NDPERS BOARD MEETING
Agenda

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

October 19, 2006 **Time: 8:30 AM**

I. MINUTES
- A. September 14, 2006

II. GROUP INSURANCE
- A. Group Insurance Renewal – Sparb and Kathy (Board Action)
- B. Long Term Care Insurance – Kathy (Board Action)
- C. Wellness Benefit Program – Kathy (Board Action)
- D. CIGNA Dental Contract – Kathy (Board Action)
- E. Annual Flu Shot Update – Cheryle (Information)
- F. Smoking Cessation Program – Cheryle (Board Action)
- G. Surplus/Affordability Update – Bryan (Information)

III. RETIREMENT
- A. Job Service COLA – Kathy (Board Action)
- B. 2006 Valuations – Sparb (Board Action)
- C. Legislative Reviews – Sparb (Board Action)

IV. DEFERRED COMPENSATION
- A. Sunset Life – Kathy (Board Action)

V. LASR
- A. Project Update – Deb (Information)
- B. Proposal Evaluation Methodology – Deb (Board Action)

VI. MISCELLANEOUS

- A. SIB Agenda – (Information)

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

M I N U T E S

North Dakota Public Employees Retirement System

Thursday, September 14, 2006
ND Association of Counties, Bismarck
BCBS, 4510 13th Ave SW, Fargo
8:30 A.M.

Members Present:	Ms. Joan Ehrhardt
	Mr. Ron Leingang
	Ms. Sandi Tabor
Via Video Conference:	Ms. Rosey Sand
	Chairman Jon Strinden
Via Conference Call:	Mr. Howard Sage
Member Absent:	Ms. Arvy Smith
Others Present:	Mr. Sparb Collins, Executive Director, NDPERS
	Ms. Cheryl Stockert, NDPERS
	Ms. Kathy Allen, NDPERS
	Ms. Deb Knudsen, NDPERS
	Mr. Bryan Reinhardt, NDPERS
	Ms. Cheryle Masset-Martz, NDPERS
	Ms. Rebecca Fricke, NDPERS
	Ms. Diane Heck, NDPERS
	Ms. Julie Krenz, Attorney General's Office
	Mr. Aaron Webb, Attorney General's Office
	Mr. Kevin Schoenborn, BCBSND
	Ms. Onalee Sellheim, BCBSND
	Mr. Mike Moehle, Segal Company
	Mr. Brad Ramirez, Segal Company
	Mr. Dave Bergerson, Segal Company
	Ms. Jodee Buhr, NDPEA
	Mr. Bill Kalanek, AFPE-INDSEA
Via Video Conference	Mr. Larry Brooks, BCBSND
	Mr. Chad Niles, BCBSND
Via Conference Call:	Mr. Bill Robinson, Gallagher Benefit Services

Chairman Jon Strinden called the meeting to order at 8:35 a.m.

MINUTES

Chairman Strinden called for any comments or corrections to the August 17, 2006 Board meeting minutes.

THERE BEING NONE, MR. LEINGANG MOVED APPROVAL OF THE AUGUST 17, 2006 BOARD MEETING MINUTES. MS. EHRHARDT SECONDED THE MOTION. THE MINUTES WERE APPROVED.

Chairman Strinden called for any comments or corrections to the August 24, 2006 Board meeting minutes.

THERE BEING NONE, MR. LEINGANG MOVED APPROVAL OF THE AUGUST 24, 2006 BOARD MEETING MINUTES. MS. EHRHARDT SECONDED THE MOTION. THE MINUTES WERE APPROVED.

Chairman Strinden called for any comments or corrections to the August 29, 2006 Board meeting minutes.

THERE BEING NONE, MR. LEINGANG MOVED APPROVAL OF THE AUGUST 29, 2006 BOARD MEETING MINUTES. MS. EHRHARDT SECONDED THE MOTION. THE MINUTES WERE APPROVED.

GROUP INSURANCE

Ms. Julie Krenz with the Attorney General's Office introduced Mr. Aaron Webb to the Board who is the recently hired attorney that is assigned to NDPERS.

ING

Mr. Collins reported that PERS had a participating contract with ING, the previous insurance carrier, which we are now in the process of closing out permanently. Mr. Collins noted the Life Summary of Experience shows a positive amount of $1,442,853.28, which is the amount we will get back plus interest. Secondly, ING has a claims reserve of approximately $260,000 which is 10% of paid premium. ING has indicated that they would forward all of this amount if PERS would sign a Hold Harmless Agreement assuming responsibility for any claims to be paid in the future. Ms. Krenz stated the Attorney General's office does not support signing a blanket Hold Harmless Agreement. Mr. Collins stated that alternatively ING indicated that if we wanted ING to maintain responsibility for any future claims then ING would need to maintain half of the claims reserve or 5% of paid premium which would be approximately $130,000 and then they would maintain responsibility for paying future claims.

MR. LEINGANG MOVED TO AUTHORIZE MR. COLLINS TO NEGOTIATE WITH ING TO REDUCE THE RETAINAGE FEE TO 3 TO 4%, BUT ACCEPT THE 5% AS SETTLEMENT IN THE CLOSING. IN ADDITION, STAFF SHOULD INSURE THAT

THERE IS DOCUMENTATION THAT ING WILL BE RESPONSIBLE FOR FUTURE CLAIMS. THE MOTION WAS SECONDED BY MR. SAGE.

Ayes: Mr. Leingang, Mr. Sage, Ms. Sand, Ms. Tabor, Ms. Ehrhardt, and Chairman Strinden.
Nays: None
Absent: Arvy Smith

MOTION PASSED

GROUP INSURANCE RENEWAL

Mr. Collins reported staff has been working with BCBS to finalize the group insurance renewal, but there are issues that need further clarification from BCBS before a final decision can be made. Therefore, staff suggested deferring the decision on the renewal until October. Mr. Collins shared with the Board the information received to date from BCBS. Next week Mr. Collins will be meeting with OMB to present the proposed group insurance renewal, pending Board action.

Mr. Collins stated there was a news announcement reporting that BCBS is returning premiums to members in the amount of $26 million. NDPERS is not included in this premium return because receive funds each biennium if the plan has a gain. However, Mr. Collins indicated we should ask BCBS to review this with the Board at the next meeting.

In addition, Mr. Collins noted we need clarification from BCBS relating to our ability to audit the pharmacy benefits and the PBM.

The Board directed Mr. Collins to proceed in obtaining the information from BCBS prior to the next meeting to assist in making their final decision relating to the group insurance renewal.

MEDICARE PART D RENEWAL

Mr. Collins indicated that Medicare Part D is due for renewal January 1, 2007. Mr. Brooks, BCBS, presented information relative to the changes for Medicare Part D. CMS has indicated they will separate out the specialty drugs that are currently on the third tier which are nonpreferred drugs and include a $25 copayment and 50% coinsurance; these drugs will become the 4th tier. The renewal rate for 2007 for PERS will increase by 9.5% to $58.94 per month. If supplemental drugs are added to this coverage, the rate will increase to $60.14. Mr. Collins requested BCBS provide additional information at the October 19 Board meeting before a final decision is made and he also suggested that PERS meet with the retiree group to review this information as well.

SURPLUS/AFFORDABILITY UPDATE

Mr. Reinhardt presented the surplus projections through July 2006. He reported the claims projections are coming in as expected. The projection for the 2003-2005 biennium shows an ending balance of $15.6 million.

RETIREMENT

DEFINED CONTRIBUTION VESTING SCHEDULE

Ms. Fricke reported that PERS was contacted by Fidelity Investments to review an audit of members that participate in the defined contribution plan to ensure that participants are vesting correctly in the employer contribution and to ask for clarification from PERS. Upon review of the NDCC 54-52.6-10 and the Plan Document, it appears that vesting in this plan is only based on years of service credit and not on the age of the participant. Staff is asking for Board action to prepare legislation to change the law to include 100% vesting in the employer contribution based on obtaining age 65 (which is consistent with how this is applied in the Defined Benefit plan).

MS. TABOR MOVED TO ACCEPT THE STAFF RECOMMENDATION TO PREPARE LEGISLATION TO ALLOW PARTICIPANTS TO VEST IN THE DEFINED CONTRIBUTION PLAN AT 100% BASED ON OBTAINING AGE 65 TO BE CONSISTENT WITH THE DEFINED BENEFIT PLAN. THE MOTION WAS SECONDED BY MS. SAND.

Ayes: Mr. Leingang, Mr. Sage, Ms. Sand, Ms. Tabor, Ms. Ehrhardt, and Chairman Strinden
Nays: None
Absent: Arvy Smith

MOTION PASSED

FEDERAL PENSION LEGISLATION UPDATE

Mr. Collins stated that in August the president signed the Pension Protection Act of 2006, with some significant provisions relating to public sector plans. Segal will be available at either the October or November meeting to provide an update. One change in the law relates to the provision of purchases by an eligible participating member. Federal law has always stated that only active members can purchase time, however, the new federal law has expanded the definition of who can purchase, including nonactive members. North Dakota state law states that only participating members can purchase service. Staff is recommending legislative amendments to maintain the existing purchase opportunities, to change the wording in the law from “participating member” to “participating active member”.

MS. SAND MOVED TO PURSUE LEGISLATION TO MAINTAIN THE STATUS QUO RELATING TO PURCHASE OF SERVICE OPTIONS FOR ONLY PARTICIPATING ACTIVE MEMBERS. THE MOTION WAS SECONDED BY MS. TABOR.

Ayes: Mr. Leingang, Mr. Sage, Ms. Sand, Ms. Tabor, Ms. Ehrhardt, and Chairman Strinden.
Nays: None
Absent: Ms. Smith

MOTION PASSED

2ND QUARTER 2006 INVESTMENT REPORT

Mr. Reinhardt reported that the 401(a) Plan has assets of $14.6 million as of June 30, 2006. The 457 Companion Plan increased to over $18.1 million. Representatives from Fidelity attended the Investment Subcommittee meeting and stated the performance was positive and they had no recommended changes.

NEW FIDELITY FUNDS FOR THE 401(a) and 457 PLANS

Mr. Reinhardt reported that at the last Investment Subcommittee meeting, Fidelity proposed the addition of the Freedom 2045 and 2050 lifestyle funds be added to the 401(a) and 457 core fund offerings. These funds will be more aggressive and would be in addition to the current lifestyle fund options.

MS. TABOR MOVED TO ADD THE FIDELITY FREEDOM 2045 AND 2050 LIFESTYLE FUNDS TO THE CORE FUND OFFERINGS. THE MOTION WAS SECONDED BY MS. SAND.

Ayes: Mr. Leingang, Mr. Sage, Ms. Sand, Ms. Tabor, Ms. Ehrhardt, and Chairman Strinden.
Nays: None
Absent: Ms. Smith

MOTION PASSED

Mr. Collins introduced the new representatives from Segal who attended the Board meeting and will be meeting with staff. Mr. Michael Moehle, Vice President and Consulting Actuary, took over responsibilities of Ms. Leslie Thompson who has left Segal.

LASR UPDATE

Ms. Knudsen presented the monthly status report for the LASR project, stating we are on schedule. Mr. Collins indicated that on October 11 we will be appearing before the Legislative Information Technology Committee to introduce the project since LASR is classified as a large project. In October staff will be going to SITAC to present an overview of the project as well.

MISCELLANEOUS

The Audit Committee update was presented and it was reported to the Board that an audit committee meeting was held relating to staffing issues. Internal Audit staff will be assisting in the accounting area.

State Investment Board agenda was not available at the time of the Board meeting.

The meeting adjourned at 9:50 a.m.

Prepared by,

Cheryl Stockert
Secretary to the NDPERS Board

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

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

FAX: (701) 328-3920 ● EMAIL: NDPERS@state.nd.us ● discovernd.com/NDPERS

Memorandum

TO: PERS Board

FROM: Sparb and Kathy

DATE: October 16, 2006

SUBJECT: Group Insurance Renewal

The following attachments are provided with this memo for your consideration:

Attachment #1 is the previous Board memos on this issue for your reference
Attachment #2 is the response from BCBS for the Group Medical coverage
Attachment #3 is the response relating to the Medicare Rx plan

During the last several months we have been discussing the two renewals before us. One is for the Medicare Rx plan (the annual renewal) and the other is for the Medical Plan (the biennial renewal).

Medicare Rx Plan

Attachment #2 is the responses from BCBS. We have sent the information on to GBS and they are reviewing it. I will have their comments at the Board meeting. Also on October 3 staff met with our retiree working group. We reviewed with them the changes proposed. We also reviewed with them the issue of adding to the Medicare Plan the enhanced benefit discussed on the bottom of page 2 and the top of page 3 in Attachment #2. They would recommend to the board adding the additional benefit. After additional discussion the committee also recommends that PERS should set up a group of retirees to review the existing plan medical coverage and explore the desirability and feasibility of having the retiree plan move to more of a Medicare supplement plan design that is separate from the active plan. They also suggest we explore the possibility of coordinating the premium renewal cycles.

Staff Recommendation

Assuming the report from GBS does not raise any new issues staff would recommend the board accept the recommendations of the retiree group:

- To add the enhanced benefit
- To set up a group next spring to review the retiree plan design

Given the above and the attached staff would recommended accepting the Medicare Rx renewal.

Board Action Requested

To determine if the Medicare Rx renewal should be accepted and if the above recommendations should also be accepted.

Medical Plan

Attachments #3 is the responses from BCBS on the medical plan that we requested at the last meeting relating to:

Premium refunds
Interest
PBM Review/audit
Rx and Disease Management documentation

As you will note they indicate we are not eligible for any further premium refunds due to our present arrangements that provide refunds each biennium. Concerning the second issue, interest we are still reviewing this with them. Concerning the audit of the PBM we will be talking with BCBS more this week before the meeting to get a better understanding of the response.

BlueCross BlueShield of North Dakota

An independent licensee of the Blue Cross & Blue Shield Association

4510 13th Avenue South
Fargo, North Dakota 58121-0001

Memorandum

TO: Sparb Collins, NDPERS

FROM: Larry Brooks, BCBSND

DATE: October 17, 2006

SUBJECT: 2007-2009 Health Renewal - Responses

The purpose of this memo is to respond to questions from the September 14 PER Board meeting regarding 2007-2009 Health Plan renewal.

Issues to address:

- PERS participation in premium refund (as clarified with you, this ties in with risk charge questions).
- Clarify interest rate issue.
- Determine if PERS can audit our pharmacy vender (PBM)
- Complete 2 Memorandums of Understanding (MOU). MyHealthConnection and pharmacy rebates

ISSUES AND RESPONSES

1. PERS participation in premium refund (as clarified with you, e-mail dated Sept 17, this ties in with risk charge questions).

Due to favorable financial results over the last few years, the BCBSND Board of Directors approved a premium refund to certain lines of business whose underwriting results were significantly better than targeted. NDPERS, even though paying a risk charge of 1% has not produced underwriting results better than targeted by BCBSND.

This is because of the special gain sharing provision in the NDPERS contract. This gain sharing provision is unique to this account, and sets NDPERS apart from all other fully insured group business written by BCBSND. This gain sharing provision provides that BCBSND accepts full risk for underwriting losses while sharing 50% of the first $3 million of underwriting gains. In exchange for agreeing to accept all losses and share a limited portion of gains, BCBSND retains a risk charge of 1.00% of premium.

