabilities on the financial statements, which could influence the overall financial ratings of the State and its employers. The various rating agencies have recently made public statements equating management of pension liabilities to management

of debt. If the State does not conservatively manage either, the State's bond rating may suffer, causing additional unknown interest costs.

The bill will first affect the June 30, 2015 financial statements and actuarial report. Over the long term, the unfunded liability will likely increase and so will the actuarially required contributions. The fund's assets are projected to be exhausted in 2049. In addition, the unfunded liabilities reported on the financial statements will likely grow since, under GASB 67 and 68, the weak funded status will require that a lower interest rate be used for measuring the unfunded liability. This financial information could also encourage more of the existing members to elect to leave the Hybrid Plan, causing more transfers to the DC Plan and further accelerating the projected exhaustion date.

### **Technical Comments:**

#### **General**

The bill essentially closes the Hybrid Plan to new entrants employed by the State, which means the bill would have a major impact in the following areas (described in more detail below):

- The proposed changes would have a significant impact on the funding status of the defined benefits plan; and
- Similarly situated employees would have different levels and forms of retirement benefits; and
- The role of the affected Systems in administering retirement benefits for State employees would shift dramatically over time.

#### **Benefits Policy Issues**

##### ➤ Proposed Funding Method

*Funding the shortfall:* Based upon the proposed funding method discussed in the memo from Legislative Council, the Hybrid Plan would be on a path to insolvency before a funding plan is approved. Specifically, it appears the effect of this bill is to close the Plan to new participants by January 1, 2016, which will put the fund on a course to exhaustion. To offset this funding shortfall, monies could come from the Foundation Aid Stabilization Fund, but only if a constitutional amendment is adopted by the voters and if the money is transferred by a future legislative session (2017 or later). The timeline proposed would create an unfunded liability before a funding mechanism is approved or implemented. Assuming 40% of current members transfer from the Hybrid Plan to the DC Plan, the Hybrid Plan would be on a path to insolvency by 2049 (assuming an 8% rate of return) and facing a funding deficit of \$1.19 billion that would have to be paid on a pay-as-you-go basis from the State's general fund, unless a retirement funding plan is adopted and implemented by a future legislature. At a 7%

return assumption, the insolvency date would be 2041, and at a 6% return assumption, the insolvency date would be 2037.

*Integrity of the Trust:* Based upon the funding plan discussed in the memo from Legislative Council, no specific plan is established to guarantee the necessary funding to the retirement fund as established under North Dakota State law. Holding members' funds in a retirement trust is important since the trust is held for the exclusive benefit of the members and managed according to the prudent person rule. The plan outlined in the Legislative Council memo is that retirement monies would potentially be held in a Retirement Stabilization account that is not part of the retirement trust. Keeping retirement money in the retirement trust instead of a non-retirement trust as proposed in this bill is important for several reasons: 1) it is set aside for retirement and is protected from claims by creditors of the employer; 2) the money is managed by trustees whose sole responsibility is the benefit programs they administer; 3) the funds cannot be diverted for other uses; and 4) the money is set aside for the members' retirement instead of having to rely on the goodwill of future Legislatures to transfer the necessary funds.

By contrast, having retirement money in a non-retirement account means the retirement plan members do not have any ownership in the account or its assets (which could be diverted for uses other than funding PERS) nor does the non-retirement account specifically address funding problems created due to closing the Hybrid Plan. Also, a non-retirement account that is not set up for the exclusive benefit of the members means that it could be managed by non-retirement trustees who may have broader ranging responsibilities that may at times be in conflict with those of the retirement plan. While these wider ranging set of interests could be well intentioned, they may not be consistent with the needs of the retirement plan. The wider set of interests could include such things as Economically Targeted Investing and social investing that could be a benefit to the State or certain segments of the State but not to the retirement plan. This also is not consistent with general methods of managing retirement assets. Holding money in a separate account would not pass the ERISA test in the private sector since funding of the trust is not clear (ERISA does not apply to governmental plans). Consequently, North Dakota could be doing something that would not be allowed in the private sector.

In the governmental sector, the closest example of holding funds in a non-retirement fund is the 457 plan assets. Prior to the mid-1990's these funds were a general asset of the employer. In the mid-1990's several local governments faced bankruptcy and these funds were at risk to the creditors of the employer. This so shocked the public that Congress passed a federal law that required these funds to be held in a trust for the exclusive benefit of the members.

These situations point out the importance of retirement funds being held in a trust, the sole purpose of which is to meet the needs of its members. It also points out that holding money in a separate fund that may be required to meet a broader range of needs raises many concerns. This would provide less security to members since members would now be relying on the good intentions of future legislatures to ensure Plan benefit payments.

➤ Adequacy of Retirement Benefits

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

In a letter dated July 17, 2013 (attached) we provided an analysis of how benefits under the Hybrid Plan compare to benefits under the DC Plan. It showed that the contribution rate for the DC Plan would need to be dramatically increased in order to provide a benefit that is comparable to the current Hybrid Plan. Specifically the analysis shows the following for individuals who are presently in the DC Plan established in the late 1990’s:

1. DC Plan participants are projected to have a retirement benefit that is less than what they would have had if they stayed in the Hybrid Plan in almost all cases.
2. DC Plan contributions will need to increase to 20% or more to provide a similar benefit to the current Hybrid Plan (e.g., under the Hybrid Plan a 25-year employee would receive 50% of their final average salary).
3. For those individuals that are age 55 and above, the effect of the market downturns on their portfolios makes it extremely difficult for them to recover even if contributions are increased dramatically. The market downturn of 2008 highlights one of the risks faced by DC Plan members.
4. The benefit provided in the existing DC Plan is not adequate in providing a comparable benefit to the Hybrid Plan at the existing contribution level

In a survey of DC Plan members conducted last year (31% responding), 65% of the responding members feel they made a mistake by transferring to the DC Plan, 69% would not recommend the DC Plan to others, 80% would switch back to the Hybrid Plan if given the opportunity, and nearly 70% think they are on the wrong track for retirement. The most likely reason for the high level of dissatisfaction is that most people do not feel they have enough savings to retire.

The PERS Board has been concerned with the pension adequacy of the DC Plan for many years. Consequently, the DC Plan has been a part of the recovery plan PERS proposed in

2011. At that time, PERS proposed increasing the contributions to this Plan to 16.12% of covered payroll with a 2% increase in 2012, 2% in 2013, 2% in 2014 and 2% in 2015. To date, the legislature has approved the 2012, 2013 and 2014 increases. As a result of the PERS Board's continued concern, they have submitted a bill to the Legislative Employee Benefits Committee for the last 2% increase to be considered by the upcoming legislature. The Board will be studying if future increases are needed.

- *Retirement Savings:* The nature of the DC Plan with lump sum benefit payments may decrease the amount that will be available for retirement to the extent it is used for current consumption. Employee Benefit Research Institute (EBRI) statistics indicate that because of this “leakage” effect, less than 100% of employer contributions will actually be used to provide retirement benefits. Based upon the EBRI study entitled “Reported Uses for Any Portion of Lump-sum Distributions”, the average amount of distributed funds retained in retirement vehicles (tax-qualified financial savings) is 41.5%. Seventeen percent is saved, and the remainder (41.5%) is used for debt, education or consumption. Forty-six percent of these individuals rolled over at least some of the money into another retirement plan and 27% put some of the money into other savings investments. Because of this “leakage” effect, less than 100% of the employer contributions will actually be used to provide retirement benefits. Nationally, 58.5% of any lump sum distribution is not used for retirement purposes. The current Hybrid Plan has minimal leakage of employer contributions.
- *Personal savings:* Participation in a defined contribution plan may encourage members to save for retirement because of the participant-directed investment feature and the awareness that it is important to save for their own early retirement or post-employment inflation protection. However, the State's DC Plan does not provide any separate monetary incentive or opportunity to increase personal savings. The existing PERS main retirement plan added the PEP feature in 1999. One aspect of this provision is to create an incentive for members to engage in supplemental retirement savings. Specifically, this feature provides that if a member participates in the State's deferred compensation plan, they will vest in the employer contribution in the Hybrid Plan. This provision has helped to encourage participation in the supplemental savings plan and has been successful at enhancing the overall retirement preparedness for those participants. The proposed DC Plan would not have a similar defined benefit incentive to encourage participation.
- *Other Plans:* Other states with defined benefit plans have converted to defined contribution plans for new hires in recent years. Examples include Alaska, Michigan, and Oklahoma (effective for new hires after November 1, 2015). A notable exception is West Virginia, which replaced its teachers' DC plan with a DB plan in 2005. Some states have moved from DB plans to DB/DC combinations (Oregon, Utah, and Rhode Island) or hybrid arrangements such as a cash balance plan (Nebraska, Kentucky, and Kansas). Utah offers new employees a choice between a pure DC plan and a hybrid DB plan with a capped employer contribution. In many cases, such as Alaska and Michigan, supplemental contributions have been needed to help with the funding of the closed DB plans.