Recent bienniums have employed similar risk sharing arrangements, resulting in NDPERS retaining a portion of underwriting gains. As NDPERS already has a contractual provision for sharing in favorable underwriting experience, the group is not eligible for participation in the upcoming premium refund as it has not significantly exceeded targeted underwriting results.

2. Clarify interest rate issue.

Response:

BCBSND 2007-2009 administrative renewal rates were developed assuming the proposed interest credit using yield-to-maturity for 12 month treasuries. BCBSND offers a final compromise for PERS consideration in lieu of the original proposal; to use a treasury rate maturing 24 months from the monthly valuation date.

This will require changes to the service agreement to specifically spell out the 24 month maturity provision.

3. Determine if PERS can audit our pharmacy vender (PBM)

Below is a summary of our response to the question of allowing PERS the ability to audit our pharmacy benefits manager (PBM) vendor. More information on this subject is outlined in the attached document.

> NDPERS has the ability under the agreement in place with BCBSND to review NDPERS' pharmacy claims and any data related thereto that is in the possession of BCBSND, including rebate information. BCBSND has just completed an internal audit of the terms of its agreement with its pharmacy benefits manager (PBM) specifically as this agreement relates to the rebate provisions detailed therein, and to the extent there is NDPERS data included in this audit, NDPERS has access to the information. However, BCBSND deems such information to be confidential and proprietary, thus limiting NDPERS from sharing this data except for the sole purpose in meeting its needs in administering the NDPERS plan. Additionally, the audit results related to this internal audit may be available to NDPERS, but not the underlying records and data. Finally, the PBM has indicated that it has availed itself of outside audit services and has compiled these results in a report pursuant to the "SAS 70" audit guidelines that the PBM indicated it may share with NDPERS given the sensitive nature of the information. This is an option that would need to be pursued further with the PBM.

4. Complete two (2) Memorandums of Understanding (MOU). MyHealthConnection and pharmacy rebates.

Please see the two attached summaries of the above documents.

Pharmacy document titled - **OUTLINE OF PRESCRIPTION DRUG REBATE PROCESS**

MyHealthConnection document titled – **MEMORANDUM OF UNDERSTANDING**

Sparb, if you have any questions, please let me know.

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (MOU), is entered into this 5th day of October, 2006, by and between the North Dakota Public Employees Retirement System (NDPERS), a public agency created under North Dakota state law, and Blue Cross Blue Shield of North Dakota (BCBSND), a North Dakota nonprofit mutual insurance company, located at 4510 13th Avenue South, Fargo, North Dakota.

RECITATIONS:

WHEREAS, BCBSND has entered into an agreement with NDPERS to offer to NDPERS Members (as defined by the Administrative Services Agreement between the parties) (ASA Agreement) an integrated approach to care management services, including tools and capabilities to identify, reach, and engage Members and populations of Members who have, or are at risk of having, chronic or other preference sensitive medical conditions, and to provide medical decision support services and to disseminate medical decision support content to these Members and Member populations (hereinafter referred to as a "Disease Management Program"); and

WHEREAS, pursuant to this ASA Agreement, BCBSND has entered into a Shared Decision-Making and Collaborative Care Support Services Agreement (Health Dialog Agreement), dated August 6, 2004, as amended through Health Dialog Work Order #2 (NDPERS Work Order), dated July 13, 2005, with an outside vendor, Health Dialog, to assist in providing these services and administering the Disease Management Program, and which contains certain provisions related to the Disease Management Program, and

WHEREAS, the Health Dialog Agreement reflects a fee for these services for NDPERS Members to be administered through an arrangement with BCBSND.

NOW, WHEREFORE, in recognition of the mutual promises herein contained and for other good and valuable consideration hereby acknowledged by the parties hereto, NDPERS and BCBSND agree to the following.

BENEFITS AND SAVINGS RESULTING FROM THE DISEASE MANAGEMENT PROGRAM.

BCBSND acknowledges, understands and agrees that any benefits or monetary savings resulting from the administration of the Disease Management Program, as this program relates to NDPERS Members, as determined by BCBSND are to be passed directly through to NDPERS.

OTHER TERMS AND CONDITIONS.

NDPERS acknowledges, understands and agrees that the terms of the Health Dialogue Agreement and NDPERS Work Order IN PLACE BETWEEN Health Dialog and BCBSND, including but not limited to terms that specifically relate to the administration, cancellation, termination and payment terms, are hereby incorporated into this MOU and applicable to this agreement related to the Disease Management Program as if fully incorporated herein.

GENERAL PROVISIONS.

The following general conditions, covenants and obligations apply equally to both NDPERS and BCBSND under the terms of this MOU.

Time is of the Essence. Time is of the essence of each provision of this entire MOU and all of its terms and conditions.

Notice. Any notice required or permitted under the terms of this MOU shall, in all cases, be construed under the notice provision in the Agreement.

Assignment. No party may assign this MOU, or any of the obligations or duties mandated under the terms of this MOU, without the prior written consent of the other parties hereto.

Waiver. No delay or omission by any party to exercise any right or power under the terms of this MOU shall preclude the exercise of such right or power in subsequent instances or be construed to be a waiver thereof. A waiver by any party hereto of any of the covenants to be performed by any other party shall not be construed to be a waiver of any covenant herein contained, and the waiver of any breach of covenant shall not be construed to be a waiver of any succeeding breach thereof.

Entire Agreement. To the extent this MOU affects the ASA Agreement between NDPERS and BCBSND, this MOU shall constitute the entire agreement between the parties, and any prior understandings or representations of any kind preceding the date of this MOU shall not be binding upon either party except to the extent expressly set forth in this MOU.

Modification. Any modification of this MOU or additional obligations assumed by any party in connection with this MOU shall be binding only if evidenced in writing and signed by each party or an authorized representative of each party hereto.

Counterparts. This MOU may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

Recitals and Paragraph Headings. The recitals to this MOU are deemed to be an expression of the intent of the parties hereto, and to the extent the recitals create any duties for or obligations on the parties to this MOU, such recitals are deemed to be a part of the MOU. The titles to the paragraphs of this MOU are solely for the convenience of the parties and shall not be used to explain, modify, simplify or aid in the interpretation of the provisions of this MOU.

Binding Effect. This MOU is binding on the parties hereto, and to their successors and assigns, including any parent or subsidiary corporation.

IN WITNESS WHEREOF, the parties hereto by their duly authorized representatives have executed this MOU as of the date first written above.

NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM (NDPERS)
PO Box 1657
Bismarck, ND 55416

____
Name Date

____
Title

BLUE CROSS BLUE SHIELD OF NORTH DAKOTA (BCBSND)
4510 13th Avenue South
Fargo, ND 58121-0001

Michael B. Unhjem
Michael B. Unhjem Date

President and CEO

Date: September 26, 2006

RE: Pharmacy Rebates and the North Dakota Public Employee Retirement System (NDPERS) Health Care Plan

OUTLINE OF PRESCRIPTION DRUG REBATE PROCESS

Definition of Rebate.

A "rebate" is defined as a retrospective reimbursement of monetary amounts by a manufacturer under a manufacturer rebate discount program in place with the PBM for pharmaceutical products of that manufacturer dispensed to a plan member under certain conditions.

The PBM negotiates on behalf of BCBSND with manufacturers to obtain rebates for covered prescription drug services. Rebates from any manufacturer will accrue, if at all, only after four conditions precedent are satisfied:

(1) The PBM has entered into a contract or reimbursement agreement with the manufacturer for rebates ("Manufacturer Agreement");
(2) The manufacturer agrees in writing to accept BCBSND for purposes of participating in its rebate program;
(3) A formulary is distributed or made available by BCBSND to its members or others as may be required by the manufacturer; and
(4) The manufacturer determines that the requirements for receiving rebates are satisfied and pays rebates on the particular product/covered prescription drug service utilized by a member.

The extent to which manufacturer rebates are earned by participants in the rebate program is based on a number of factors, including benefit design (copay/coinsurance structure), achievement of market share benchmarks, and utilization (pharmacy claims paid). By agreement with BCBSND, the PBM passes back to the program participant 100 percent of earned rebates less a defined program management fee of 8%. There is also a deduction taken from the rebates for physician education and clinical programs. The total amount deducted from rebates for NDPERS is $18,750 per quarter or $75,000 per year.

Manufacturer rebates do not include any fees paid to the PBM by manufacturers, such as administrative fees. Manufacturer rebates also do not include purchasing discounts where the PBM is the direct purchaser of the products.

Manufacturer administration fees are collected for services rendered in connection with rebate contracts, such as performing the market share analysis required to calculate rebates, consolidating billing for clients, formulary communication services, and other services. Manufacturer administration fees do not exceed three percent of sales for any manufacturer. The PBM receives no other revenue from manufacturers.

No "Spread Pricing" Permitted in Pharmacy Network.

BCBSND does not permit its PBM to perform "spread pricing" through its pharmacy network. The PBM's contracted network discounts are directly passed through to BCBSND customer health plans and their members. The full value of the PBM's discounts accrues to the benefit of BCBSND customers, including the member and the group health plan.

Rebate Calculation.

Contracts with manufacturers are generally structured to provide an access discount (i.e., a discount given for having a product on formulary) and volume discounts that are dependent on the market shares achieved by products on the formulary. Higher market shares will earn higher discounts on the overall utilization of a product.

The only claims excluded from rebates are those processed as part of a discount card program, a 100 percent copay program, paper claims, VA and Indian Health Service claims and claims for which the manufacturer has already paid a discount.

Products Rebated.

2005 Q2 NDPERS Actual Contracts and Products - BCBSND Formulary

Data	Number
Contracts	55
Products	183 with earned rebates

Prime Therapeutics Manufacturer Contracts and Products- All Client Formularies

Data	Number
Contracts	66
Products	306 rebate eligible products

On average, 31 percent of Prime's claims are rebate eligible. A rebate eligible claim is defined as a claim for a product that is listed on the formulary and is covered by a manufacturer contract. Not every manufacturer with drugs on the formulary provides rebates. The table below shows net rebate experience (net of 8% program management fee) for five quarters for NDPERS.

For NDPERS:

Quarter	Rebate per Claim	Rebate per Rebate eligible claim
3rd Quarter 2003	$2.35	$7.17
4th Quarter 2003	$2.71	$7.56
1st Quarter 2004	$2.98	$8.37
2nd Quarter 2004	$3.09	$8.93
3rd Quarter 2004	$3.14	$9.59
4th Quarter 2004	$3.29	$10.08
1st Quarter 2005	$3.19	$10.06
2nd Quarter 2005	$3.34	$10.76

Does <u>not</u> reflect net of the Clinical/Physician Education Program fee.

How Rebates Are Processed and Calculated.

The PBM bills manufacturers for rebates 45 days after the end of each quarter and payment is due from manufacturers 60 days from the date of invoice.

The PBM calculates an initial estimate of rebates for each calendar quarter and communicates this estimate to BCBSND within sixty (60) days after the end of that quarter. The PBM remits to BCBSND all rebates relating to BCBSND members, less applicable fees, actually paid by manufacturers for each respective quarter.

For NDPERS, the PBM pays estimated rebates, less applicable fees, within sixty (60) days following the end of the respective calendar year quarter. A single and final account reconciliation is completed no later than twelve (12) months following the end of each respective quarter.

Formulary Development.

The BCBSND P&T Committee, a diverse group of physicians and pharmacists within the state of North Dakota, meets quarterly to review therapeutic drug classes and new drug monographs. Drug monographs are prepared by the PBM based on its clinical expertise, complete literature review, and complete product dossiers submitted in Academy of Managed Care Pharmacy (AMCP) format by drug manufacturers.

The P&T Committee conducts reviews of all therapeutic drug classes annually with the reviews distributed equally between the four meetings. New drugs are evaluated in conjunction with their therapy area review unless there are compelling clinical or financial reasons to review the agent out of cycle.

Formulary additions and deletions are made on the basis of stepwise consideration of the following criteria spelled out by the P&T Committee:

- Safety
- Efficacy
- Uniqueness
- Cost

The overriding consideration of the P&T Committee is to preserve the clinical integrity of the formulary. Decisions are made based on the information gathered through the combined efforts of the PBM's clinical staff and local expertise of the P&T Committee. All parties work together to ensure that safety, efficacy and uniqueness considerations are met. Where those three criteria are similar among drug products, minimization of cost is pursued.

Member Rebate Accounts (MRA).

BCBSND shares these retrospective discount payments, referred to in the pharmaceutical industry as rebates, from drug manufacturers with the NDPERS group as a means of lowering the group's overall pharmacy costs. However, as approved by the NDPERS Board of Directors in May 2005, a determination was made to share these rebate dollars where appropriate with NDPERS members through the BCBSND Member Rebate Account (MRA) program. This MRA program passes a portion of the manufacturer rebates available directly to NDPERS members.

Participation in the MRA program reduces the portion of the total rebates available to NDPERS by the amount that is returned to its members. The determination of each member's portion of the rebates available is based on a percentage of out-of-pocket expenses, less copayment amounts, paid for each member's prescriptions during the applicable quarter. To ensure each member receives the appropriate rebate, BCBSND establishes an MRA for each NDPERS member and their eligible dependents. A percentage of any applicable rebates from prescriptions purchased on or after July 1, 2005, are placed into the MRA.

Beginning in October 2006, NDPERS members who have accumulated rebates in their MRA automatically receive a discount off their out-of-pocket expenses the next time they purchase prescription drugs. As members utilize their MRA, a notice explaining this unique program will be included with their quarterly Prescription Drug Summary. The Prescription Drug Summary will indicate the total Member Rebate Account discount they used for each quarter. However, please note that not all prescription drugs are eligible for rebates and rebate percentages can fluctuate from year to year. NDPERS members continue to be eligible to use any accumulated portion in their MRA as long as they remain eligible under a BCBSND health benefit plan. If the member terminates coverage and becomes ineligible for the MRA, any unused rebates will be applied towards the cost of the health plan.

BlueCross BlueShield of North Dakota
An independent licensee of the Blue Cross & Blue Shield Association

Consulting Services Unit
4510 13th Avenue South
Fargo, North Dakota 58121-0001
(701) 282-1444

Memorandum

TO: Sparb Collins, NDPERS

FROM: Larry Brooks, BCBSND

DATE: October 10, 2006

SUBJECT: 2007 Medicare Part D Renewal - Responses

The purpose of this memo is to respond to questions from the September 14 PERS Board meeting regarding 2007 Medicare Part D Option E.

From the September 14 meeting, there were 3 questions:

- Bill Robinson's question as to why rates are going up when CMS rates going down.
- Provide GBS our rate worksheet
- Provide more rating information on "enhanced benefit"

ISSUES and RESPONSES

E-mail from Bill Robinson (Thursday, September 14, 2005)

> Larry,
> I have copied below our health actuary's response regarding 2007 renewals for Medicare Advantage Plans. Granted, these are different animals than what PERS has, but it does raise questions as to how much your rates need to be raised in light of the federal reimbursement and reinsurance coverage for PDPs. Can you provide detailed claims experience that we can take a look at in order to give Sparb an assessment?
> Regards,
> Bill
>
> *"I do rate filings for two Medicare Advantage plans that have drug plans built into their programs. The national average bid by Part D vendors (for the standard Part D benefit net of federal reinsurance) this year was lower than last year. Last year's average was $92.30, although I believe I remember seeing that if they had used this year's method for weighting the bids the average would have been something like $86. This year's average bid was $80.43. The resulting member premium fell from $32.20 to $27.35.*
>
> *Based on this, I don't expect big rate increases in general. Basically, carriers are telling the feds they can offer the standard benefits for less than they thought, and that difference should also flow through to richer programs."*

Glen R. Volk, FSA, MAAA
Vice President & Consulting Actuary

Response:

Regarding Mr. Robinson's comments, please refer to the comments at the bottom of Brad Bartle's spreadsheet communicating the rate increase to Sparb.

Final bullet from September 13 Board agenda item:

Information regarding CMS bidding averages:

> The Centers for Medicare and Medicaid Services (CMS) reported on August 15, 2006 the national average monthly bid amount for standard Part D individual coverage of $80.43 and the Part D base beneficiary premium for 2007 (average individual premium) of $27.35. These amounts are decreased from those used in 2006, which were $92.30 and $32.20, respectively. The decreases in these averages indicate a tightening of bidding by carriers for individual Prescription Drug Plans for the 2007 plan year, and changes in the calculation methodology used by CMS.

Gallagher is correct regarding the national averages. What is not mentioned is that the CMS subsidy of the PERS product drops with these national averages. That is, BCBS will receive less federal money for each PERS member as a result of these averages going down. The underlying claims costs for the GPDP, however, are not affected by the reduction in national averages.

Premium development worksheets:

Group PDP rate – Claims information has been sent to GBS. Monthly enrollment will be sent shortly.

Enhanced Benefit – The Regional Alliance has indicated the additional premium required to for the "enhanced" list of drugs to be about $1.00 to as much as $1.50 (depending on utilization). We were conservative with our approach, not knowing exactly what the utilization and total cost for the drugs would be and assigned $1.20 per contract to the premium. The drugs to be included on the enhanced drug list include:

- Barbiturates
- Benzodiazopines
- Cough and cold medicines

These medications contain ingredients that cause drowsiness and could cause someone to fall (thus considered hazardous by CMS). But with enough pressure from senior citizens requiring these sort of medications, CMS decided to make payment for these specific classifications of drugs at an optional additional cost.

Just recently, we were advised that medications for erectile dysfunction (pill form only) were also added to the list of enhanced drugs. The additional cost of these meds was determined to be $0.30 per contract. We have decided to leave the current proposed rate of $1.20 per contract as is and add the additional drugs to the list.

Timelines:
As a reminder, the member is required by Federal mandate to have in their hands the following pieces of information by October 31, 2006:

- Annual Notice of Change (ANOC)
- Revised Summary of Benefits
- 2007 Formulary lists

For your information, if the "supplemental" or enhanced list of drugs are approved for payment (along with the corresponding $1.20 increase in rates), standard CMS notices and Summaries of Benefits can be completed and sent to the member.

However, if the "supplemental" drugs are not included as payable benefits, this will require changes to the standard CMS documents. Timelines will therefore be very short if decisions are postponed from this meeting. Again, this is informational.

Sparb, if you have any questions, please let me know.

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

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

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

Memorandum

TO: NDPERS Board

FROM: Kathy Allen

DATE: October 13, 2006

SUBJECT: Long Term Care Insurance
UnumProvident Contract

This past summer we went out to bid for the long term care plan. We received no responses to our RFP. Therefore, we did follow-up with our current carrier UnumProvident to discuss what options may be available regarding the future of the plan. Unum indicated that it is happy to continue to offer the long term care plan currently in force for the State of North Dakota. In addition, they are willing to work with us to review our current plan and to discuss various options that may be available to enhance our current offering.

STAFF RECOMMENDATION

Staff feels this is a viable solution and recommends we accept the offer to continue the current plan in force and to begin to work with Unum after the first of next year to conduct a review of the options and solutions that Unum can provide.

BOARD ACTION REQUESTED

Accept staff recommendation.

October 9, 2006

Kathy Allen
North Dakota PERS
PO Box 1657
Bismarck, ND 58502

Re: North Dakota Public Employees Retirement System
Group Long Term Care
Policy # 510487
Unum Life Insurance Company of America

Dear Kathy,

Thank you for partnering with UnumProvident to provide your employees with insurance services. By selecting coverage from UnumProvident, you are partnering with the leader in income protection and Group Long Term Care – and with a company that is dedicated to providing responsive service and reliable protection at an affordable price. We offer innovative plan designs as well as unparalleled employee support programs, and we have proven expertise in claimant care and absence management.

Per our discussion on October 4, 2006, UnumProvident would like to confirm that we are happy to continue to offer the Group Long Term Care plan that North Dakota PERS currently has inforce. The plan will continue as is and will require full medical underwriting for all new enrollees.

We look forward to working with you in the future to review your current Long Term Care offering and explore ideas that may better serve your employees. In January of 2007, we will contact you to discuss the options and solutions UnumProvident can provide.

Again, thank you for choosing UnumProvident as your benefits provider. We look forward to strengthening our partnership and continuing to serve your company's benefit needs. If you have any questions or concerns, please feel free to contact us.

Respectfully,

Kyle J. Halliday
Sales Consultant
952.346.4516
Khalliday@unumprovident.com

Paul Standal
National Accounts Manager
952.346.4522
Pstandal@unumprovident.com

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

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

FAX: (701) 328-3920 ● EMAIL: NDPERS@state.nd.us ● discovernd.com/NDPERS

Memorandum

TO: **NDPERS Board**

FROM: **Wellness Benefit Committee**
Arvy Smith
Larry Brooks
Kathy Allen

DATE: **October 13, 2006**

SUBJECT: **Wellness Benefit Program**

At the August meeting, the Board reviewed the proposed change to the reimbursement policy for the program. The following is the proposed reimbursement policy:

Calculation 1: 100% of the first $500 or actual program expense, whichever is less, plus 75% of actual expenses in excess of $500 to a maximum benefit of $1,000, **OR**
Calculation 2: $2.00 times the number of health contracts

The Committee will use the calculation that provides the best benefit to the employer based on actual program expenses.

Calculation 1 is how the program is administered today. Calculation 2 was developed to address the concerns with the maximum limit used in Calculation 1 in order that larger agencies be allowed a benefit beyond the $1,000 limit. The Board requested the committee prepare some examples of how the reimbursement policy would be applied using various scenarios. Following are some examples for the Board's information:

	Calculation 1		Calculation 2
EXAMPLE 1:	**Program expenses: $1,000**		**No. of Contracts: 250**
	100% of 1st $500 = $ 500	**OR**	250 x $2 = $500
	75% of $500 = $ 375		
	Total Reimbursed $ 875		

	Calculation 1		**Calculation 2**
EXAMPLE 2:	**Program expenses: $1,500**		**No. of contracts: 1000**
	100% of 1st $500 = $ 500	**OR**	1,000 x $2 = $2,000
	75% of $1,000 = $ 750		
	$1,250		Total reimbursed $1,500
	Maximum Benefit $1,000		
EXAMPLE 3:	**Program expenses: $350**		**No. of contracts: 50**
	100% of 1st $500 = $500	**OR**	50 x $2 = $100
	Total Reimbursed $350		
EXAMPLE 4:	**Program expenses: $5,000**		**No. of contracts: 2000**
	100% of 1st $500 = $ 500	**OR**	2,000 x $2 = $4,000
	75% of $4,500 = $3,375		
	$3,875		Total reimbursed $4,000
	Maximum Benefit $1,000		

Staff has noted that there are other administrative issues regarding the Wellness Benefit and Wellness Discount programs. As an example, since inception of the Wellness Benefit Program, if an agency has more than one location, each location is eligible to submit an application for funding assistance if they are geographically separate and if there is evidence of planning at each location. However, the Employer Based Wellness Discount Program is agency based and does not apply to separate locations. It is staff's intention over the next year to evaluate these issues to develop an integrated program by moving from a work site oriented focus to an agency based focus. The Board will be kept updated as we progress with this effort.

Staff is recommending the change to the reimbursement policy. It is staff's intent to explain these changes at the 2006 Wellness Forum scheduled for November 7.

Board Action Requested

Approve or reject revised reimbursement schedule.

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

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

FAX: (701) 328-3920 ● EMAIL: NDPERS@state.nd.us ● discovernd.com/NDPERS

Memorandum

TO: PERS Board

FROM: Kathy & Sparb

DATE: October 13, 2006

SUBJECT: CIGNA – NDPERS Contract

The Personal Service Contract between CIGNA and NDPERS for the dental plan is included for your information. The contract has been reviewed by our legal counsel, Aaron Webb, and the CIGNA legal team and the changes as indicated have been approved by both parties. Staff recommends the Board approve the contract as set forth and authorize signature by the Board chairman. Aaron is available to respond to any questions.

BOARD ACTION REQUESTED

Approve the Personal Service Contract incorporating the changes as indicated on the document and authorize signature by the Board chairman.

ATTACHMENT 1

PERSONAL SERVICE CONTRACT

PERSONAL SERVICE CONTRACT

The parties to this contract are the State of North Dakota, acting through its [agency name] (STATE) and [contractor's legal name] (CONTRACTOR);

1. <u>SCOPE OF SERVICE</u>

CONTRACTOR, in exchange for the compensation paid by STATE under this contract, agrees to provide the following services:

As described in the Dental Policy ("Policy)

2. <u>TERM OF CONTRACT</u>

The term of this contract is for a period of _____ months, commencing on the ___ day of ______, 20__ , and terminating on the ___ day of ______ , 20__.

3. <u>COMPENSATION</u>

STATE will pay for the services provided by CONTRACTOR under this contract an amount not to exceed ________ per ______, to be paid ____________.

KTB: NEED TO FILL IN AGREE UPON RATES INCLUDING AGREED UPON RATE FOR SUBSEQUENT YEARS

4. <u>TERMINATION OF CONTRACT</u>

a. **Termination without cause.** This contract may be terminated by mutual consent of both parties, or by either party upon 30-days written notice.

i. **Termination for lack of funding or authority.** STATE may terminate this contract effective upon delivery of written notice to CONTRACTOR, or on any later date stated in the notice, under any of the following conditions:

(1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.

(2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.

(3) If any license, permit or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended or not renewed.

Termination of this contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

b. **Termination for cause.** STATE by written notice of default to CONTRACTOR may terminate the whole or any part of this contract:

i. If CONTRACTOR fails to provide services required by this contract within the time specified or any extension agreed to by STATE; or

ii. If CONTRACTOR fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms.

iii. The rights and remedies of STATE provided in the above clause related to defaults by CONTRACTOR are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

c. Termination for cause. CONTRATOR by written notice of default to state may terminate the whole or any part of this contract If STATE fails to pay all premium due.

5. <u>FORCE MAJEURE</u>

CONTRACTOR will not be held responsible for delay or default caused by fire, riot, acts of God or war if the event is beyond CONTRACTOR'S reasonable control and CONTRACTOR gives notice to STATE immediately upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.

6. <u>RENEWAL</u>

This contract will not automatically renew. STATE will provide written notice to CONTRACTOR of its intent to renew this contract at least 60 days before the scheduled termination date.

7. MERGER AND MODIFICATION

This contract, the Policy and the RFPI constitute the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this contract. This contract and the Policy may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

8. SEVERABILITY

If any term of this contract is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms must not be affected, and, if possible, the rights and obligations of the parties are to be construed and enforced as if the contract did not contain that term.

9. ASSIGNMENT AND SUBCONTRACTS

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without STATE'S express written consent. However, CONTRACTOR may enter into subcontracts provided that CONTRACTOR is solely responsible for the performance of any subcontractor. CONTRACTOR has no the authority to contract for or incur obligations on behalf of STATE.

10. NOTICE

All notices or other communications required under this contract must be given by registered or certified mail and are complete on the date mailed when addressed to the parties at the following addresses:

______________________________		______________________________
______________________________	or	______________________________
______________________________		______________________________

Notice provided under this provision does not meet the notice requirements at N.D.C.C. § 33-12.2-04(1).

11. APPLICABLE LAW AND VENUE

This contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be brought in the District Court of Burleigh County, North Dakota.

12. Deliberately omitted

13. INDEMNITY

Contractor agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from claims resulting from the performance of the Contractor or its agent, including all costs, expenses and attorneys' fees, which may in any manner result from or arise out of this agreement. The legal defense provided by Contractor to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Contractor also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

14. INSURANCE

a. CONTRACTOR shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

   i. Commercial general liability, including premises or operations, contractual, and products or completed operations coverages, with minimum liability limits of $250,000 per person and $1,000,000 per occurrence.
   ii. Automobile liability, including owned (if any), hired, and non-owned automobiles, with minimum liability limits of $250,000 per person and $1,000,000 per occurrence.
   iii. Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
   iv. Employer’s liability or “stop gap” insurance of not less than $1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.

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

   i. Any deductible or self insured retention amount or other similar obligation under the policies is the sole responsibility of CONTRACTOR. The amount of any deductible or self retention is subject to approval by State.
   ii. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated “A-” or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an “A-” rating

must be approved by State. The policies shall be in form and terms approved by State.

iii. State will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by CONTRACTOR in excess of the minimum requirements set forth above. The duty to indemnify State under this agreement must not be limited by the insurance required in this agreement.

iv. The State of North Dakota and its agencies, officers, and employees (State) must be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. State must have all the rights and coverages as CONTRACTOR under the policies.

v. The insurance required in this agreement, through a policy or endorsement, shall include:

    (1) a “Waiver of Subrogation” waiving any right to recovery the insurance company may have against State;

    (2) a provision that the policy and endorsements may not be canceled or modified without 30-days prior written notice to the undersigned State representative;

    (3) a provision that any attorney who represents State under this policy must first qualify as, and be appointed by, the North Dakota Attorney General as a special assistant attorney general as required under N.D.C.C. § 54-12-08;

    (4) a provision that CONTRACTOR’s insurance coverage will be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the state and that any insurance, self-insurance or self-retention maintained by State must be in excess of CONTRACTOR’s insurance and must not contribute with it;

    (5) cross liability/severability of interest for all policies and endorsements;

vi. The legal defense provided to State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for State is necessary.

vii. CONTRACTOR shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements must be provided as soon as practicable.

viii. Failure to provide insurance as required in this agreement is a material breach of contract entitling State to terminate this agreement immediately.

15. DELIBERATELY OMITTED

16. <u>ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL</u>

STATE does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial.

17. <u>CONFIDENTIALITY</u>

CONTRACTOR agrees not to use or disclose any information it receives from STATE under this contract that STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this contract or as authorized in advance by STATE. STATE agrees not to disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that STATE determines is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. § 44-04-18. All records containing personal information relating to a public employee are confidential under North Dakota law and, except as otherwise authorized by North Dakota law, shall not be used or disclosed without written authorization of the employee. The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this contract, or any extensions or renewals of it.