➤ Benefits Equity and Group Integrity

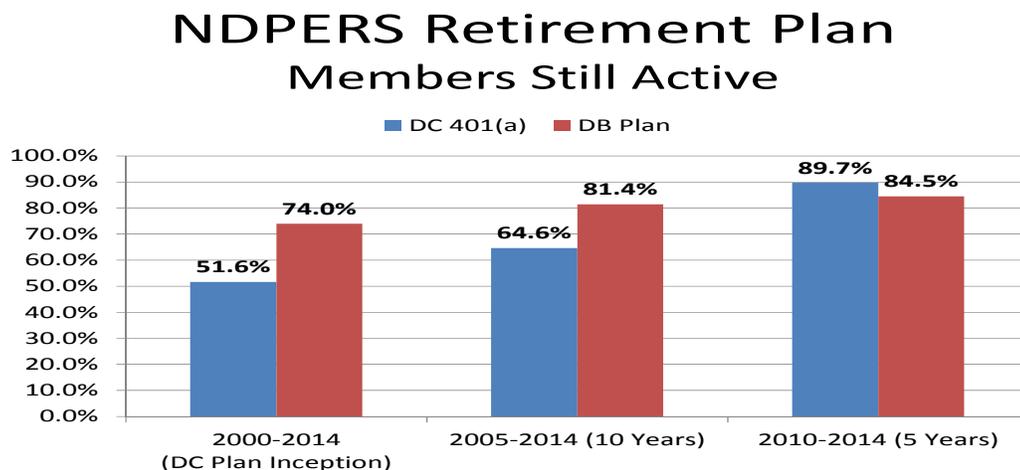
Under the bill, virtually all State employees hired after December 31, 2015 would accumulate employer-provided retirement benefits only under the DC Plan. There is an equity issue in having two types of retirement plans in the workplace with newer employees in the new DC Plan and older employees in the current Hybrid Plan. If the contribution levels for the DC Plan remain at 14.12% of pay, there will be a clear inequity between the two groups.

➤ Competitiveness and Retention

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

The bill will be following the trend among smaller private sector employers to use defined contribution plans instead of defined benefit arrangements as a primary vehicle for retirement benefits. However, it does not match the designs of most public sector employers that have continued to maintain a combination plan structure - a core defined benefit plan with a supplemental set of defined contribution and/or profit sharing arrangements.

Based upon data collected by the System staff, the Hybrid Plan has more continuing actives since inception than the DC Plan as shown in the following:



Since 2000, more members of the Hybrid Plan have remained than those in the DC Plan. However, in the short term, the DC Plan has a slightly higher rate. This could be due to the existing vesting criteria which requires employees to stay in the plan a certain number of years before vesting 100% in the employers contributions. This bill would allow more DC Plan participants to leave earlier and be fully vested in their contributions and so the results above could change.

➤ Purchasing Power Retention

A defined contribution plan does not provide guaranteed purchasing power retention after benefits are distributed. The ability to maintain purchasing power will depend solely on the investment performance of the distributed assets. It is not possible under current federal tax laws to directly provide post-retirement increases for defined contribution plan retirees.

➤ Preservation of Benefits

A defined contribution plan can work well to preserve the value of benefits for former members but actual preservation of such values will depend on the investment performance on the amounts distributed. To the extent benefits are not invested adequately or not saved for retirement purposes, the value of the retirement benefits is diminished. In addition, participants who receive lump sum benefits such as those that are paid from a defined contribution plan face the following risks not present in receiving an annuity from a defined benefit plan:

- *Longevity risk:* Retirees may draw down benefits too quickly and outlive their assets. Conversely, retirees may draw down their benefits too slowly, unnecessarily reduce their consumption, and leave more wealth than intended when they die.
- *Investment risk:* Assets in which retirement savings are invested may decline in value. Safer investments that are less likely to decline in value may earn lower returns.

➤ Portability

The bill generally provides a high degree of portability of retirement benefits for new State employees who participate in the DC Plan, since their entire benefit is available for distribution or rollover after termination of employment. Note that under the PEP provisions, the existing Hybrid Plan also offers a significant level of portability.

➤ Ancillary Benefits

- Pre-retirement death benefits and disability benefits provided under a defined contribution plan would generally be less than similar benefits provided under a defined benefit plan structure because defined contribution plan benefits depend on the total amount of contributions made and investment performance of assets, while defined benefit plan benefits are not contingent upon such factors. Specifically:

1. The Hybrid Plan provides for a disability retirement benefit of 25% of final average salary calculated at the date of disability. A member is eligible for this after six months of participation in the system. The proposed DC Plan would offer no other disability benefits other than the account balance at the date of disability, which in most cases would be much less than the current Hybrid Plan disability benefit. Many employers provide disability insurance benefits to employees, which offsets the need for this in the retirement plan. It is our understanding the State does not currently provide employer-paid disability insurance to its employees, meaning that disability benefits under the bill would be less than State employees currently receive.
  2. North Dakota Century Code Section 54-52-17(6)(b) provides benefits for surviving spouses under the Hybrid Plan. Essentially the spouse has three choices: 1) a lump sum payment of the member contributions with interest, 2) lifetime payment of monthly benefit equally to fifty percent of the deceased member's accrued single life benefit, or 3) if the member at death was eligible for a normal retirement benefit the spouse can select a benefit equal to the member's 100% joint and survivor annuity benefit. In the proposed DC Plan, the spouse would only be eligible to receive a lump payment of the account balance. Generally, the proposed DC Plan benefit would be significantly less than the spouse benefits in the Hybrid Plan. Many employers do have employer-paid life plans that offset the need for this benefit in the retirement plan. In North Dakota, it is our understanding that the State only provides \$1,300 in life coverage for retirees and \$3,500 for active employees with supplemental life insurance coverage available to active employees at additional costs, up to a maximum benefit of \$200,000. In the DC Plan, a death benefit could be added or the State could provide expanded life insurance coverage to provide for the surviving spouse. If this is not provided, the bill would result in lower death benefits for State employees than are provided by the current Hybrid Plan.
- The PERS Hybrid Plan has from time to time provided for retiree increases with ad hoc adjustments. This has occurred as a result of favorable Plan experience and when the Plan's funding situation has allowed. At some future date, it is possible that the Hybrid Plan may reach a funded level that would allow it to again provide ad hoc adjustment to retirees. Under the proposed legislation, contributions to the current Hybrid Plan will decrease as the active population decreases, and the assets will decrease as the liability for members is paid off over time. Since the contributions under the closed plan will be used for paying off the unfunded liability, it is unlikely that excess contributions will be available to fund ad hoc increases to current retirees. This could result in retirees of the political subdivision portion of the Plan getting increases funded from the Plan and those in the State portion of the Plan not getting similar adjustments (unless the legislature sets another funding mechanism).

In addition, since DC Plan balances are individual accounts, the proposed DC Plan does not provide for sharing of favorable Plan experience among members, nor does it

specifically provide for ad hoc adjustments to retirees. However, those individuals in the proposed DC Plan that realize favorable investment experience would benefit from what would generally be comparable to an ad hoc adjustment. If the State has a wish to someday provide retiree adjustments, a new process would need to be identified.