18. <u>COMPLIANCE WITH PUBLIC RECORDS LAW</u>

CONTRACTOR understands that, except for disclosures prohibited in Section 17, STATE must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records that are obtained or generated by CONTRACTOR under this contract, except for records that are confidential under Section 17 may, under certain circumstances, be open to the public upon request under the North Dakota open records law. CONTRACTOR agrees to contact STATE immediately upon receiving a request for information under the open records law and to comply with STATE'S instructions on how to respond to the request.

19. DELIBERATELY OMITTED

20. <u>INDEPENDENT ENTITY</u>

CONTRACTOR is an independent entity under this contract and is not a STATE employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North

Dakota Unemployment Compensation Law and the North Dakota Workers' Compensation Act. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR'S activities and responsibilities under this contract, except to the extent specified in this contract.

21. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

CONTRACTOR agrees to comply with all applicable laws, rules, regulations and policies, including those relating to nondiscrimination, accessibility and civil rights. CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes and unemployment compensation and workers' compensation premiums. CONTRACTOR shall have and keep current at all times during the term of this contract all licenses and permits required by law.

22. STATE AUDIT

All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this contract are subject to examination by the North Dakota State Auditor or the Auditor's designee. CONTRACTOR will maintain all such records for at least three years following completion of this contract. Pursuant to North Dakota law (NDCC § 54-52-04(10)), the North Dakota Public Employees Retirement System shall have the right to audit any books, papers, accounts, bills, vouchers, and other documents or property relating to CONTRACTOR'S activities and responsibilities under this agreement.

23. REPAYMENT

STATE will not make any advance payments before performance by CONTRACTOR under this contract.

24. TAXPAYER ID

CONTRACTOR'S federal employer ID number is: ______________________.

25. PAYMENT OF TAXES BY STATE.

State is not responsible for and will not pay local, state, or federal taxes. State sales tax exemption number is E-2001, and certificates will be furnished upon request by the purchasing agency.

26. <u>EFFECTIVENESS OF CONTRACT</u>

This contract is not effective until fully executed by both parties.

CONTRACTOR

____

BY:____________________________________

ITS:____________________________________

DATE:__________________________________

STATE OF NORTH DAKOTA

____

BY:____________________________________

ITS:____________________________________

DATE:__________________________________

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

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

FAX: (701) 328-3920 ● EMAIL: NDPERS@state.nd.us ● discovernd.com/NDPERS

Memorandum

TO: **NDPERS Board**

FROM: **Cheryle Masset**

DATE: **October 13, 2006**

SUBJECT: **2006 Employee Flu Shot Program**

As in past years, UND Center for Family Medicine has approached NDPERS to offer a flu shot program for state employees and retirees in the Bismarck/Mandan area. NDPERS assists with this project by providing the communication media to notify its members about the program.

Attached is a copy of the information that was both sent via email to the Bismarck/Mandan employers to notify their employees, as well as posted to the NDPERS website.

This is being provided for your information.

NDPERS Annual Flu Shot Clinic

The UND Center for Family Medicine will be offering flu shots again this fall to participants of the North Dakota Public Employees Retirement System health plan. The cost for each immunization is **$10.00** and is payable by cash or person check (made payable to UND Center for Family Medicine) at the door. ***No insurance claim(s) will be filed***. However, participants of the NDPERS FlexComp may use the Flu Shot Receipt to file a claim towards their NDPERS FlexComp medical spending account.

The nasal-spray flue vaccine is available and approved for use in health people 5 years to 49 years of age who are not pregnant. However, the cost of the Live Attenuated Influenza Vaccine (LAIV) will be $20.00. Please advise the NDPERS representative so appropriate payment is made if you wish to have members of your family received the nasal-spray versus an immunization

Immunizations will be given at the UND Center for Family Medicine, 515 East Broadway Ave., Bismarck ND from **4:00 PM to 6:00 PM** according to the schedule below. For your convenience please have each individual receiving the flu shot complete the UND Center for Family Medicine release form. Free parking will be available in the Parkade ramp. Members will be required to show their NDPERS/BCBSND insurance identification card. If possible, we are requesting your cooperation in assisting us to comply with the outlined schedule.

Tuesday	*October 17th*	*Persons aged ≥ 60 years + ANY individuals considered at High-Risk*
Tuesday	*October 24th*	*Persons aged ≥ 40 years + ANY individuals considered at High-Risk*
Monday	*November 6th*	*Families – Last Names beginning with (L-Z)*
Tuesday	*November 14th*	*Families – Last Names beginning with (A-K)*
Tuesday	*November 21st*	*OPEN to those members that remain to be immunized*

The number of immunizations allocated to the group is limited based on availability.

Key Facts about Influenza (FLU) Vaccine issued by the Department of Health & Human Services, Centers for disease Control & Prevention can be located on their web-site: http://www.cdc.gov/flu/protect/keyfacts.htm

As of June 9, 2006, influenza vaccine manufactures projected that approximately 100 million doses of influenza vaccine will be available in the U.S. for use during the 2006-07 influenza season. The National Influenza Vaccine Summit has made a commitment to provide information on important issues concerning the upcoming influenza season. As part of that effort, they will let us know about any recent FDA action that concerns influenza vaccine fro the 2006-07 season.

Priority groups for vaccination (as per the ACIP) Advisory Committee on Immunization Practices

1)

People who should get vaccinated each year are:

- Children aged 6 – 59 months,
- Pregnant women,
- People 50 years of age and older, and
- People of any age with certain chronic medical conditions;
- People who live in nursing homes and other long term care facilities.

2)

People who live with or care for those at high risk for complications from flu, including:

- Household contacts of persons at high risk for complications from the flu (see above)
- Household contacts and out of home caregivers of children less than 6 months of age (as these children are to young to be vaccinated), and
- Healthcare workers.

The single best way to prevent the flu is to get a flu vaccine each fall!

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

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

FAX: (701) 328-3920 ● EMAIL: NDPERS@state.nd.us ● discovernd.com/NDPERS

Memorandum

TO: NDPERS Board

FROM: Cheryle Masset

DATE: October 13, 2006

SUBJECT: Smoking Cessation Program

There is now a new medication available for tobacco cessation that is available by prescription only called Chantix (Varenicline generic). The public health units who work with the NDPERS Smoking Cessation program have requested our direction regarding coverage for this new smoking deterrent.

NDPERS contacted BCBSND and requested input from Dr. Rice with BCBS regarding the efficacy of the new medication. The favorable recommendation received from Dr. Rice is attached.

Our current grant proposal references coverage for NRTs under the Program Services and Reimbursement sections as follows:

- $500 per Member/ per Benefit Period for office visit, prescription drugs and over-the-counter drugs prescribed for tobacco cessation.

The cost for these products is $125.00 per month, which fall within the reimbursement guidelines in our proposal. As the proposal does not specify product names, it is staff's interpretation that these new products are eligible for coverage under the plan and BCBS should be instructed to reimburse them accordingly. Staff is requesting whether the Board agrees with this interpretation and staff recommendation.

Board Action Requested

Accept or reject staff's recommendation that Chantix is eligible for coverage under the smoking cessation program.

Memorandum

Date: October 4, 2006

To: Sparb Collins, NDPERS

From: Larry Brooks, BCBSND

SUBJECT: Prescription Chantix

A new prescription medication for tobacco cessation called Chantix (brand name) is now available. The question was asked if this drug should be made available through the NDPERS Tobacco Cessation Program.

Dr. Jon Rice, Senior Vice President & Chief Medical Officer at BlueCross BlueShield of North Dakota commented as follows:

"Based on the uniqueness of the drug, its cost being somewhat less than Zyban and some improved efficacy, our recommendation is to add Chantix to coverage for smoking cessation programs. It provides an alternative and another opportunity for those who desire to quit smoking."

If you have additional questions or would like to discuss further, please call me at (701) 282-1259.

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

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

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

M E M O R A N D U M

TO: NDPERS BOARD
SPARB COLLINS, NDPERS
KATHY ALLEN, NDPERS

FROM: BRYAN T. REINHARDT BTR

DATE: September 21, 2006

SUBJECT: GROUP MEDICAL PLAN - SURPLUS/AFFORDABILITY UPDATE

Here is the August surplus projection and affordability analysis for the NDPERS group medical plan. The plan made it through the 2003-2005 biennium and is in the last half of the 2005-2007 period.

Net premium sent to BCBS in July 2005 was $10,853,370. For comparison, net premium sent to BCBS in June 2005 was $9,821,731. The NDPERS health plan ended up with 23,580 contracts in June, 2005. There were 22,947 contracts in June, 2003, and 21,792 in July 2001. There are now 23,961 contracts.

The projection for the 2003 - 2005 biennium shows an ending balance of $15.67 million. The cash settlement back to NDPERS should be around $1.4 million. The $14.3 million deposit date for the 05-07 biennium was July 1, 2006. These amounts are at BCBS and receiving interest.

The early projection for the 2005 - 2007 biennium shows a June 30, 2007 ending balance of less than $1.0 million. Note that this is a very early estimate and likely to change. Since we share 50/50 in the first $3.0 million surplus with BCBS, future growth in this surplus will be difficult.

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

NDPERS - ESTIMATED SURPLUS PROJECTION: 2005-2007 BIENNIUM

August, 2006

The following exhibit summarizes the estimated surplus for the NDPERS group medical plan at the end of the 2005-2007 biennium. The estimate has been updated to include account activity through August, 2006.

1) Preliminary Underwriting Gain for the 2005-2007 Biennium		($15,731,100)
2) Cash Balance Interest Accumulation		$695,902
3) Estimated Underwriting Gain for the 2005-2007 Biennium		($15,035,198)
5) Refunds and Settlements		
07/05/05 Perform Rebate	(Included as claim rebates)	$418,453
10/04/05 Perform Rebate	(Included as claim rebates)	$425,316
12/01/05 Perform Rebate	(Included as claim rebates)	$8,716
01/01/06 Perform Rebate	(Included as claim rebates)	$350,907
03/01/06 Perform Rebate	(Included as claim rebates)	$15,236
04/01/06 Perform Rebate	(Included as claim rebates)	$384,639
07/04/06 Perform Rebate	(Included as claim rebates)	$280,399
10/01/06 Perform Rebate		$400,000
01/01/07 Perform Rebate		$400,000
04/01/07 Perform Rebate		$400,000
EPO Settlement Payments 7/05 - 6/06 (Included as rebates & paid)		$0
EPO Settlement Payments 7/06 - 6/07 (Included as rebates & paid)		$0
6) Cash Reserve Account Balance		$15,666,912
2003-2005 Settlement Cash Out:		($1,439,151)
Future Interest:		$699,539
Total		$14,927,300
7) Total Estimated Surplus Held by BCBS		$1,372,501
8) BCBS Portion of Surplus (50% upto $1,500,000)		$686,250
9) PERS Portion of Surplus Held by BCBS		$686,250
10) NDPERS Wellness Accounts		
My Health Connection		$167,945
Employer Based Wellness		$52,488
Wellness Benefit Program		$18,802
SubTotal		$239,235
Total Adjusted for Usage		$0
11) Total Estimated Funds Available to PERS on June 30, 2007		$686,250

NDPERS - Projected Underwritten Experience for the 2005-2007 Biennium
August, 2006

MONTH	NET PREMIUM COLLECTED	PREMIUM ADJUSTMENT	TOTAL PREMIUM INCOME	ADMIN EXPENSE $26.98/CON	NET PREMIUM	CLAIMS INCURRED & PAID TO DATE	ESTIMATED IBNR CLAIMS	TOTAL INCURRED CLAIMS (1)	ESTIMATED GAIN / LOSS
Jul-05	$11,491,070	($2,387)	$11,488,683	$637,699	$10,850,984	$10,904,083	$0	$10,904,083	($53,099)
Aug-05	$11,486,984	$0	$11,486,984	$635,676	$10,851,308	$10,762,576	$0	$10,762,576	$88,732
Sep-05	$11,592,130	$0	$11,592,130	$641,396	$10,950,735	$9,663,486	$0	$9,663,486	$1,287,249
Oct-05	$11,564,639	($995)	$11,563,644	$640,748	$10,922,896	$9,844,258	$0	$9,844,258	$1,078,638
Nov-05	$11,565,139	$1,417	$11,566,556	$640,478	$10,926,078	$11,298,081	$0	$11,298,081	($372,003)
Dec-05	$11,575,731	$7,675	$11,583,406	$640,829	$10,942,577	$11,802,780	$0	$11,802,780	($860,203)
Jan-06	$11,053,969	$332	$11,054,300	$644,606	$10,409,694	$9,915,390	$104,000	$10,019,390	$390,304
Feb-06	$11,053,628	$0	$11,053,628	$645,308	$10,408,320	$10,003,957	$159,000	$10,162,957	$245,363
Mar-06	$11,049,994	($26,775)	$11,023,218	$645,146	$10,378,073	$11,703,683	$258,000	$11,961,683	($1,583,610)
Apr-06	$11,066,004	($36,321)	$11,029,683	$645,820	$10,383,862	$10,293,073	$564,000	$10,857,073	($473,211)
May-06	$11,064,390	$3,501	$11,067,891	$646,198	$10,421,693	$10,926,333	$785,000	$11,711,333	($1,289,640)
Jun-06	$11,076,821	$0	$11,076,821	$647,385	$10,429,436	$9,610,345	$1,399,000	$11,009,345	($579,909)
Jul-06	$11,056,557	$0	$11,056,557	$646,495	$10,410,063	$7,649,471	$3,480,000	$11,129,471	($719,408)
Aug-06	$11,052,995	$0	$11,052,995	$646,414	$10,406,581	$4,033,236	$8,251,000	$12,284,236	($1,877,655)
Sep-06	$11,052,995	$0	$11,052,995	$646,414	$10,406,581	$0	$0	$11,167,443	($760,862)
Oct-06	$11,052,995	$0	$11,052,995	$646,414	$10,406,581	$0	$0	$11,243,089	($836,507)
Nov-06	$11,052,995	$0	$11,052,995	$646,414	$10,406,581	$0	$0	$11,318,734	($912,152)
Dec-06	$11,052,995	$0	$11,052,995	$646,414	$10,406,581	$0	$0	$11,394,379	($987,797)
Jan-07	$11,052,995	$0	$11,052,995	$646,414	$10,406,581	$0	$0	$11,470,024	($1,063,442)
Feb-07	$11,052,995	$0	$11,052,995	$646,414	$10,406,581	$0	$0	$11,545,669	($1,139,087)
Mar-07	$11,052,995	$0	$11,052,995	$646,414	$10,406,581	$0	$0	$11,621,314	($1,214,732)
Apr-07	$11,052,995	$0	$11,052,995	$646,414	$10,406,581	$0	$0	$11,696,959	($1,290,377)
May-07	$11,052,995	$0	$11,052,995	$646,414	$10,406,581	$0	$0	$11,772,604	($1,366,022)
Jun-07	$11,052,995	$0	$11,052,995	$646,414	$10,406,581	$0	$0	$11,848,249	($1,441,667)
BIENNIAL TOTAL	$268,280,001	($53,554)	$268,226,447	$15,468,335	$252,758,112	$138,410,752	$15,000,000	$268,489,213	($15,731,101)

(1) Future Months are Estimated based on Projection from NDPERS.

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

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

FAX: (701) 328-3920 ● EMAIL: NDPERS@state.nd.us ● discovernd.com/NDPERS

Memorandum

TO: **NDPERS Board**

FROM: **Kathy**

DATE: **October 16, 2006**

SUBJECT: **Job Service COLA**

According to Article VII(3) of the plan document for the Retirement Plan for Employees of Job Service North Dakota, "effective each December 1 of any year, the monthly amount of each retirement annuity, death benefit, or disability benefit then payable shall be increased by the percent increase, if any, in the Consumer Price Index." It further states…"no increase in retirement allowance granted under the Plan, or the date for commencement of such increase, will become effective unless the same increase has been authorized for the Civil Service Retirement System, and unless the increase has been authorized by the NDPERS Board." This provision for a COLA increase was authorized by the United States Department of Labor as part of a larger agreement reached with the USDOL in the late 1970's. Since that time the Plan practice has been to provide COLA's consistent with the Federal Civil Service Plan. The plan assumes a post-retirement COLA of 5%.

As the annual COLA percentage adjustment for the Federal Civil Service Plan is not available until October 15th, the increase and its effect on the system will be provided at the meeting.

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

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

FAX: (701) 328-3920 ● EMAIL: NDPERS@state.nd.us ● discovernd.com/NDPERS

Memorandum

TO: PERS Board

FROM: Sparb

DATE: October 16, 2006

SUBJECT: Annual Actuarial Valuations

Mike Moehle, our new actuary from Segal, will be with us by video conference from Denver to review the annual valuations for the retirement plans. Also attached is a copy of the valuations for your information and review.

Main, Judges, Guard, Law Enforcement, HP and Retiree Health Plans

The following is a summary of the conclusions for the above plans:

System	Actuarial Rate for 2006	Statutory Rate	2006 Margin	2005 Margin
Main	6.90%	4.12%	-2.78	-1.91%
Judges	12.36%	14.52%	2.16	2.90%
Guard	4.02%	6.50%	2.42	6.75%
HP	19.03%	16.70%	-2.33	-.91%
Law Enf (w serv)	12.07%	8.31%	-3.76	-3.72%
Law Enf (n serv)	7.43%	6.43%	-1.00	-1.18%
Retiree Hlth Credit	1.00%	1.00%	.00	.00%

A couple of items influence the above numbers. First we changed some of our actuarial assumptions based on the experience review and those are reflected in this valuation but were not in the last (I have attached for your reference the memo from last October that discussed the changes). Secondly, for the National Guard retirement plan we reduced the required employer contribution from 8.3% to 6.50% which is the reason the margin dropped from last year to this year.

Job Service Retirement Plan

This last year we changed the assumed rate of return for the Job Service Retirement Plan from 8% to 7%. This change was made after we reviewed the plans investment strategy and its liability structure. We decided at that time to start reducing the investment return assumption and fund that with the gains the system was developing. The goal of this effort is to reduce the investment assumption to a level low enough that in the future we can change the investment strategy to be more and more fixed income. Based on the closed nature of the liability structure this strategy will insure that it meets its future obligations. Based upon the advice of Segal we went to 7%. You will notice in reviewing the Job Service valuations this change has resulted in the fund having an unfunded liability and showing a required employer contribution. If we had set it at 7.5% we would have not had an unfunded liability (however please note that at market value the fund is still fully funded). Given this information we have two options. First, maintain the 7% assumption but not ask for any additional contributions. Second, change the assumption to 7.5% which would not show a required employer contribution. Staff would recommend option 1. Mike Moehle will discuss this further at the meeting.

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

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

FAX: (701) 328-3920 ● EMAIL: NDPERS@state.nd.us ● discovernd.com/NDPERS

Memorandum

TO: PERS Board

FROM: Sparb

DATE: October 13, 2005

SUBJECT: Actuarial Audit & Experience Study

During the last year we have had an actuarial audit completed on the system by GRS and an experience review by Segal. One of the suggestions from the audit was that we modify the methodology for calculating the normal cost. You reviewed that at the last meeting and made the modification. With that completed we can now turn to addressing the remaining recommendations. The following tables show the recommendations from the experience study (from Segal) and any suggestions/observations from the audit. Also shown is the cost of change shown is a % of payroll. For example a .08% would be the % of payroll to support this change. I have highlighted those cells for which a recommended change is offered. Also their were no recommendations relating to the Retiree Health Program so it is not displayed in the following.

Staff Recommendation

To accept the recommendations from Segal as noted in the following.

Board Action Requested

To accept, modify or reject the following recommended demographic changes for the PERS retirement plans

Assumption/ Method	Retirement Plan			
	Main	Judges	Nat Guard/Law Enf.	Highway Patrol
Healthy Life Mortality	**Segal:** Set back one year for Males, no change for females **Cost: 0.22** **GRS:** Mortality table will likely need to be updated in 2005 **Staff:** Accept Segal recommendation	**Segal:** Set back one year for Males, no change for females **Cost: 0.47** **GRS:** Mortality table will likely need to be updated in 2005 **Staff:** Accept Segal recommendation	**Segal:** Set back one year for Males, no change for females **Cost: 0.28** **GRS:** Mortality table will likely need to be updated in 2005 **Staff:** Accept Segal recommendation	**Segal:** Set back one year for Males, no change for females **Cost: 0.72** **GRS:** Mortality table will likely need to be updated in 2005 **Staff:** Accept Segal recommendation
Disabled Life Mortality	**Segal:** No change **Cost:** **GRS:** No recommendation **Staff:** No change	**Segal:** No change **Cost:** **GRS:** No recommendation **Staff:** No change	**Segal:** No change **Cost:** **GRS:** No recommendation **Staff:** No change	**Segal:** No change **Cost:** **GRS:** No recommendation **Staff:** No change
Disability Incidence	**Segal**: No change **Cost:** **GRS:** No recommendation **Staff:** No change	**Segal**: No change **Cost:** **GRS:** No recommendation **Staff:** No change	**Segal**: No change **Cost:** **GRS:** No recommendation **Staff:** No change	**Segal**: No change **Cost:** **GRS:** No recommendation **Staff:** No change
Withdrawal	**Segal:** Decrease Select and ultimate rates **Cost: 0.25** **GRS:** No recommendation **Staff:** Accept Segal recommendation	**Segal**: No change **Cost:** **GRS:** No recommendation **Staff:** No change	**Segal**: No change **Cost:** **GRS:** No recommendation **Staff:** No change	**Segal**: No change **Cost:** **GRS:** No recommendation **Staff:** No change
Retirement	**Segal:** Split into Rule of 85 ad Non Rule of 85 rates **GRS:** Early retirement rates seem low compared with other systems. **Cost: 0.14** **Staff:** Accept Segal recommendation	**Segal**: No change **Cost:** **GRS:** No recommendation **Staff:** No change	**Segal**: No change **Cost:** **GRS:** No recommendation **Staff:** No change	**Segal**: No change **Cost:** **GRS:** No recommendation **Staff:** No change
Interest	**Segal**: No change **Cost:** **GRS:** No recommendation **Staff:** No change	**Segal**: No change **Cost:** **GRS:** No recommendation **Staff:** No change	**Segal**: No change **Cost:** **GRS:** No recommendation **Staff:** No change	**Segal**: No change **Cost:** **GRS:** No recommendation **Staff:** No change
Inflation	**Segal:** 3% to 3.5% per annum **Cost:** **GRS:** Inflation rate	**Segal:** 3% to 3.5% per annum **Cost:** **GRS:** Inflation rate	**Segal:** 3% to 3.5% per annum **Cost:** **GRS:** Inflation rate	**Segal:** 3% to 3.5% per annum **Cost:** **GRS:** Inflation rate

Assumption/ Method	Retirement Plan			
	Main	Judges	Nat Guard/Law Enf.	Highway Patrol
	should be specified **Staff:** Accept Segal recommendation	should be specified **Staff:** Accept Segal recommendation	should be specified **Staff:** Accept Segal recommendation	should be specified **Staff:** Accept Segal recommendation
Salary Scale	**Segal**: No change **Cost:** **GRS:** No recommendation **Staff:** No change	**Segal**: No change **Cost:** **GRS:** No recommendation **Staff:** No change	**Segal**: No change **Cost:** **GRS:** No recommendation **Staff:** No change	**Segal**: No change **Cost:** **GRS:** No recommendation **Staff:** No change
Payroll Growth	**Segal**: No change **Cost:** **GRS:** No recommendation **Staff:** No change	**Segal**: No change **Cost:** **GRS:** No recommendation **Staff:** No change	**Segal**: No change **Cost:** **GRS:** No recommendation **Staff:** No change	**Segal**: No change **Cost:** **GRS:** No recommendation **Staff:** No change
Actuarial Cost Method	**Segal**: No change **Cost:** **GRS:** No recommendation **Staff:** No change	**Segal**: No change **Cost:** **GRS:** No recommendation **Staff:** No change	**Segal**: No change **Cost:** **GRS:** No recommendation **Staff:** No change	**Segal**: No change **Cost:** **GRS:** No recommendation **Staff:** No change
Asset Valuation Method	**Segal:** No change **GRS:** More common is to use 5-year smoothing of *differences* between actual and expected returns **Cost:** **Staff:** No change, board studied this issue previously and decided to maintain present method which is more conservative	**Segal:** No change **GRS:** More common is to use 5-year smoothing of *differences* between actual and expected returns **Cost:** **Staff:** No change, board studied this issue previously and decided to maintain present method which is more conservative	**Segal:** No change **GRS:** More common is to use 5-year smoothing of *differences* between actual and expected returns **Cost:** **Staff:** No change, board studied this issue previously and decided to maintain present method which is more conservative	**Segal:** No change **GRS:** More common is to use 5-year smoothing of *differences* between actual and expected returns **Cost:** **Staff:** No change, board studied this issue previously and decided to maintain present method which is more conservative

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

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

FAX: (701) 328-3920 ● EMAIL: NDPERS@state.nd.us ● discovernd.com/NDPERS

Memorandum

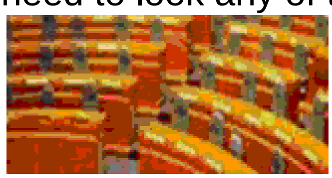
TO: PERS Board

FROM: Sparb

DATE: October 16, 2006

SUBJECT: Legislation

Attachment #1 is a review of the proposed legislation relating to PERS that will be considered by the Legislative Employee Benefits Committee on October 24th. That review summarizes the proposed bills, highlights critical issues from the legislative reviews done by our consultants and provides a staff recommendation on how to proceed. Attachment #2 is the individual draft reviews for each bill as completed by our consultants. Please note that if you need to look any of the proposed bills you can find a link on our web site:



Proposed Legislation

Click on the above link which will take to the Legislative Council site, scroll down to “Employee Benefits Programs Committee” and there is a list of all the bills with links to each.

<u>Staff Recommendation</u>

Is shown on Attachment #1 for each bill

<u>Board Action Requested</u>:

To determine PERS position on each bill and if any should be amended.

2007 Legislative Session
Analysis of the Financial and Technical Impact of Legislation
North Dakota Public Employees Retirement System

LC Bill Number	Sponsor	Summary	Critical Issues	Recommendation
70030	S. Mathern	As proposed, this bill would expand the uniform group insurance program to allow participation by members of the ND National Guard in the medical and life insurance coverages. The member of the National Guard must be a “resident” of ND. Premiums will be paid directly by the individual and State coverage would be secondary to any military coverage available. Guard members called to active duty outside of ND do not lose eligibility. Finally, the bill authorizes the Board to allow licensed agents to sell the uniform health insurance coverage and receive commissions.	Section 7 of the bill mitigates the concerns of GBS and provides the board the authority not to implement the bill unless it can be done in a manner that will not impact the plan	Remain “neutral” on the bill
70031	S. Mathern	As proposed, this bill would allow participation in the State uniform group insurance program for “permanent employees of non-profit organizations.” It allows the Board to establish minimum eligibility requirements for the non-profit organization, including medical underwriting and risk-adjusted premium requirements. Section 5 of the bill authorizes the Board to allow licensed agents to sell the health insurance coverage and receive commissions. Section 6 of the bill allows the Board to accept “grants, donations, legacies and devices for the purpose of implementing (the bill).”	Section 8 of the bill mitigates the concerns of GBS and provides the board the authority not to implement the bill unless it can be done in a manner that will not impact the plan	Remain “neutral” on the bill

LC Bill Number	Sponsor	Summary	Critical Issues	Recommendation
70032	S. Mathern	As proposed, this bill would expand the uniform group insurance program to allow participation by small (50 or fewer employees) private sector employers subject to minimum requirements established by the Board. It also allows licensed agents to sell the program and receive commissions.	Section 8 of the bill mitigates the concerns of GBS and provides the board the authority not to implement the bill unless it can be done in a manner that will not impact the plan	Remain "neutral" on the bill
70062	R. Price	As proposed, this bill would clarify that distinct health units and the Garrison Conservancy District participate in the uniform group insurance program under the same terms and conditions as State agencies. Therefore, they would pay medical premiums on a flat (composite) basis.	GBS states they have no concerns with the bill	Remain "neutral" on the bill but indicate we have no concerns with the bill.
70071	S. Krebsbach	The proposed legislation would permit a specified association of counties and their employees to participate in the Public Employees Retirement System (Hybrid Plan), the Retiree Health Benefit Fund and the Deferred Compensation Program.	Segal indicates that it does not appear that the specified association of counties satisfies the requirements to be a political subdivision under applicable federal law. I have reviewed this with the association and they have prepared amendments that will resolve this and Segal concurs	Remain "neutral" on the bill but indicate we have no concerns with the bill as amended.
70073	PERS & SB Career & Tech. Education	The proposed legislation would permit current and future employees of the State board for career and technical education to irrevocably elect to transfer to and/or participate in the Public Employees Retirement System (PERS) Hybrid Plan and the Retiree Health Benefit Fund effective July 1, 2007. Employees of the State board for career and technical education currently may participate only in the Teachers' Fund for Retirement (TFFR). For current employees of the board who elect to transfer to the Hybrid Plan, the TFFR must transfer the greater	For PERS retirement plan the bill is neutral as a result of the asset transfer from TFFR. For the retiree health program we need since no assets will transferred for past service liability we need an increase in contributions to pay for this liability over time. Segal indicates this should be…….	Remain "neutral" on the bill if it pays the past service liability for the retiree health program. Oppose the bill if it does not provide for payment for the past service liability for the retiree health program.