- Social Security: No impact.
- Retiree Health Insurance Credit Plan: Benefits under the current Retiree Health Insurance Credit Plan (RHIC) are coordinated with the Hybrid Plan. Members who are eligible for benefits under the Hybrid Plan are also eligible for the health credit. In order for a member of the DC Plan to be eligible for this benefit, they must elect to receive a periodic payment upon retirement. Members who elect a lump sum payment do not receive the RHIC benefit.

### **Funding Policy Issues**

#### ➤ Actuarial Impacts

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

- The bill will have an effect on the actuarially recommended contribution (based upon a 20-year funding period), increasing it to 28.86% on January 1, 2016, assuming an 8% rate of return and 40% of Hybrid Plan members transfer into the DC Plan.
- The bill will not provide for a change in the statutory contribution rate, which could cause a decreased funded status and increased unfunded liability as will be shown in the June 30, 2015 actuarial valuation report.
- Projected contributions will be lower than they otherwise would be beginning January 1, 2016.
- While the effect on benefit payments will not be immediate, transfers from the Hybrid Plan to the DC Plan will remove assets from the Hybrid Plan. If a significant portion of members elect to transfer, the Plan may experience cash flow issues since the amount of annual benefit payments will be a higher percentage of total assets. This could force the fund to sell investments in order to have the funds to make benefit payments.

#### ➤ Investment Impacts

- Altering the existing investment process, as outlined in the Legislative Council memo, by depositing the funds into the Retirement Stabilization fund (instead of directly into PERS fund) would leave funds outside the existing retirement investment management process. If the same level of diversification and risk reduction were to be accomplished, having the funds in the Retirement Stabilization Fund could increase investment costs which are the single highest cost of program administration. This is something both the PERS

Board and TFFR Board recognized in the late 1980's when the two boards came to the Legislature to reorganize the State retirement investment process. The proposal at that time was to establish a mechanism to allow comingling of retirement assets for investment purposes under the State Investment Board. The proposed method was more cost effective because manager savings were achieved by investing larger sums. However, if money is to be held in a non-retirement fund with the same level of diversification, this co-mingling may not occur since the other fund would not be a part of the current system. Consequently, investment costs could rise.

- Depending on the performance of the capital markets and the investment choices made by members, new employees participating in the DC Plan may experience greater, or, more likely, lesser benefits than those provided under the current Hybrid Plan. The risk of loss or gain is borne by the individual member and there is no risk sharing among DC Plan participants.
- *Cash Flow:* As indicated above, a significant drop in assets associated with a large number of transfers from the Hybrid Plan to the DC Plan could cause cash flow issues as ongoing benefit payments would be a larger percentage of plan assets. This could force the fund to sell investments in order to have available funds to make benefit payments.
- *Asset Allocation:* The bill may create new investment asset allocation issues for the Hybrid Plan as the amount of new contributions to the Plan decreases relative to the amount of benefit payments from the Plan (see Callan letter). Specifically, the asset allocation for the PERS State system would likely need to change if 40% or 80% of the members transferred out of the Plan. This would likely effect the assumed rate of return in order for the Plan to maintain the necessary liquidity to pay benefits. This will need to be studied in more detail.

**Administration Issues**

➤ Implementation Issues

- The following comments on implementation were provided by PERS staff:

<b>Legislation requirement (New Employees)</b>	<b>Effect/Comment</b>
General – consideration should be given to stating in statute that the state plan and political subdivision plan are separate after the date of implementation of this bill	This will clearly state legislative intent that it is not the desire of the state to shift costs of the closing of this plan to the political subdivisions.

<p>Section 5 An eligible state employee hired for the first time after December 31, 2015, would be required to enroll in the defined contribution plan under Chapter 54-52.6, rather than the defined benefit plan.</p>	<p>All new employees join the DC plan starting Jan 2016. The direction on how to administer this provision is clear</p>
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	<p><b>Legislation requirement (Existing Employees)</b></p>	<p><b>Effect/Comment</b></p>
<p>1</p>	<p>Section 4 includes an election for all eligible employees, who are first employed before January 1, 2016, and who are members of PERS on June 30, 2016, to terminate membership under the defined benefit retirement plan and transfer to the defined contribution retirement plan</p>	<p>Those state employees first employed before Jan 2016 and who are members on June 30 get to transfer. Our understanding of this section is only active state employees of the system who were employed before Jan 2016 and are still active state employees of the system on June 30 will get the opportunity to transfer. We also believe this section means that they must also be an eligible state employee on the date of transfer although this is not as clear. For example:</p> <ol style="list-style-type: none"> <li>1. Someone meets the requirement on June 30 but terminates employment after transfer – they would stay in the DC plan.</li> <li>2. Someone meets the requirements on June 30, makes an election to transfer but terminates employment before the transfer – their transfer would be negated and they would remain a member of the Hybrid/ DB plan.</li> <li>3. State employee employed before Jan 2016 transfers employment prior to June 30, 2016 to political sub who participates in PERS – not eligible to transfer since not a state employee on June 30, 2016</li> <li>4. State employee employed before Jan 2016, but transfers employment prior to Jan 2016 to political sub who participates in PERS – not eligible to transfer since not a state employee on June 30, 2016</li> <li>5. Someone fist employed before Jan 2016 but not on payroll on June 30 would not get the opportunity to transfer.</li> <li>6. Clarification of the above in statute would be helpful</li> </ol>

2	<p>Section 5: The election period would begin July 1, 2016, and would end December 30, 2016 for eligible employees who are first employed and entered upon the payroll of that person's employer. .</p>	<p>This section lines 24 through 30 seems to indicate that eligible employees hired after 1/1/2016 have an election period from July 1, 2016 – December 30, 2016. However other parts of the bill state that all newly hired employees after 1/1/2016 can only enroll in the Defined Contribution plan. This needs to be clarified.</p>
3	<p>Section 7 states the transfer amount shall be:</p> <ol style="list-style-type: none"> <li>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</li> <li>2. 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</li> </ol>	<p>This is clear as to the transfer amount. However:</p> <ol style="list-style-type: none"> <li>1. The date of "January 1, 2001" needs to be removed.</li> <li>2. Determining the contribution plus interest amount method is a very time intensive effort since the information needed to determine compounded interest on the employer contributions is not stored in our business system. Therefore, a manual calculation needs to be made for each member. If it was ½ hour per member, then if 40% of the members (4,000) elected to transfer it would take us 2,000 hours or 12 months of effort. If 80% elected to switch (8,000 members) it would take us 4,000 hours or about 24 Months of efforts. In 1991 this was done for about 600 members and we hired three temporary staff to assist; however, this time it would be for many times that number. This could require us to hire 2-3 temp staff for about 6-8 months or 4-6 staff for 3-4 months which would require an appropriation to be added to the bill.</li> <li>3. Pursuant to the bill we would only be determining the amounts in #2 above after the election period. Therefore we would not be able to transfer funds to the DC plan until this analysis is completed which would be in the last half of 2017 or earlier depending on the staffing. Without additional staffing it is uncertain when this could be completed but it would certainly be more than a 12-18 months. This means that people who made the election to transfer would need to wait a long period of time for it to occur and if they may no longer be employed on the date of the transfer so they would no longer be eligible ( see row 1 above). We expect this would become an issue that would frustrate many members. Alternatively, a different method could be developed to calculate the interest on the employer contributions that would be more abbreviated thereby reducing the cost of staff and time. Also instead of the transfer occurring all at one time it could be staggered</li> </ol>

		over time but then who would go first. Also since there would be a long delay and if the investment environment was positive it could expose the plan/state to lawsuits for lost earnings. Further guidance and funding is needed for this section.
4	<b>Section 8</b> of the bill draft amends Section 54-52.6-10 of the <b>defined contribution plan</b> and provides a participating member is 100 percent vested in the employer contributions made on the member's behalf upon completion of one year of service.	Not sure if this would apply to only those members joining the plan after December 2015 or to all members.
5	<b>Section 9</b> of the bill draft provides that for the period beginning January 1, 2016, and ending June 30, 2017, upon the request of an individual who is eligible for termination of membership in the public employees retirement system under chapter 54-52 as provided for in Subsection 1 of Section 54-52.6-02, the public employees retirement system shall estimate the individual's accumulated balance transfer amount by calculating the actuarial present value of the individual's accumulated benefit obligation under the public employee's retirement system based on the assumption that the individual will retire under the earliest applicable normal retirement age.	<ol style="list-style-type: none"> <li>1. The period from January 1, 2016 to June 30, 2017 exceeds the election period, which is from July 1, 2016, and ends December 30, 2016. PERS would not be able to provide information earlier than the election period or later unless it was information that was not current.</li> <li>2. It is clear that PERS would only provide members the actuarial value of the transfer amount. However, members would get the higher of the actuarial value or the contributions plus interest as noted above. Pursuant to this section we would not be providing members what they would actually be getting which will be frustrating to many. Based upon the two previous times this was offered in 1999 61% of the eligible members had a transfer amount greater than the actuarial value and in 2001 66% did. Consequently, many members will need to consider an election without knowing the exact value of what they could get. We expect many members will be dissatisfied without having a full disclosure and could subsequently argue they would have made a different decision if they had been fully informed.</li> </ol>

➤ Administrative Costs

The bill will have an impact on the administrative resources needed for both the defined benefit plans and the DC Plan because it would add a relatively large number of new members to the DC Plan. Administrative costs may need to be reallocated from the defined

benefits plans to the Defined Contribution Plan over time, as membership numbers shift to the DC Plan. Initially, however, the bill will require maintaining the administrative resources for the defined benefit plans, while increasing the administrative resources available to the DC Plan. Funds will need to be provided to pay for implementing the transfer provision, if not significant delays in implementation will occur.

Furthermore, PERS would be required to provide detailed calculations to Hybrid Plan members in order for them to transfer to the DC Plan. As noted earlier, this would involve significant time and expense to prepare for transferring members.

➤ Needed Authority

The bill appears to require additional administrative and governance authority as noted above for the PERS Board to implement the changes made by the bill.

➤ Integration

No impact.

➤ Employee Communications

1. Not disclosing to members full information for them to consider the transfer provision can be a significant concern to members. As proposed, members will only get the eligible transfer amount based upon the actuarial present value of the benefit. They will not get information on the account balance. This means members will need to make a decision without the benefit of full disclosure on the information. This will undoubtedly cause frustration with the membership during the election period. Afterward, members could assert that they would have or would not have done the transfer if they had received the full amount of disclosure. On an ongoing basis, this could be an issue.
2. The nature of defined contribution plans allowing participant-directed investments will require additional employee education effort regarding retirement and investment planning. The need for this effort is supported by information found in a recent retirement portability study conducted by the federal Office of Management and Budget. A survey of employees indicated an overall low level of understanding of the how to invest moneys for retirement. The survey indicated a low level of understanding regarding investment categories and investment risk. Because the DC Plan will be the primary retirement vehicle for its members, it will be critical to provide these education services.
3. Consideration should be given to participant education, including requiring or allowing members to attend financial planning seminars and meeting with financial advisors in the work place and during working hours. Increasingly, sponsors of defined contribution plans are making available investment advisory services to assist

members to invest their retirement assets prudently. There are a variety of methods for providing these education and advisory services that should be examined, including group meetings, individual counseling and technology based approaches. With a DC Plan, individual members are responsible for monitoring their own investment performance and making changes as appropriate. Their success or failure is a direct result of how they fulfill this responsibility.

➤ Miscellaneous

- Consideration should be given to examining the fiduciary issues surrounding defined contribution plans, including the nature of the risks associated with participant-directed investments, provision of employee investment information and education, self-directed brokerage windows, financial and retirement planning and investment advisory services.
- To date, the Legislature has approved three years of the 4-year recovery plan for PERS. Contribution increases under this recovery plan are shared between the employer and employee with one-half being paid by each party. When proposed, it was projected that as employers and employees contributed to this effort it would stop the downward trend in the funded status of the Hybrid Plan and put it on a course to 100% funding. Both employees and employers have paid their share and at this point the total increase has been 3% of salary. If this bill (LC 176) passes, it would again put the Hybrid Plan on track to insolvency unless the constitutional amendment is passed and future legislatures immediately start depositing money in the trust fund to reverse that trend. Clearly, this bill will change the perception of the PERS Hybrid Plan with employees. This could cause members to reconsider their commitment of contributing to the Plan. While it is hard to determine the implications of such reconsideration, one result could be a lawsuit by aggrieved members. As we have previously noted, there is a risk that a court could find such contribution requirements a violation of the contract for existing employees possibly resulting in a loss of the employee contributions thereby increasing the employer requirements. While this is a remote risk, it needs to be recognized. We note that in the State of Michigan they have increased the contributions for members of their closed DB plan (they were one of the first states to close their DB plan and have new members go to a DC plan) and the state was challenged by employees in court. At this point, two lower courts have held that the employee contribution cannot be increased and the case is now pending before the State Supreme Court.
- Long-Term Costs: Once the unfunded liability of the Hybrid Plan is paid off, the contribution level can be decreased to the normal cost which today would be 10.31% of payroll. If the DC Plan contribution level is set at the current rate of 14.12% or the 16.12% rate PERS is proposing, then after the unfunded liability is paid off, the long-term cost of the DC Plan is the difference between the two rates. Specifically, the long-term cost of the DC Plan could be anywhere from about 3.8% to about 5.8% higher, based on future payrolls. These are substantial cost differences on future payrolls for

participating employers, if accurate. Currently, the State payroll is over \$517 million. If 40% of the Hybrid Plan members transfer, each 1% change in the contribution rate represents \$2.1 million annually.

The projections were made using generally accepted actuarial practices and are based on the July 1, 2014 actuarial valuation results, including the asset information, participant data and actuarial assumptions on which that valuation was based except for benefit payments in the first fourteen years of the projections, which were adjusted to better reflect plan experience. In addition, the total active member population for the Hybrid Plan and DC Plan has been assumed to remain constant in all future years. All transfers from the Hybrid Plan to the DC Plan were assumed to occur on January 1, 2017. Calculations were completed under the supervision of Tammy Dixon, FSA, MAAA, Enrolled Actuary.

Projections, by their nature, are not a guarantee of future results. The modeling projections are intended to serve as illustrations 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.

Please call if you have any questions or comments.

Sincerely,



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

Sincerely,



Melanie Walker, JD  
Vice President

CZ



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# Memorandum

**TO:** PERS Board

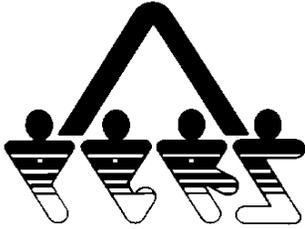
**FROM:** Sparb

**DATE:** December 8, 2014

**SUBJECT:** Open Meetings Attorney General Opinion

Attached, for your information, is AG Opinion # 2014-O-19 relating to holding executive session in an open meeting.

Jan will be available to review this information with the Board.



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# Memorandum

**TO:** NDPERS Board  
**FROM:** Kathy  
**DATE:** December 11, 2014  
**SUBJECT:** NDPERS Update

This update is to provide the Board with the outreach activities conducted by NDPERS and/or its vendors in 2014.

Presentation Type	No. of Meetings	No. of Attendees
PEP	21	952
OSBC	5	72
New Employee Orientation	12	163
PREPs	4	785
TFFR	1	75
Benefit Fairs	2	60
New Group/Update	2	17
Mid Career Financial Education Workshop (Pilot)	1	42
Total	48	2,166

The last item on the above list is a new program that was developed and piloted in 2014. On October 8<sup>th</sup>, we conducted a Mid Career Financial Education Workshop (FEW). This program's focus was to educate members with the objective of getting them on track with their financial planning and retirement savings goals. The target audience for the pilot was human resource assistants/administrators who were asked to bring at least two other employees from their agency. We had a total of 42 attend the half-day workshop. Attendees were asked to evaluate the program so we could assess the feasibility of adding the workshop to the list of other services provided by NDPERS staff. Out of 42 attendees, 32 completed and returned the evaluation. Overall the evaluations and participant comments were very positive with approximately 93% rating the information as Excellent to Good. There were also some very good suggestions to improve the program. All 32 respondents said they would recommend this workshop to other employees and 31 felt more confident about their opportunity to set financial goals. Based on this feedback, PERS will be adding this program to its venue of planning services available to our members.