LC Bill Number	Sponsor	Summary	Critical Issues	Recommendation
		of the actuarial equivalent of the employee's accrued benefit or the employee's account balance to the Hybrid Plan.		
70075	PERS	The proposed legislation would allow the Board to provided for a one-time post-retirement payment equal to 75% of the member's, beneficiary's, disability retirees or prior service retirees current monthly benefit payment amount payable in January of either 2008 or 2009, if the trust fund's total annualized return on investments is at least 9.16% for the fiscal year ending June of 2007 or 2008, applicable to both the Hybrid Plan (except the Judges retirement plan) and the Highway Patrol Retirement System. This is a potential one-time payment in the biennium.	Final actuarial numbers on the 13th check were not completed at the time this memo was prepared. Segal will present this information at the board meeting. For the Judges 2% increase for each year of the biennium Segal indicates the cost is .46% of payroll. Since the judges have a margin of 2.16% this is affordable.	Support the bill as amended.
70076	PERS	The proposed legislation would make the following important changes: Applies the definition of final average salary under the Hybrid Plan and Highway Patrolmen's Retirement System, which is currently the highest salary for 36 months in the last 180 months of employment, to employees who <u>terminate employment</u> on or after August 1, 2010, rather than those employees who <u>retire</u> on or after July 1, 2009. Also, for employees who terminate employment between July 1, 2005 and August 1, 2010, final average salary would be the highest salary for 36 months for any period for which the Board has accurate salary records, but no longer than the last 180 months of employment;	No Concerns were expressed and it was indicated the bill would have no significant actuarial impact on the system.	Submit and support the bill as written

LC Bill Number	Sponsor	Summary	Critical Issues	Recommendation
		Updates federal compliance provisions of the Hybrid Plan and Highway Patrolmen's Retirement System; Provides record confidentiality rules under the Hybrid Plan and Highway Patrolmen's Retirement Plan to limit disclosure of information regarding employer service purchases to the minimum, necessary elements of data; Permits conversion of sick leave to retirement credit under the Hybrid Plan and Highway Patrolmen's Retirement System at any time, rather than within 60 days of termination only; Clarifies that employer service purchases on an actuarial equivalent basis under the Hybrid Plan must include contributions for both retirement and the Retiree Health Benefits Fund; Clarifies that temporary employees may not purchase any additional service credit, including repurchase of past service upon reemployment; Permits members who retire and commence receiving benefits after their normal retirement date under the Hybrid Plan or Highway Patrolmen's Retirement System to elect between a single lump sum payment equal to missed payments since normal retirement date or an increase in monthly retirement benefits that reflects the missed payments;		

LC Bill Number	Sponsor	Summary	Critical Issues	Recommendation
		Permits conversion of sick leave under the Defined Contribution Plan after four or more years of service, instead of after 25 or more years of service; Provides for automatic refund of member accounts under the Defined Contribution Plan if the vested account balance is less than $1,000, instead of $5,000.		
70077	PERS	The proposed legislation would automatically enroll new employees after August 1, 2007 in the Deferred Compensation Program and defer $25 per month into the Program into a default investment option selected by the Board, unless the new employee opts out of enrollment within 30 days of beginning employment.	The bill indicates that if we had full participation (100%) the cost could be about .15%. However it is unlikely that we would achieve that level and therefore the existing assumption likely would remain accurate (50% of employees at 100% participation).	Submit and support the bill as written
70078	PERS	As proposed, this broad-ranging bill addresses the following employee benefits issues: • Section 1 requires that employees' lump sum accrued sick leave payout and unused annual leave at termination be deposited into a trust (as established under Section 7). • Section 2 increases basic and AD&D life insurance coverage to $5,000 from the current $1,000 benefit. • Section 3 creates a new subsection to the Century Code that creates separate coverage for	Section 1 and 7 set up a trust with a mandatory deposit of sick leave and vacation time at termination of employment. When this was recommended to the board by the benefits committee it was their understanding that employees could withdraw from the trust the mandatory payments in cash if they so elected. The GBS review indicates that is not acceptable under federal law. When the committee discussed proposing this provision they did so because they thought employees had this option. They would not have been in favor of this if they had known that this was not an option. Therefore staff is recommending that we amend the bill to withdraw section #1 and #7.	Amend the bill to withdraw section #1 and #7 and support the bill as amended.

LC Bill Number	Sponsor	Summary	Critical Issues	Recommendation
		"retired Medicare-eligible group prescription drug coverage" in response to the new federal Medicare Part D drug plan. • Section 4 revises the policy on how the retiree health care credit will be applied for married couples where both parties are eligible for the credit. • Section 5 changes the eligibility requirements for a "temporary employee" of political subdivisions to a minimum of twenty hours per week and at least twenty weeks per year. • Section 6 relates to Section 3 above and authorizes the Board to bid and contract for a separate Medicare retiree drug plan distinct from the active employees' plan. • Section 7 gives the Board the authority to establish a trust to maintain employer and employee funds resulting from Section 1 above to be used for future health care expenses. SEGAL: Section 4 of the proposed legislation would permit those members where both the member and spouse have credit in the Fund to combine credits towards monthly retiree premiums under the uniform group insurance program.		

LC Bill Number	Sponsor	Summary	Critical Issues	Recommendation
70079	PERS	The proposed legislation would increase the required monthly contribution to the Retiree Health Benefit Fund from 1.00% of monthly salary to 1.15% of monthly salary and increase the monthly retiree health credit from $4.50 per year of credited service to $5.00 per year of credited service. There is also a corresponding contribution rate increase for nonteaching employees of the superintendent of public instruction with a higher contribution rate for a specified period that is intended to fund past service.	Segal expressed no reservations with this bill and confirmed the actuarial cost to be .15% of payroll.	Support the bill as written.
70080	PERS	The proposed legislation would increase the employer contribution rate from 16.17% to 21.7% of salary for the Highway Patrolmen's Retirement System and from 4.12% to 5.12% of salary for the Hybrid Plan and Defined Contribution Plan. In addition, the proposed legislation would provide for an increase of 2% of monthly retirement benefits to retirees and their beneficiaries in both the Hybrid Plan and the Highway Patrolmen's Retirement System effective August 1, 2009.	Segal indicated the actuarial cost of this bill to be: Main .64% Judges 1.43% LE 0% HP 3.95%	The cost of these bills is less then we had originally estimated, therefore we should amend the bills with the new estimates. Please note the judges are not included in the increased contributions since they already have sufficient margin to pay for the proposed enhancement.
70100	S. Mathern	As proposed, this bill would expand the uniform group insurance program to allow participation by permanent and temporary employees of private sector employers and any other individual who is without health insurance coverage. It would also authorize the Board to allow licensed agents to sell the uniform program and receive commissions.		

DRAFT

September 22, 2006

Representative Matthew M. Klein
Chairman, Legislative Employees Benefits Committee
State of North Dakota
P. O. Box 1657
Bismarck, ND 58502-1657

Re: Review of Proposed Bill:

1) 70030.0100 – A bill relating to expansion of the uniform group insurance program to allow participation by members of the ND National Guard and to allow agents to sell the group insurance program and receive commissions.

Dear Representative Klein,

The following summarizes the above referenced bill and our professional comments on the financial and technical impact of the proposed legislation.

Overview of Proposed Bill

As proposed, this bill would expand the uniform group insurance program to allow participation by members of the ND National Guard in the medical and life insurance coverages. The member of the National Guard must be a "resident" of ND. Premiums will be paid directly by the individual and State coverage would be secondary to any military coverage available. Guard members called to active duty outside of ND do not lose eligibility. Finally, the bill authorizes the Board to allow licensed agents to sell the uniform health insurance coverage and receive commissions.

Expected Financial Impact

From a group health benefits actuarial and underwriting perspective, we have the following concerns with this bill as written.

- It allows National Guard members to individually elect coverage in the uniform group insurance plan. The potential for "adverse selection" is significant. Individuals would be allowed to elect coverage based on personal or family medical need without any financial protection to the program.
- Unlike the existing uniform group insurance that requires an employer-employee relationship (which is a traditional requirement of group insurance) and a minimum employer contribution, this proposed bill contains neither of these requirements. The absence of these two conditions further increases the potential for adverse selection against the program, which ultimately affects the program costs for the State and its contributing employees.
- Section 7 of the proposed bill states that it will "become effective when the board determines that utilizing medical underwriting requirements and risk-adjusted premiums does not violate the Health Insurance Portability and Accountability Act

> [HIPAA]..."As discussed under Technical Comments below. HIPAA puts considerable limitations on a plan's ability to use medical underwriting to accept new applicants and eliminates the ability to use risk adjusted premiums. These restrictions create additional adverse risk against the uniform group insurance program.

Because NDPERS' medical and life insurance coverages are insured and not self-funded, its insurance carriers would need to determine if they are willing to underwrite additional risks created by this proposed bill. If they were not willing to accept the additional risk under the current premium structure, they would then determine if rates would need to be increased for the State and covered employees.

Technical Comments

We have two primary technical concerns with the proposed bill. First, is its potential impact on NDPERS governmental status. Second, is the ability to apply reasonable risk selection techniques to minimize adverse risk to the program.

The proposed bill would potentially permit non-governmental employees to join the uniform group insurance program, which currently only permits governmental entities to participate. Including non-governmental employees in the program raises the question whether it would jeopardize its government plan status.

At PERS request, our Compliance Department previously researched the question relating to allowing National Guardsmen to enroll in the NDPERS benefit plan. In an effort to address the impact of this legislation, we have identified five (5) Department of Labor Advisory Opinion letters that address the question whether the status of the Plan as a "governmental plan" under section 3(32) of ERISA would be adversely affected if it were to extend benefits to certain private sector employees.

The common areas of response in Department of Labor's five Advisory Opinions regarding coverage of private sector individuals under governmental plans are as follows.

ERISA section 4(b)(1) provides that Title I of ERISA does not apply to any employee benefit plan that is a "governmental plan" as defined in ERISA section 3(32). Section 3(32) of ERISA defines the term "governmental plan," in pertinent part, as "a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing."

In the Advisory Opinion letters provided, the DOL consistently indicates that a plan's governmental status would not be adversely affected by participation of a de minimis number of private sector employees. However, if a benefit arrangement is extended to cover more than a de minimis number of private sector employees, the Department may not consider it a governmental plan under Title 1 of ERISA.

The specific circumstances in each of the cases provided do not allow for any direct comparison to the proposed NDPERS legislation; however, it appears that if the number of non-governmental participants meets the de minimis test cited above, your non-

ERISA status would remain. For your reference the Advisory Opinion Letters used in our research are as follows:

2005-21A ERISA Sec.3 (32), 2005-17A ERISA Sec.3 (32), 95-27A ERISA Sec.3 (32), 2002-11A ERISA Sec.3 (32), and 2000-08A ERISA Sec.3 (32)

The DOL Advisory Opinion Letters for these cases and others can be accessed from their website at www.dol.gov/ebsa/regs/Aos/main.html. Advisory Opinion Letters are not necessarily conclusive. However, it appears likely that the number of National Guard members electing coverage under this proposed bill could be considered de minimis relative to the total covered population under the uniform program.

Our second primary technical concerns relates to the ability to reduce or eliminate adverse risk to the program. The proposed bill would not have a significant impact upon the PERS plan if it can use appropriate underwriting rules and premium adjustments to make sure that the introduction of these additional individuals will not increase the overall risk profile of the existing plan. The bill as written states that the Board may apply medical underwriting requirements and risk adjusted premiums to individuals seeking coverage. There is a question whether HIPAA would allow PERS the ability to underwrite new applicants to its plans in a manner to eliminate adverse selection.

In 1996, the federal government passed the Health Insurance Portability and Accountability Act (HIPAA). In particular, HIPAA's nondiscrimination rules several restricted the use of medical underwriting and risk-adjusted premiums for healthcare coverage. The pertinent question is whether HIPAA would prohibit NDPERS from using medical underwriting and risk-adjusted premiums when adding the new groups to the uniform group insurance program.

It is our understanding that the HIPAA nondiscrimination standards adopted by the Department of Health and Human Services apply to any entity that is:

- A *health* care provider that conducts certain transactions in electronic form
- A *health* care clearing house, or
- A *health* care plan

PERS' uniform insurance program clearly meets the HIPAA definition of a "covered entity" as a health plan. Therefore, it is our opinion that PERS is subject to the non-discrimination requirements unless it qualifies for an exemption as described below.

A nonfederal governmental employer that provides self-funded group heath plan coverage to its employees may elect to exempt its plan from the non-discrimination requirements of HIPAA. However, applicability is very limited. It does not apply to either insured or self-funded plans of employers that are not governmental employers, or to insured plans of governmental employers. An election must be completed annually. However, it is likely that this exception may not apply if NDPERS allows private sector plans into its program as permitted by the proposed bill. As noted, the exception only applies to self-funded "governmental employers."

In conclusion, as long as NDPERS continues to insure its health plans, it is our opinion that it must comply with HIPAA's nondiscrimination requirements. Consequently, it would not be able to "apply medical underwriting and risk-adjusted premiums" as stated in the proposed bill. Alternatively, if it decides to self-fund and allow non-governmental employees in the plan as allowed by the proposed bill, we question whether the governmental exemption would then apply.

Section 7 of the bill appears to recognize potential obstacles with ERISA and HIPAA. It states that the bill would only be enacted if the Board receives an ERISA exemption and HIPAA portability provisions are not violated. Further, it states an insurer must agree to underwrite the expanded group.

Gallagher Benefit Services, Inc. is not licensed to provide legal advice. If NDPERS desires to have a qualified legal opinion concerning this proposed piece of legislation, we suggest that it consult qualified employee benefits legal counsel.

We appreciate the opportunity to provide input on this proposed bill. Please let me know if we can provide any further assistance.

Sincerely,

William F. Robinson, Jr.
Area Vice President

cc: Sparb Collins, NDPERS

DRAFT

September 22, 2006

Representative Matthew M. Klein
Chairman, Legislative Employees Benefits Committee
State of North Dakota
P. O. Box 1657
Bismarck, ND 58502-1657

Re: Review of Proposed Bill:

70031.0100 – A bill relating to the expansion of the uniform group insurance program to allow participation by permanent employees of non-profit organizations and allow agents to sell the group insurance program and receive commissions.

Dear Representative Klein,

The following summarizes the above referenced proposed legislation and our professional comments on the financial and technical impact of the bill.

Overview of Proposed Bill

As proposed, this bill would allow participation in the State uniform group insurance program for "permanent employees of non-profit organizations." It allows the Board to establish minimum eligibility requirements for the non-profit organization, including medical underwriting and risk-adjusted premium requirements. Section 5 of the bill authorizes the Board to allow licensed agents to sell the health insurance coverage and receive commissions. Section 6 of the bill allows the Board to accept "grants, donations, legacies and devices for the purpose of implementing (the bill)."

Expected Financial Impact

From a general group health benefits actuarial and underwriting perspective, our financial concerns with this bill are as follows. These include:

- The legislation allows the non-profit organization and not the Board to establish the employee contribution to the program. Thus allowing non-profits with no or little employer contributions to participate in the program creates a significant potential for adverse selection. To minimize actuarial risk to the program, minimum employer contributions, preferably 75% or greater, should be required.

- Section 8 of the proposed bill states that it will "become effective when the board determines that utilizing medical underwriting requirements and risk-adjusted premiums does not violate the Health Insurance Portability and Accountability Act [HIPAA]..."As discussed under Technical Comments below. HIPAA puts considerable limitations on a plan's ability to use medical underwriting to accept new applicants and eliminates the ability to use risk adjusted premiums. These restrictions create additional adverse risk against the uniform group insurance program.

Because NDPERS' medical and life insurance coverages are insured and not self-funded, its insurance carriers would need to determine if they are willing to underwrite additional risks created by this proposed bill under the current premium structure. If they were not willing to accept the additional risk, they would then determine if rates would need to be increased for the State and covered employees.