**Activities coordinated by PERS:**

May 7, 2014: ADP live meeting, "Learn More About Your ADP FlexComp Card."

June 26, 2014: ADP Webinar, "Using Your Debit Card, Online Claims Submission or Mobile App"

July 10, 2014: Affordable Care Act (ACA) implementation meeting – 150 participants

August 26, 2014: ADP Webinar, "Using Your Debit Card, Online Claims Submission or Mobile App"

September 9, 2014: COSE Wellness Fair:

WorkLife – wellness screenings

ADP - 2 on-site presentations, "Your ADP FlexComp Plan."

BCBS - 2 on-site presentations, "HealthyBlue Website & Benefits Overview"

UND - 2 on-site presentations, "Health Info. Online – Quality, Free, No Strings!"

Mid Dakota - 2 on-site presentations, "Do You Have Metabolic Syndrome?"

September 24, 2014: Affordable Care Act (ACA) implementation meeting – 100 participants

October 22-23, 2014: Authorized Agent and New Group Presentations to ND School Board & Business Manager Association - 30 participants

November 5, 2014: Retiree Health Fair - 19 vendors available to provide education, health screenings and information on senior care services health clubs, counseling, eye health, volunteer services and general PERS benefit information - 75 participants

December 11, 2014: GASB 68 Employer Training - PERS partnered with TFFR and the State Auditor's Office to provide training to participating employers and their auditors on the new Governmental Accounting Standards Board Statement 68 for pension reporting. A training session was held in June for a pilot group of employers and auditors. The training session for all employers/auditors will take place on December 11, 2014. This session will also be recorded and made available on our website for those who are not able to attend.

Flu Shot Clinics: 1,669 participants

UND Center for Family Medicine:	September 30
	October 9
	October 14
	October 23
	October 28
Capitol on-Site:	October

December 1 – 5, 2014: Employer Self Service – We are in the reconstruction phase of the PERSLink Employer Self Service portal to provide our employers better usability. This project was undertaken based on employer feedback and surveys. As part of the development, we

conducted a usability study to determine if the new Employer Self Service is user friendly and to uncover areas where work still needs to be done - 9 employers volunteered to participate and 17 employees attended the study sessions.

Throughout 2014: Authorized Agent Training focused on benefit plan overviews, Employer Self Service, and Member Self Service training – 10 training sessions conducted by PERS staff.

**Requests for Proposals:**

	<b>Released</b>	<b>Due</b>
Group Health – Fully Insured	7-18-14	9-3-14
Group Health – Self Insured	8-13-14	10-10-14
Group Health – Fully Insured (rebid)	10-30-14	11-19-14
RHIC Administrative & Recordkeeping Services	10-31-14	12-22-14
Experience Study for NDPERS & HP	12-5-2014	1-23-15
NDPERS Web Development & Social Media	12-4-14	1-9-15

**Renewals Renegotiated:**

	<b>New Term</b>
VOYA – Group Life Plan	7-1-14 to 7-1-16
ADP – FlexComp Administrative Services	1-1-15 to 12-31-17
Delta Dental	1-1-15 to 12-31-16
Superior Vision	1-1-15 to 12-31-17

**TIAA-CREF Individual Consultations in State:**

January 28-30, 2014  
February 11-13  
March 11-13  
March 18-20  
April 29 - May 1, 2014  
May 27-28, 2014 (Fargo)  
June 10-12, 2014 (Grand Forks)  
June 25, 2014 (Devils Lake)  
July 22-24, 2014 (Bismarck)  
August 26-28 (Bismarck)  
September 17-19 (Bismarck)  
September 23-25 (Bismarck)  
October 28-30 (Bismarck)  
November 4-6 (Bismarck)  
November 18-20(Bismarck)  
December 17-18 (Bismarck)

**TIAA-CREF Education & Communication:**

February: TIAA-CREF Resource Guide mailing sent to 401(a) participants  
February: TIAA-CREF Advice mailing sent to both the 457 and 401(a) plan participants  
April 7, 2014: Sent 1<sup>st</sup> e-mail for Financial Literacy Month: How will you pay for tomorrow's life expenses?

April 14, 2014: Sent 2<sup>nd</sup> e-mail for Financial Literacy Month: How much more should you save for retirement?  
April 15 to May 15, 2014: "Test Your Financial IQ" online challenge for 457 plan participants  
April 23, 2014: Sent 3<sup>rd</sup> e-mail Financial Literacy Month: How long until your investments double? Discover the 'Rule of 72'  
May 12, 2014: E-mailed webinar "Spending within Your Means" & Reminder for "Test Your Financial IQ" online challenge for 457 plan participants  
July 30, 2014: "Tomorrow in Focus Webinar" Live Online Presentation  
August 5, 2014: "Tomorrow in Focus Webinar" Live Online Presentation  
October 19-25, 2014: Save for Retirement Week  
October 22, 2014: "Money at Work Webinar" Live Online Presentation  
October 30, 2014: "Money at Work Webinar" Live Online Presentation  
December 10, 2014: "Managing Income & Debt" Live Online Presentation  
December 16, 2014: "Managing Income & Debt" Live Online Presentation

**2014 Annual Enrollment:**

The following are the statistics showing the number of employees that utilized our Member Self Service portal for open enrollment:

Health	3,630
Dental	3,611
Vision	3,656
Life	3,770
Flex	4,018

The above represents 18,685 enrollment requests from 5,166 individuals.

Paper applications processed in-house:

Health	115
Dental/Vision	197
Life	94
Flex	470

November 24 – December 5, 2014 - Special Enrollment Window for ACA Eligible Temporary Employees. As of December 9<sup>th</sup>, 97 new enrollments have been received and processed by NDPERS.

We are available to answer any questions.



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**TO:** NDPERS Board  
**FROM:** Jamie Kinsella *Jamie*  
**DATE:** November 19, 2014  
**SUBJECT:** August 20, 2014 PERS Audit Committee Minutes  
August 29, 2014 PERS Audit Committee Minutes

Attached are the approved minutes from the August 20, 2014 and the August 29, 2014 meetings. Those who attended the meeting are available to answer any questions you may have.

The minutes may also be viewed on the NDPERS web site at [www.nd.gov/ndpers](http://www.nd.gov/ndpers).

The next audit committee meeting is tentatively scheduled for February 18, 2015 10:00 a.m., in the NDPERS Conference Room.

Attachment

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• FlexComp Program	• Retirement Programs	• Retiree Health Insurance Credit
• Employee Health & Life Insurance	- Public Employees	• Deferred Compensation Program
• Dental	- Highway Patrol	• Long Term Care Program
• Vision	- National Guard/Law Enforcement	
	- Judges	
	- Prior Service	
	- Job Service	



MEMORANDUM

TO: Audit Committee  
Jon Strinden  
Arvy Smith  
Rebecca Dorwart

FROM: Jamie Kinsella, Internal Auditor *Jamie*

DATE: September 2, 2014

SUBJECT: August 20, 2014 Audit Committee Meeting

In Attendance:

Jon Strinden  
Arvy Smith  
Rebecca Dorwart  
Jamie Kinsella  
Julie McCabe  
Sparb Collins  
Sharon Schiermeister  
Deb Knudsen

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

I. **May 21, 2014 Audit Committee Minutes**

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

II. **Internal Audit Reports**

- A. Quarterly Audit Plan Status Report – A summary of the internal audit staff time spent for the past quarter was included with the audit committee materials.
- B. FY 2014 Retirement Benefits & Refunds Executive Summary Reports – The Executive Summary Reports from the FY 2014 Retirement Benefits & Refunds Audit was brought to the board for their information.
- C. Audit Recommendations Status Report – As stated in the Audit Policy #103, the Internal Audit Division is to report quarterly to management and the audit committee the status of the audit recommendations of the external auditors, as well as any found by the internal auditor. The Internal Audit recommendations will be added to this report for November. In addition, target implementation dates were not updated for a few items.
- D. Benefit/Premium Adjustments Report – The quarterly benefit adjustment report was provided to the audit committee. The report is in two sections, Retirement

and Insurance. This report has five retirement and four health adjustments for this quarter.

- E. Job Service Update – The adjustments to the members' benefits on July 1, 2014 for the 1<sup>st</sup> Year COLA and Uniform Income errors that were found have been completed. However, during the course of our regular monthly audit, some questions arose regarding how the sick leave purchase was calculated. This led to other issues which include Sick Leave Balances, Alternate Payee Uniform Income, Correct Straight Life and Year Term Certain Formula which was not provided to the vendor, Joint & Survivor factor for contingent beneficiaries with more than 10 years difference in age is not included in formula, and finally, staff has requested a test run to verify that the COLA increase will calculate correctly. This will require additional time from Internal Audit through the end of the year 2014.

### III. Administrative

- A. Audit Committee Meeting Date & Time – The next audit committee meeting is scheduled for November 19, 2014 at 10:00 a.m.
- B. Audit Committee Charter Revision Proposal – At the last audit committee meeting a proposed revised Audit Committee charter was provided for review as there had been significant updates to the Audit Committee Charters examples provided by both the Association of Public Pension Fund Auditors and the Institute of Internal Auditors. A special audit committee meeting was scheduled for August 29, 2014 to discuss the Audit Committee Charter.

### IV. Miscellaneous

- A. External Audit Update – Brady Martz will be in the NDPERS office the weeks of August 25<sup>th</sup> through September 5<sup>th</sup> to complete their fieldwork.

A new contract with Brady Martz outlining their audit procedures they will undertake as a result of additional work required to comply with the provision of GASB Statement No. 68 was received. Brady Martz does not anticipate the fee for these additional services to exceed \$75,000. Discussion followed.

- B. Travel Expenditures Update – There were no travel expenditures incurred by the Board and/or Executive Director for out-of-state travel submitted from May 1, 2014 through July 31, 2014.
- B. Risk Management Report – The Loss Control Committee will provide quarterly to the Audit Committee a copy of the Loss Control Committee's agenda from their last meeting as well as the approved minutes. Copies of the March 24, 2014 meeting and the agenda for the June 24, 2014 meeting were provided to the audit committee. Deb Knudsen provided a report of the past year's activities.
- C. Report on Consultant Fees - According to the Audit Committee Charter, the audit committee should "Periodically review a report of all costs of and payments to

the external financial statement auditor. The listing should separately disclose the costs of the financial statement audit, other attest projects, agreed-upon-procedures and any non-audit services provided." A copy of the report showing the actuary/consulting audit, legal, investment and administrative fees paid during the quarter ended June 2014 were provided to the audit committee. Discussion followed. Mr. Collins will be following up with the NDPERS board.

- D. Publications – The June 2014 publication of the Tone at the Top were provided to the Audit Committee for their perusal.
  
- F. Webinars and CPE's – Ms. Kinsella and Ms. McCabe have been participating in free Webinars that the Institute of Internal Auditors provides for their members. Each 1 hour webinar provides 1 hour of continuing professional education credits. The internal auditors have attended seven webinars from May 1, 2014 through July 31, 2014. These webinars are held during the lunch hour so the internal auditors remain available to staff during normal business hours.

Meeting adjourned at 11:05 a.m.



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**MEMORANDUM**

**TO:** Audit Committee  
Jon Strinden  
Arvy Smith  
Rebecca Dorwart

**FROM:** Jamie Kinsella, Internal Auditor *Jamie*

**DATE:** September 2, 2014

**SUBJECT:** August 29, 2014 Audit Committee Meeting

In Attendance:  
Jon Strinden  
Arvy Smith  
Rebecca Dorwart  
Jamie Kinsella  
Julie McCabe  
Sparb Collins

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

**I. Audit Committee Charter**

The meeting was called to review the Audit Committee Charter. Changes were reviewed and additional changes made. The final draft will be provided at the next Audit Committee Meeting in November for final approval.

Meeting adjourned at 10:35 a.m.



**NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM**  
**Internal Audit Division**  
**Office Memorandum**

**TO:** NDPERs Board  
**FROM:** Jamie Kinsella  
**DATE:** November 21, 2014  
**SUBJECT:** Internal Audit Policy 101 – Audit Committee Charter

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During 2014 the Audit Committee reviewed revisions suggested by the Internal Audit Manager to Internal Audit Policy 101, Audit Committee Charter. Internal Audit proposed revising the policy as a result of several suggested changes from the Institute of Internal Auditors and the Association of Public Pension Auditors.

We request that the NDPERs Board review this policy and provide their approval of this change. I have included for your reference the original policy, as well as the revised policy.

Those who attended the meeting are available to answer any questions you may have.

**Board Action Requested:** Approve the attached revised Policy #101.

## INTERNAL AUDIT POLICY

PUBLIC EMPLOYEES RETIREMENT SYSTEM INTERNAL AUDIT POLICY	Policy No. 101
	Original Effective Date: 8/26/93
	Revised: November 19, 2014
	New Effective Date: January 1, 2015
Subject: Audit Committee Charter	Page 1 of 4

### PURPOSE

The audit committee is appointed by the board of directors of the agency to assist the board of directors in fulfilling its fiduciary oversight responsibilities for (1) financial reporting, (2) risk management, (3) internal controls, (4) internal audit, (5) the engagement of external auditors, (6) compliance, (7) the special investigations and whistleblower process, and (8) other responsibilities.

### STRUCTURE

The audit committee will consist of two to five members with the majority of the members selected from the Board of Directors, and one may be selected from outside the organization. The Board or its nominating committee will appoint committee members and the committee chair. The Board should attempt to appoint committee members who are knowledgeable and experienced in financial matters, including the review of financial statements.

### MEETINGS

The audit committee will meet as often as it determines is appropriate, but not less frequently than quarterly. All committee members are expected to attend each meeting, in person or via tele- or video-conference, with a minimum of two required for a quorum. The committee periodically will hold individual meetings with management, the internal auditor and the external auditor. The audit committee may invite any officer or employee of the agency, the external auditor, the agency's outside counsel, or others to attend meetings and provide pertinent information.

Meeting agendas will be prepared by the Chief Audit Executive (CAE) and provided in advance to members, along with appropriate briefing materials. Minutes will be kept by a member of the audit committee or a person designated by the audit committee. Members of the audit committee will be compensated for attendance at committee meetings in accordance with NDPERS' policy for compensation in effect at the time for Board members. Audit Committee members who are not NDPERS board members will be compensated at the same rate.

### AUTHORITY

The audit committee has authority to conduct or authorize examinations into any matters within its scope of responsibility. It is empowered to:

- Seek any information it requires from NDPERS employees, external auditors, consultants, and external parties. All parties are directed by the Board to cooperate with the Committee's requests.
- Oversee the work of all external auditors employed by the organization.
- Assist in resolving any disagreements between management and the external auditors regarding financial reporting, if necessary.

- Oversee the retention of independent counsel, accountants or others to advise or assist the Committee in the performance of its responsibilities.
- Approve the consultants, or others retained by the organization to assist in the conduct of an audit, review, and/or a special investigation.
- Meet with management, external and internal auditors, or outside counsel as necessary.