Technical Comments

We have two primary technical concerns with the proposed bill. First, is its potential impact on NDPERS governmental status. Second, is the ability to apply reasonable risk selection techniques to minimize adverse risk to the program.

The proposed bill would potentially permit non-governmental employees to join the uniform group insurance program, which currently only permits governmental entities to participate. Including non-governmental employees in the program raises the question whether it would jeopardize its government plan status.

At PERS request, our Compliance Department previously researched the question relating to allowing non-governmental employees to enroll in the NDPERS benefit plan. In an effort to address the impact of this legislation, we have identified five (5) Department of Labor Advisory Opinion letters that address the question whether the status of the Plan as a "governmental plan" under section 3(32) of ERISA would be adversely affected if it were to extend benefits to certain private sector employees.

The common areas of response in Department of Labor's five Advisory Opinions regarding coverage of private sector individuals under governmental plans are as follows.

ERISA section 4(b)(1) provides that Title I of ERISA does not apply to any employee benefit plan that is a "governmental plan" as defined in ERISA section 3(32). Section 3(32) of ERISA defines the term "governmental plan," in pertinent part, as "a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing."

In the Advisory Opinion letters provided, the DOL consistently indicates that a plan's governmental status would not be adversely affected by participation of a de minimis number of private sector employees. However, if a benefit arrangement is extended to cover more than a de minimis number of private sector employees, the Department may not consider it a governmental plan under Title 1 of ERISA.

The specific circumstances in each of the cases provided do not allow for any direct comparison to the proposed NDPERS legislation; however, it appears that if the number of non-governmental participants meets the de minimis test cited above, your non-ERISA status would remain. For your reference the Advisory Opinion Letters used in our research are as follows:

2005-21A ERISA Sec.3(32), 2005-17A ERISA Sec.3(32), 95-27A ERISA Sec.3(32), 2002-11A ERISA Sec.3(32), and 2000-08A ERISA Sec.3(32)

The DOL Advisory Opinion Letters for these cases and others can be accessed from their website at www.dol.gov/ebsa/regs/Aos/main.html. Advisory Opinion Letters are not necessarily conclusive. However, it appears likely that the number of National Guard members electing coverage under this proposed bill could be considered de minimis relative to the total covered population under the uniform program.

This proposed bill includes a provision for the Board to operate the group insurance program as a governmental plan provided that the Board applies to the federal government and receives exempt status under the Employee Retirement Income Security Act (ERISA) for the uniform group insurance plan.

Such a waiver would be required to allow a governmental plan to cover non-governmental entities and private citizens without losing its status as a governmental plan. ERISA section 3(32) and Internal Revenue Code section 414 (d) define a governmental plan as one established by a governmental unit for its employees. There is no guarantee that NDPERS would be successful in getting an ERISA waiver from the federal government.

The proposed bill would not have a significant impact upon the PERS plan if PERS can use appropriate underwriting rules and premium adjustments to make sure that the introduction of these additional members will not increase the overall risk profile of the existing plan. The bill as written states that the "Board may apply medical underwriting requirements and risk adjusted premiums to an employer seeking coverage and.... and to deny coverage if …the risk created by the employer is undesirable." There is a question whether HIPAA would allow PERS the ability to underwrite new applicants to its plans in a manner to eliminate adverse selection.

In 1996, the federal government passed the Health Insurance Portability and Accountability Act (HIPAA). In particular, HIPAA's nondiscrimination rules several restricted the use of medical underwriting and risk-adjusted premiums for healthcare coverage. The pertinent question is whether HIPAA would prohibit NDPERS from using medical underwriting and risk-adjusted premiums when adding the new groups to the uniform group insurance program.

It is our understanding that the HIPAA nondiscrimination standards adopted by the Department of Health and Human Services apply to any entity that is:

- A *health* care provider that conducts certain transactions in electronic form
- A *health* care clearing house, or
- A *health* care plan

PERS' uniform insurance program clearly meets the HIPAA definition of a "covered entity" as a health plan. Therefore, it is our opinion that PERS is subject to the non-discrimination requirements unless it qualifies for an exemption as described below.

A nonfederal governmental employer that provides self-funded group heath plan coverage to its employees may elect to exempt its plan from the non-discrimination requirements of HIPAA. However, applicability is very limited. It does not apply to either insured or self-funded plans of employers that are not governmental employers, or to insured plans of governmental employers. An election must be completed annually. However, it is likely that this exception may not apply if NDPERS allows private sector plans into its program as permitted by the proposed bill. As noted, the exception only applies to self-funded “governmental employers.”

In conclusion, as long as NDPERS continues to insure its health plans, it is our opinion that it must comply with HIPAA’s nondiscrimination requirements. Consequently, it would <u>not</u> be able to “apply medical underwriting and risk-adjusted premiums” as stated in the proposed bill. Alternatively, if it decides to self-fund and allow non-governmental employees in the plan as allowed by the proposed bill, we question whether the governmental exemption would then apply.

Section 8 of the bill appears to recognize potential obstacles with ERISA and HIPAA. It states that the bill would only be enacted if the Board receives an ERISA exemption and HIPAA portability provisions are not violated. Further, it states an insurer must agree to underwrite the expanded group.

Gallagher Benefit Services, Inc. is not licensed to provide legal advice. If NDPERS desires to have a qualified legal opinion concerning this proposed piece of legislation, we suggest that it consult qualified employee benefits legal counsel.

We appreciate the opportunity to provide input on this proposed bill. Please let me know if we can provide any further assistance.

Sincerely,

William F. Robinson, Jr.
Area Vice President

cc: Sparb Collins, NDPERS

DRAFT

September 22, 2006

Representative Matthew M. Klein
Chairman, Legislative Employees Benefits Committee
State of North Dakota
P. O. Box 1657
Bismarck, ND 58502-1657

Re: Review of Proposed Bill:

70032.0100 – A bill relating to expansion of the uniform group insurance program to allow participation by employees of certain private sector employers and allow agents to sell the group insurance program and receive commissions.

Dear Representative Klein,

The following summarizes the above referenced proposed legislation and our professional comments on the financial and technical impact of the bill.

Overview of Proposed Bill

As proposed, this bill would expand the uniform group insurance program to allow participation by small (50 or fewer employees) private sector employers subject to minimum requirements established by the Board. It also allows licensed agents to sell the program and receive commissions.

Expected Financial Impact

From a general group health benefits actuarial and underwriting perspective, our financial concerns with this bill are as follows. These include:

- The legislation allows the private sector organization and not the Board to establish the employee contribution to the program. Thus allowing non-profits with no or little employer contributions to participate in the program creates a significant potential for adverse selection. To minimize actuarial risk to the program, minimum employer contributions, preferably 75% or greater, should be required.

- Section 8 of the proposed bill states that it will "become effective when the board determines that utilizing medical underwriting requirements and risk-adjusted premiums does not violate the Health Insurance Portability and Accountability Act [HIPAA]..."As discussed under Technical Comments below. HIPAA puts considerable limitations on a plan's ability to use medical underwriting to accept new applicants and eliminates the ability to use risk adjusted premiums. These restrictions create additional adverse risk against the uniform group insurance program.

Knowing the difficulty that small businesses (less than 50 employees) have with the access and costs of group medical insurance, we would suspect that there would be considerable interest in joining the uniform program, particularly if offered at the same rates as active State employees.

Because NDPERS' medical and life insurance coverages are insured and not self-funded, its insurance carriers would need to determine if they are willing to underwrite any additional risks created by this proposed bill. If they were not at risk, they would then determine if premium rates would need to be increased for the State and covered employees to offset any additional risk.

Technical Comments

We have two primary technical concerns with the proposed bill. First, is its potential impact on NDPERS governmental status. Second, is the ability to apply reasonable risk selection techniques to minimize adverse risk to the program.

The proposed bill would permit non-governmental employees to join the uniform group insurance program, which currently only permits governmental entities to participate. Including non-governmental employees in the program raises the question whether it would jeopardize its government plan status.

This proposed bill includes a provision for the Board to operate the group insurance program as a governmental plan provided that the Board applies to the federal government and receives exempt status under the Employee Retirement Income Security Act (ERISA) for the uniform group insurance plan.

At PERS request, our Compliance Department previously researched the question relating to allowing non-governmental employees to enroll in the NDPERS benefit plan. In an effort to address the impact of this legislation, we have identified five (5) Department of Labor Advisory Opinion letters that address the question whether the status of the Plan as a "governmental plan" under section 3(32) of ERISA would be adversely affected if it were to extend benefits to certain private sector employees.

The common areas of response in Department of Labor's five Advisory Opinions regarding coverage of private sector individuals under governmental plans are as follows.

ERISA section 4(b)(1) provides that Title I of ERISA does not apply to any employee benefit plan that is a "governmental plan" as defined in ERISA section 3(32). Section 3(32) of ERISA defines the term "governmental plan," in pertinent part, as "a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing."

In the Advisory Opinion letters provided, the DOL consistently indicates that a plan's governmental status would not be adversely affected by participation of a de minimis number of private sector employees. However, if a benefit arrangement is extended to cover more than a de minimis number of private sector employees, the Department may not consider it a governmental plan under Title 1 of ERISA.

The specific circumstances in each of the cases provided do not allow for any direct comparison to the proposed NDPERS legislation; however, it appears that if the number of non-governmental participants meets the de minimis test cited above, your non-ERISA status would remain. For your reference the Advisory Opinion Letters used in our research are as follows:

2005-21A ERISA Sec.3 (32), 2005-17A ERISA Sec.3 (32), 95-27A ERISA Sec.3 (32), 2002-11A ERISA Sec.3 (32), and 2000-08A ERISA Sec.3 (32)

The DOL Advisory Opinion Letters for these cases and others can be accessed from their website at www.dol.gov/ebsa/regs/Aos/main.html. Advisory Opinion Letters are not necessarily conclusive. However, it appears likely that the number of non-governmental members electing coverage under this proposed bill could eventually exceed the de minimis standard.

The proposed bill would not have a significant impact upon the PERS plan if PERS can use appropriate underwriting rules and premium adjustments to make sure that the introduction of these additional groups will not increase the overall risk profile of the existing plan. The bill as written states that the "Board may apply medical underwriting requirements and risk adjusted premiums to an employer seeking coverage and.... and to deny coverage if …the risk created by the employer is undesirable." There is a question whether HIPAA would allow PERS the ability to underwrite new applicants to its plans in a manner to eliminate adverse selection.

In 1996, the federal government passed the Health Insurance Portability and Accountability Act (HIPAA). In particular, HIPAA's nondiscrimination rules several restricted the use of medical underwriting and risk-adjusted premiums for healthcare coverage. The pertinent question is whether HIPAA would prohibit NDPERS from using medical underwriting and risk-adjusted premiums when adding the new groups to the uniform group insurance program.

It is our understanding that the HIPAA nondiscrimination standards adopted by the Department of Health and Human Services apply to any entity that is:

- A *health* care provider that conducts certain transactions in electronic form
- A *health* care clearing house, or
- A *health* care plan

PERS' uniform insurance program clearly meets the HIPAA definition of a "covered entity" as a health plan. Therefore, it is our opinion that PERS is subject to the non-discrimination requirements unless it qualifies for an exemption as described below.

A nonfederal governmental employer that provides self-funded group heath plan coverage to its employees may elect to exempt its plan from the non-discrimination requirements of HIPAA. However, applicability is very limited. It does not apply to either insured or self-funded plans of employers that are not governmental employers, or to insured plans of governmental employers. An election must be completed annually. However, it is likely that this exception may not apply if NDPERS allows private sector plans into its program as permitted by the proposed bill. As noted, the exception only applies to self-funded "governmental employers."

In conclusion, as long as NDPERS continues to insure its health plans, it is our opinion that it must comply with HIPAA's nondiscrimination requirements. Consequently, it would <u>not</u> be able to "apply medical underwriting and risk-adjusted premiums" as stated in the proposed bill. Alternatively, if it decides to self-fund and allow non-governmental employees in the plan as allowed by the proposed bill, we question whether the governmental exemption would then apply.

Section 8 of the bill appears to recognize potential obstacles with ERISA and HIPAA. It states that the bill would only be enacted if the Board receives an ERISA exemption and HIPAA portability provisions are not violated. Further, it states an insurer must agree to underwrite the expanded group.

Gallagher Benefit Services, Inc. is not licensed to provide legal advice. If NDPERS desires to have a qualified legal opinion concerning this proposed piece of legislation, we suggest that it consult qualified employee benefits legal counsel.

We appreciate the opportunity to provide input on this proposed bill. Please let me know if we can provide any further assistance.

Sincerely,

William F. Robinson, Jr.
Area Vice President

cc: Sparb Collin

DRAFT

September 22, 2006

Representative Matthew M. Klein
Chairman, Legislative Employees Benefits Committee
State of North Dakota
P. O. Box 1657
Bismarck, ND 58502-1657

Re: Review of Proposed Bill:

70062.0100 – A bill relating to expansion of the uniform group insurance program to permit the Garrison Diversion Conservancy District and district health units to participate in the uniform group insurance program under the same terms and conditions as State agencies.

Dear Representative Klein,

The following summarizes the above referenced proposed legislation and our professional comments on the financial and technical impact of the bill.

Overview of Proposed Bill

As proposed, this bill would clarify that distinct health units and the Garrison Conservancy District participate in the uniform group insurance program under the same terms and conditions as State agencies. Therefore, they would pay medical premiums on a flat (composite) basis.

Expected Financial Impact

Presently, there is no consistency whether a distinct health unit pays the State "flat" composite rate or a single/family rate. If all units currently paying the flat rate were required to use the political subdivision single/family rate, NDPERS has estimated it would cost those units an additional $217,780 per year at current rates. Put another way, this bill would reduce NDPERS current annual revenue by $217,780. This is a result of the relatively high number of employees with covered dependents (80.3% according to data provided NDPERS on December 12, 2005 by the ND Home Health Administrators). This lost revenue will grow over time with medical inflation.

Technical Comments

We have no technical compliance comments concerning this proposed bill. However, we point out the following:

1. The bill indicates the units "may participate" in the program, which infers that participation is voluntary.

2. Other "State agencies" are required to participate in the program..

3. As the proposed legislation indicates that the district health units participating in the uniform group insurance program shall be "under the same terms and conditions as state agencies", we assume that their premiums could only be paid on a flat composite basis.

Given the voluntary unit participation, there would an adverse selection risk against NDPERS. A similar risk currently exists with voluntary political subdivision participation. As long as the district health units are required to contribute on a flat composite basis and not given the option to elect single/family rates, we do not believe the addition of these groups would inherently increase the risk to NDPERS. Its medical insurer has agreed to underwrite the plan for other political subdivisions and should not object or alter rates due to the addition of the district health units under a contribution requirement identical to State employees.

Gallagher Benefit Services, Inc. is not licensed to provide legal advice. If NDPERS desires to have a qualified legal opinion concerning this proposed piece of legislation, we suggest that it consult qualified employee benefits legal counsel.

We appreciate the opportunity to provide input on this proposed bill. Please let me know if we can provide any further assistance.