## **RESPONSIBILITIES**

The audit committee will carry out the following responsibilities:

### **1) Financial Reporting:**

- a. Obtain information and/or training to enhance the committee members' expertise in financial reporting standards and processes so the committee may adequately oversee financial reporting.
- b. Review significant accounting and reporting issues, including complex or unusual transactions and highly judgmental areas, recent professional and regulatory pronouncements, and understand their impact on the financial statements.
- c. Review with management, the external auditors, and the internal auditors the results of the external audit, significant adjustments or revisions to the financial statements, including attestation on the effectiveness of the internal control structure and procedures for financial reporting and any difficulties encountered.
- d. Inquire as to the external auditors' independent judgment about the appropriateness, not just the acceptability, of the accounting principles adopted by the organization and clarity of financial statements.
- e. Review the annual financial statements, consider whether they are complete, consistent with information known to the Committee, and reflect appropriate accounting principles.
- f. Review with management and the external auditors all matters required to be communicated to the Committee under generally accepted auditing standards.
- g. Review the responsiveness and timeliness of management's actions to address findings and recommendations resulting from the financial statement audit or internal audits.
- h. Review with the General Counsel the status of legal matters that may have an effect on the financial statements, as deemed appropriate.

### **2) Risk Management**

- a. Obtain information and/or training to enhance the Committee's understanding of organization and its related risk management processes.
- b. Review the adequacy of the organization's policy on risk management.
- c. Review the effectiveness of the organization's system for assessing, monitoring, and controlling significant risks or exposures.
- d. Review management's reports on risks and related risk mitigations.
- e. Hire outside experts and consultants in risk management, as necessary, subject to full board approval.

### **3) Internal Control**

- a. Obtain information and/or training to enhance the Committee's understanding of the organization's system of internal control.
- b. Consider the effectiveness of the organization's internal control system, including information technology security and control.

- c. Understand the scope of the external auditor's review of the organization's internal control over financial reporting.
- d. Review internal and external audit findings and recommendations, together with management's responses.

#### 4) Internal Audit

- a. Obtain information and/or training to enhance the Committee's understanding of the internal audit function.
- b. Periodically review and approve the Internal Audit Division Charter.
- c. Concur in the appointment, replacement, or dismissal of the CAE.
- d. Review the performance of the CAE and the internal audit function annually.
- e. Review and confirm, through organizational structure and/or by other means, the independence of the internal audit function annually.
- f. Review with management and the CAE the charter, objectives, plans, activities, and organizational structure of the internal audit function.
- g. Review and approve the risk-based internal audit annual plan.
- h. Review internal audit reports provided to the audit committee.
- i. Review the responsiveness and timeliness of management's follow-up activities pertaining to any reported findings and recommendations.
- j. Bring to the attention of the Board any internal audit issues the Committee determines significant and appropriate for consideration by the Board.
- k. On a regular basis, meet separately with the CAE to discuss any matters the committee or internal audit believes should be discussed privately (subject to open meeting laws).
- l. Designate the CAE as the primary point of contact for handling all matters related to audits, examinations, investigations or inquiries of the state auditor and other state or federal agencies.

#### 5) Engagement of External Auditors

- a. Obtain the information and/or training to enhance the Committee's understanding of the organization's financial statements audit and the role of external auditors.
- b. Review the performance of the external financial statement audit firm, and review the State Auditor's recommendation for the final approval on the request for proposal for, and the appointment, retention or discharge of the audit firm. Obtain input from the CAE, management and other parties as appropriate.
- c. Review the external auditor's audit scope and approach, including coordination of efforts with internal audit.
- d. Review the independence of the external auditors by obtaining statements from the auditors on relationships between the auditors and the organization for all audit and non-audit services.
- e. On a regular basis, meet separately with the external financial statement audit firm to discuss any matters the committee or auditors believe should be discussed privately (subject to open meeting laws).

#### 6) Compliance

- a. Review the effectiveness of the organization's system for monitoring compliance with laws and regulations, contracts, and policies and the results of management's investigation and follow-up (including disciplinary action) of any instances of noncompliance.
- b. Review the findings of any examinations by regulatory agencies, any auditor observations related to compliance, and the responsiveness and timeliness of management's actions to address the findings/observations.
- c. Obtain updates from management and organization legal counsel regarding compliance matters, as needed.

**7) Special Investigations and Whistleblower Process**

- a. Institute and oversee special investigations, as needed.
- b. Ensure the creation and maintenance of an appropriate whistleblower mechanism for reporting any fraud, noncompliance, and/or inappropriate activities.
- c. Retain independent counsel, accountants, or other specialist to advise the Committee or assist in the conduct of an investigation, subject to full board approval.

**8) Other Responsibilities**

- a. Report at least annually to the Board of Directors the Committee activities, audit issues, and related recommendations.
- b. Confirm annually all responsibilities outlined in this charter have been carried out. Review and assess periodically the adequacy of the Committee charter, request Board approval for proposed changes, and ensure appropriate disclosure as may be required by law or regulation.
- c. Evaluate the Committee's performance and report the results of the evaluation to the Board annually.
- d. Provide an open avenue of communication between the internal auditors, external auditors, management and the Board.
- e. Avoid conflicts of interest, paying strict attention to board matters.
- f. Perform other activities related to this Charter as requested by the Board.

Submitted by: Jamie Kinsella

Approved by: NDPERS Audit Committee November 19, 2014

Approved by: NDPERS Board

## INTERNAL AUDIT POLICY

PUBLIC EMPLOYEES RETIREMENT SYSTEM INTERNAL AUDIT POLICY	Policy No. 101
	Effective Date: 8/26/93
	Revised: September 18, 2008
Subject: Audit Committee Charter	Page 1 of 5

### PURPOSE

The audit committee is appointed by the board of directors of the agency to assist the board of directors in fulfilling its fiduciary oversight responsibilities for the (1) financial reporting process, (2) the system of risk management, (3) the system of internal controls, (4) the performance of the agency's internal audit process, (5) the external audit of the financial statements, (6) the engagements with other external audit firms, (7) the organization's processes for monitoring compliance with laws, regulations and the ethics policy, code of conduct and fraud policy, (8) the special investigations and whistleblower mechanism, and (9) the audit committee management and reporting responsibilities.

### STRUCTURE

The audit committee will consist of two to five members with the majority of the members selected from the Board of Directors, and one may be selected from outside the organization. The Board or its nominating committee will appoint committee members and the committee chair. The Board should attempt to appoint committee members who are knowledgeable and experienced in financial matters, including the review of financial statements.

### MEETINGS

The audit committee will meet as often as it determines is appropriate, but not less frequently than quarterly. All committee members are expected to attend each meeting, in person or via tele- or video-conference. The committee periodically will hold individual meetings with management, the internal auditor and the external auditor. The audit committee may invite any officer or employee of the agency, the external auditor, the agency's outside counsel, or others to attend meetings and provide pertinent information. Meeting agendas will be prepared by the Chief Audit Executive and provided in advance to members, along with appropriate briefing materials. Minutes will be kept by a member of the audit committee or a person designated by the audit committee. Members of the audit committee will be compensated for attendance at committee meetings in accordance with NDPERS' policy for compensation in effect at the time for Board members. Audit Committee members who are not PERS board members will be compensated at the same rate.

### AUTHORITY

The audit committee has authority to conduct or authorize examinations into any matters within its scope of responsibility for the following functions:

- 1) Financial Reporting,
- 2) System of Risk Management,
- 3) System of Internal Control,
- 4) Internal Audit,
- 5) External Audit of the Financial Statements,
- 6) Engagements with Other External Audit Firms,
- 7) Monitoring Compliance with Laws and Regulations and the Ethics Policy, Code of Conduct and Fraud Policy,
- 8) Special Investigations and Whistleblower Process, and
- 9) Audit Committee Management and Reporting Responsibilities

## RESPONSIBILITIES

The audit committee will carry out the following responsibilities:

### 1) Financial Reporting:

- a. Obtain information and/or training to enhance the committee members' expertise in financial reporting standards and processes so that the committee may adequately oversee financial reporting.
- b. Review significant accounting and reporting issues, including complex or unusual transactions and highly judgmental areas, and recent professional and regulatory pronouncements, and understand their impact on the financial statements.
- c. Review with management, the external auditors, and the internal auditors the results of the audit, including any difficulties encountered.
- d. Review all significant adjustments proposed by the external financial statement auditor and by the internal auditor.
- e. Review all significant suggestions for improved financial reporting made by the external financial statement auditor and by the internal auditor.
- f. Review with the General Counsel the status of legal matters that may have an effect on the financial statements.
- g. Review the annual financial statements, and consider whether they are complete, consistent with information known to committee members, and reflect appropriate accounting principles.
- h. Review with management the external auditors all matters required to be communicated to the committee under generally accepted auditing *Standards*.
- i. Understand how management develops interim financial information, and the nature and extent of internal and external auditor involvement.
- j. Review the statement of management responsibility for and the assessment of the effectiveness of the internal control structure and procedures of the organization for financial reporting. Review the attestation on this management assertion by the financial statement auditor as part of the financial statement audit engagement.

### 2) System of Risk Management

- a. Obtain information about, training in and an understanding of risk management in order to acquire the knowledge necessary to adequately oversee the risk management process.
- b. Periodically review that the organization has a comprehensive policy on risk management.
- c. Consider the effectiveness of the organization's risk management system, including risks of information technology systems.
- d. Consider the risks of business relationships with significant vendors and consultants.
- e. Reviews management's reports on management's self-assessment of risks and the mitigations of these risks.
- f. Understand the scope of internal auditor's and external auditor's review of risk management over financial reporting.
- g. Understand the scope of internal auditor's review of risk management over all other processes, and obtain reports on significant findings and recommendations, together with management's responses.
- h. Understand the scope of any other external auditor's or consultant's review of risk management.
- i. Hire outside experts and consultants in risk management as necessary subject to full board approval.

### 3) System of Internal Control

- a. Obtain information about, training in and an understanding of internal control in order to acquire the knowledge necessary to adequately oversee the internal control process.
- b. Ensure that the organization has a comprehensive policy on internal control and compliance.
- c. Review periodically the policy on ethics, code of conduct and fraud policy.
- d. Consider the effectiveness of the organization's internal control system, including information technology security and control.
- e. Consider any internal controls required because of business relationships with significant vendors and consultants.
- f. Understand the scope of internal auditor's and external auditor's review of internal control over financial reporting, and obtain reports on significant findings and recommendations, together with management's responses.
- g. Understand the scope of internal auditor's review of internal control over all other processes, and obtain reports on significant findings and recommendations, together with management's responses.
- h. Review the role of the internal auditor's involvement in the corporate governance process, including corporate governance documentation and training.
- i. Periodically review that contracts with external service providers contain appropriate record-keeping and audit language.

### 4) Internal Audit

- a. Obtain the information and training needed to enhance the committee members' understanding of the role of internal audits so that the committee may adequately oversee the internal audit function.
- b. Oversee the selection process for the Chief Audit Executive.
- c. Assure and maintain, through the organizational structure of the organization and by other means, the independence of the internal audit process.
- d. Review any difficulties encountered in the course of audit work, including any restrictions on the scope of activities or access to required information
- e. Review with management and the Chief Audit Executive the charter, objectives, plans, activities, staffing, budget, qualifications, and organizational structure of the internal audit function.
- f. Receive and review all internal audit reports and management letters.
- g. Review the responsiveness and timeliness of management's follow-up activities pertaining to any reported findings and recommendations.
- h. Receive periodic notices of advisory and consulting activities by internal auditors.
- i. Review and concur in the appointment, replacement, or dismissal of the Chief Audit Executive.
- j. Review the performance of the Chief Audit Executive periodically.
- k. Review the effectiveness of the internal audit function, including compliance with The Institute of Internal Auditors' *Standards for the Professional Practice of Internal Auditing*.
- l. On a regular basis, meet separately with the Chief Audit Executive to discuss any matters that the committee or internal audit believes should be discussed privately (subject to open meeting laws).
- m. Designate the Chief Audit Executive as the lead coordinator for handling all matters related to audits, examinations, investigations or inquiries of the State Auditor and other appropriate State or Federal agencies.

**5) External Audit of the Financial Statements**

- a. Obtain the information and training needed to enhance the committee members' understanding of the purpose of the financial statements audit and the role of external financial statement auditor so that the committee may adequately oversee the financial statement audit function.
- b. Review the external auditor's proposed audit scope and approach, including coordination of audit effort with internal audit.
- c. Review the performance of the external financial statement audit firm, and review the State Auditor's recommendation for the final approval on the request for proposal for, and the appointment, retention or discharge of the audit firm. Obtain input from the Chief Audit Executive, management and other parties as appropriate.
- d. Review the independence of the external financial statement audit firm by obtaining statements from the auditors on relationships between the audit firm and the organization, including any non-audit services, and discussing these relationships with the audit firm. Obtain from management a listing of all services provided by the external audit firm. Obtain information from the Chief Audit Executive and other sources as necessary.
- e. Review the audited financial statements, associated management letter, attestation on the effectiveness of the internal control structure and procedures for financial reporting, other required auditor communications, and all other auditor reports and communications relating to the financial statements.
- f. Review all other reports and communications made by the external financial statement auditor.
- g. Review the responsiveness and timeliness of management's follow-up activities pertaining to any reported findings and recommendations.
- h. On a regular basis, meet separately with the external financial statement audit firm to discuss any matters that the committee or auditors believe should be discussed privately (subject to open meeting laws).
- i. Provide guidelines and mechanisms so that no member of the audit committee or organization staff shall improperly influence the auditors or the firm engaged to perform audit services.
- j. Periodically review a report of all costs of and payments to the external financial statement auditor. The listing should separately disclose the costs of the financial statement audit, other attest projects, agreed-upon-procedures and any non-audit services provided.

**6) Engagements with Other External Audit Firms**

- a. Obtain the information and training needed to enhance the committee members' understanding of the role of the other external audit firm(s) so that the committee may adequately oversee their function(s).
- b. Confirm coordination of efficient and effective audit activities between the internal and external auditors.
- c. Review the performance of the other external audit firm(s),
- d. Review the scope all services to be performed by the other external auditor.
- e. Review the reports of the audits and/or agreed-upon-procedures.
- f. Provide a forum for follow up of findings from the audit reports or agreed-upon-procedures.
- g. Meet separately with the other external audit firm(s) on a regular basis to discuss any matters that the committee or staff of the audit firm(s) believes should be discussed
- h. Review a report of all costs of and payments to other external audit firm(s). The listing should separately disclose the costs of any audit, other attest projects, agreed-upon-procedures and any non-audit services provided.

**7) Monitoring Compliance**

- a. Review the effectiveness of the system for monitoring compliance with laws and regulations and the results of management's investigation and follow-up (including disciplinary action) of any instances of noncompliance.
- b. Review the findings of any examinations by regulatory agencies, and any auditor observations, including investigations of misconduct and fraud.
- c. Review the process for communicating to all affected parties the ethics policy, code of conduct and fraud policy to organization personnel, and for monitoring compliance therewith.
- d. Obtain regular updates from management and organization legal counsel regarding compliance matters.
- e. Monitor changes and proposed changes in laws, regulations and rules affecting the organization.

**8) Special Investigations and Whistleblower Process**

- a. Institute and oversee special investigations as needed.
- b. Provide an appropriate confidential mechanism for whistleblowers to provide information on potentially fraudulent financial reporting or breaches of internal control to the audit committee.

**9) Audit Committee Management and Reporting Responsibilities**

- a. Regularly report to the Board of Directors about all committee activities, issues, and related recommendations.
- b. Perform other activities related to this charter as requested by the Board of Directors, and report to the Board
- c. Provide an open avenue of communication between internal audit, the external financial statement auditors, other external auditors, management and the Board of Directors.
- d. Review any other reports that the organization issues that relates to audit committee responsibilities.
- e. Confirm annually that all responsibilities outlined in this charter have been carried out. Report annually to the Board, members, retirees and beneficiaries, describing the committee's composition, responsibilities and how they were discharged, and any other information required by rule, including approval of non-audit services.
- f. Review and assess the adequacy of the committee charter periodically, requesting Board approval for proposed changes, and ensure appropriate disclosure as may be required by law or regulation.

Submitted by: Jamie Kinsella

Approved by: NDPERS Board September 18, 2008