Sincerely,

William F. Robinson, Jr.
Area Vice President

cc: Sparb Collin

THE SEGAL COMPANY
6300 South Syracuse Way, Suite 750 Englewood, CO 80111
T 303.714.9900 F 303.714.9990 www.segalco.com

October 2, 2006

Representative Matthew M. Klein
Chairman, Legislative Employee Benefits Committee
State of North Dakota
Bismarck, North Dakota

Re: **Technical Comments – Bill Draft No. 70071.0100**

Dear Representative Klein:

The following presents our analysis of the proposed changes found in Bill Draft No. 70071.0100:

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

Summary: The proposed legislation would permit a specified association of counties and their employees to participate in the Public Employees Retirement System (Hybrid Plan), the Retiree Health Benefit Fund and the Deferred Compensation Program.

Actuarial Cost Analysis: Full actuarial cost analysis of the proposed changes is not requested at this time but will be performed at a later date. However, it appears that this bill would have an actuarial impact on the Public Employees Retirement System and Retiree Health Benefit Fund.

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

General

Section 1 of the bill indicates that the specified association of counties is deemed to be a political subdivision of the State and therefore a "governmental unit" which is eligible to participate in the Public Employees Retirement System. However, it does not appear that the specified association of counties satisfies the requirements to be a political subdivision of the State under applicable federal law.

Benefits Policy Issues

- Adequacy of Retirement Benefits

  The bill may significantly enhance retirement benefits for employees of the specified association of counties, but does not appear to affect the adequacy of retirement benefits of current members.

- Benefits Equity and Group Integrity

  No impact.

- Purchasing Power Retention

  No impact.

- Preservation of Benefits

  No impact.

- Portability

  No impact.

- Ancillary Benefits

  - The bill indirectly impacts other ancillary death or survivor benefits under the System only for employees of the specified association of counties.

  - Social Security: No impact.

Funding Policy Issues

- Actuarial Impacts

  The bill may have an actuarial impact on the Hybrid Plan and/or the Retiree Health Benefit Fund by introducing a new group of employees into the plans. The extent to which this new group affects the actuarial and demographic assumptions utilized by the plans depends upon the size of the group and its demographic make up (for example, average age, disability rate, etc.).

- Investment Impacts

  - Asset Allocation: The bill does not create new investment asset allocation issues.

  - Cash Flow Impacts: The bill does create new cash flow needs, but the impact on the System is minimal.

Administration Issues

- Implementation Issues

  No impact.

- Administrative Costs

  The bill will have an impact on administrative resources.

- Needed Authority

  The bill does appear to clearly provide sufficient levels of administrative and governance authority to the PERS Board to implement the changes made by the bill to the affected plans.

- Cross Impact on Other Plans

  No impact.

- Employee Communications

  Communications to the employees of the specified association of counties should be provided to describe the provisions of the Hybrid Plan, the Retiree Health Benefit Fund and the Deferred Compensation Program.

Miscellaneous and Drafting Issues

The language of the bill does not specifically state that employees of the specified association of counties will participate in the Hybrid Plan and the Retiree Health Benefit Fund on a prospective basis only, with no past service credit provided for any purpose, including vesting. However, our analysis of the bill is based on the assumption that such participation will be prospective only.

Please call if you have any questions or comments.

Sincerely,

Michael Moehle, FSA, MAAA, EA
Vice President and Actuary

Melanie Walker, JD
Vice President

cc: Brad Ramirez, FSA, MAAA, EA

146811v1/01640.004

THE SEGAL COMPANY
6300 South Syracuse Way, Suite 750 Englewood, CO 80111
T 303.714.9900 F 303.714.9990 www.segalco.com

October 16, 2006

Representative Matthew M. Klein
Chairman, Legislative Employee Benefits Committee
State of North Dakota
Bismarck, North Dakota

Re: **Technical Comments – Bill Draft No. 70073.0100**

Dear Representative Klein:

The following presents our analysis of the proposed changes found in Bill Draft No. 70073.0100:

Systems Affected: North Dakota Public Employees Retirement System (Hybrid Plan), Retiree Health Benefit Fund and Teachers' Fund for Retirement

Summary: The proposed legislation would permit current and future employees of the State board for career and technical education to irrevocably elect to transfer to and/or participate in the Public Employees Retirement System (PERS) Hybrid Plan and the Retiree Health Benefit Fund effective July 1, 2007. Employees of the State board for career and technical education currently may participate only in the Teachers' Fund for Retirement (TFFR). For current employees of the board who elect to transfer to the Hybrid Plan, the TFFR must transfer the greater of the actuarial equivalent of the employee's accrued benefit or the employee's account balance to the Hybrid Plan.

Actuarial Cost Analysis: It appears that this bill would have an actuarial impact on the Public Employees Retirement System (Hybrid Plan) and Retiree Health Benefit Fund, if the full actuarial cost of benefits under the TFFR is not transferred to PERS for those members electing to transfer. Section 3 of the bill indicates that the amount to be transferred will be at least the actuarial present value of the transferring employees' accrued benefit, but does not specify whether actuarial present value will be determined using actuarial assumptions under PERS or actuarial assumptions under TFFR. If PERS actuarial assumptions are used, the total actuarial present value of the transferring employees' accrued benefit (Retiree Health Benefit Fund only) is $115,016 as of July 1, 2006. If this amount is amortized over the employees average future working lifetime of 8.72 years, this would result in an increase to the required employer contribution of 1.85% of future payroll over that period.

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

General

The Teachers' Fund for Retirement and the Hybrid Plan provide very similar levels of benefits to their participants, including the benefit accrual formula (2% of final average salary times years of service), normal retirement and early retirement ages, death benefits and optional forms of retirement benefits. However, these retirement plans have some important differences, as follows:

1. TFFR's contributions rates are 7.75% of salary employees and 7.75% employers, while PERS' contributions rates are lower; 4% for employees and 4.12% for employers.
2. Participants in PERS are eligible to contribute to and receive a benefit from the Retiree Health Benefit Fund. Employees of the State board for career and technical education who elect to participate in PERS would contribute 2.85% of salary for eight years and 1% of salary thereafter to the Retiree Health Benefit Fund and receive benefits at retirement equal to $4.50 per year of service.
3. Disability benefits from TFFR equal accrued normal retirement benefits with 20 years of service assumed and without regard to age, which is generally 40% of final average salary. Disability benefits from the Hybrid Plan equal 25% of final average salary.
4. Participants in the Hybrid Plan may retire and begin receiving benefits and then after a specified period of time return to covered employment for an unlimited amount of work and continue to receive retirement benefits. Participants in TFFR may retire and begin receiving benefits and then return to covered employment for only a limited number of hours without having monthly retirement benefits suspended.

These differences may have important implications for the System, as discussed in more detail below.

Benefits Policy Issues

- Adequacy of Retirement Benefits

  The bill may significantly enhance retirement benefits for employees of the State board for career and technical education who elect to participate in the Public Employees Retirement System and the Retiree Health Benefit Fund. That is because, although the retirement benefits from both TFFR and the Hybrid Plan are substantially equal, employees who elect to participate in the Hybrid Plan will also receive retiree health benefits where the combined contributions to PERS and Retiree Health Benefit Fund are slightly lower than the contributions to TFFR for retirement benefits only. In addition, employees of the board who retire under the Hybrid Plan may return to covered employment for an unlimited amount of work and continue to receive retirement benefits. However, the bill reduces the disability benefits for employees of the State board for career and technical education who elect to participate in the Public Employees Retirement System and the Retiree Health Benefit Fund.

  The proposed legislation does not appear to affect the adequacy of retirement benefits for current participants of the Hybrid Plan.

- Benefits Equity and Group Integrity

  No impact.

- Competitiveness

  The bill may increase the benefits competitiveness of the System only for employees of the State board for career and technical education who elect to participate in the Hybrid Plan and the Retiree Health Benefit Fund.

- Purchasing Power Retention

  The bill may increase the purchasing power of for employees of the State board for career and technical education who elect to participate in the Hybrid Plan and the Retiree Health Benefit Fund where the combined contributions to PERS and Retiree Health Benefit Fund are slightly lower than the contributions to TFFR for retirement benefits only. Thus, such employees have additional amounts of salary available to contribute to supplemental retirement plans, such as the State's Deferred Compensation Program, during active employment and may have lower health care costs after retirement.

- Preservation of Benefits

  No impact.

- Portability

  No impact.

- Ancillary Benefits

  - Since TFFR generally provides more generous disability benefits than the Hybrid Plan, employees of the State board for career and technical education who elect to participate in PERS and then become disabled will experience a decrease in disability benefits.

  - Social Security: No impact.

Funding Policy Issues

- Actuarial Impacts

  The bill may have an actuarial impact on the Hybrid Plan and/or the Retiree Health Benefit Fund by introducing a new group of employees into the plans. The extent to which this new group affects the actuarial and demographic assumptions utilized by the plans depends upon the size of the group and its demographic make up (for example, average age, disability rate, etc.).

- Investment Impacts

  - Asset Allocation: The bill does not create new investment asset allocation issues.

  - Cash Flow Impacts: The bill may create new cash flow needs, but the impact on the System is minimal.

Administration Issues

- Implementation Issues

  The bill will require that the System develop a form for electing participation in the Hybrid Plan instead of TFFR for employees of the board. Appropriate forms and procedures may need to be developed for the purpose of transferring salary, service credit, contribution history, account balance and other necessary information and assets from TFFR to PERS. Such procedures should include a method for calculating the actuarial equivalent of accrued benefits of employees who elect to transfer.

- Administrative Costs

  The bill will have an impact on administrative resources. The bill does include an appropriation of funds to the Public Employees Retirement System for the purpose of implementing the proposed changes.

- Needed Authority

  The bill appears to provide sufficient levels of administrative and governance authority to the PERS Board to implement the changes made by the bill to the affected plans.

- Cross Impact on Other Plans

  Since TFFR generally provides more generous disability benefits than the Hybrid Plan, there may be some adverse selection against TFFR. That is, employees of the State board for career and educational training who are more likely to become disabled may elect to participate in TFFR instead of the Hybrid Plan. This could lead to an increase in disability rates, and consequently an increase in actuarial costs, for TFFR.

- Employee Communications

  The bill would require employee communications to current and future employees of the State board for career and technical education to describe the comparative provisions of the Teachers' Fund for Retirement and the Hybrid Plan with the Retiree Health Benefit Fund, including some information about the advantages and disadvantages of both plans.

Please call if you have any questions or comments.

Sincerely,

Michael Moehle, FSA, MAAA, EA
Vice President and Actuary

Melanie Walker, JD
Vice President

cc: Brad Ramirez, FSA, MAAA, EA

THE SEGAL COMPANY
6300 South Syracuse Way, Suite 750 Englewood, CO 80111
T 303.714.9900 F 303.714.9990 www.segalco.com

October 2, 2006

Representative Matthew M. Klein
Chairman, Legislative Employee Benefits Committee
State of North Dakota
Bismarck, North Dakota

Re: **Technical Comments – Bill Draft No. 70075.0100**

Dear Representative Klein:

The following presents our analysis of the proposed changes found in Bill Draft No. 70075.0100:

Systems Affected: North Dakota Public Employees Retirement System (Hybrid Plan including the main, judges, law enforcement and national guard retirement plans) and Highway Patrol Retirement System

Summary: The proposed legislation would allow the Board to provided for a one-time post-retirement payment equal to 75% of the member's, beneficiary's, disability retirees or prior service retirees current monthly benefit payment amount payable in January of either 2008 or 2009, if the trust fund's total annualized return on investments is at least 9.16% for the fiscal year ending June of 2007 or 2008, applicable to both the Hybrid Plan (except the Judges retirement plan) and the Highway Patrol Retirement System. This is a potential one-time payment in the biennium.

In addition, the proposed legislation would allow the Board to provide for an increase of 2% of monthly retirement benefits for supreme court and district judges and their beneficiaries beginning January 1, 2008 and another 2% increase beginning January 1, 2009, if the board determines that there is sufficient actuarial margin to pay the increase(s).

Actuarial Cost Analysis: Full actuarial cost analysis of the proposed changes is not requested at this time. However, it appears that this bill would have an actuarial impact on the Hybrid Plan and the Highway Patrolmen's Retirement System.

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

Benefits Policy Issues

- Adequacy of Retirement Benefits

  No impact.

- Benefits Equity and Group Integrity

  Post-retirement increases to the monthly benefits from the Hybrid Plan could create some level of benefits inequity between the Hybrid Plan and the Defined Contribution Plan because, although contributions to both Plans remain the same, there are no post-retirement increases paid from the Defined Contribution Plan. However, to the extent the DC plan members' investment earnings are sound they can fund their own post retirement increase.

- Competitiveness

  No impact.

- Purchasing Power Retention

  The proposed post-retirement increases continue the Board's policy of maintaining purchasing power of retirement benefits through ad hoc increases when such are affordable. However, a one-time payment equal to 75% of current monthly benefits, and even a 2% increase in monthly benefits for judges, is not anticipated to fully maintain the purchasing power of retirement benefits whenever price inflation exceeds the amount of the post-retirement payment.

- Preservation of Benefits

  It is clear that without some adjustment the benefits of the Hybrid Plan will be eroded by inflation.

- Portability

  No impact.

- Ancillary Benefits

  A 13th check at 75% of the retirees excluding judges would amount to about $3,675,800 in one-time payments. A 2% increase in judge's benefits would amount to about $20,720 per year. These additional payments into North Dakota's economy will generate additional economic activity as well as tax revenue to the state.

Funding Policy Issues

- Actuarial Impacts

  The bill would have an actuarial impact on the System, as noted earlier.

- Investment Impacts

  - Asset Allocation: The bill does not create new investment asset allocation issues.

  - Cash Flow Impacts: The bill creates new cash flow needs, but the impact is minimal.

Administration Issues

- Implementation Issues

  None.

- Administrative Costs

  No impact.

- Needed Authority

  The bill appears to provide sufficient levels of administrative and governance authority to the PERS Board to implement the changes made by the bill.

- Cross Impact on Other Plans

  No impact.

- Employee Communications

  Employee communications will be necessary to explain the one-time post-retirement payment and increase(s) to monthly retirement benefits of judges, if applicable.

Please call if you have any questions or comments.

Sincerely,

Michael Moehle, FSA, MAAA, EA
Vice President and Actuary

Melanie Walker, JD
Vice President

cc: Brad Ramirez, FSA, MAAA, EA

147097v1/01640.004

THE SEGAL COMPANY
6300 South Syracuse Way, Suite 750 Englewood, CO 80111
T 303.714.9900 F 303.714.9990 www.segalco.com

October 16, 2006

Representative Matthew M. Klein
Chairman, Legislative Employee Benefits Committee
State of North Dakota
Bismarck, North Dakota

Re: **Technical Comments – Bill Draft No. 70076.0100**

Dear Representative Klein:

The following presents our analysis of the proposed changes found in Bill Draft No. 70076.0100:

Systems Affected: North Dakota Public Employees Retirement System (Hybrid Plan and Defined Contribution Plan) and Highway Patrolmen's Retirement System

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

Applies the definition of final average salary under the Hybrid Plan and Highway Patrolmen's Retirement System, which is currently the highest salary for 36 months in the last 180 months of employment, to employees who <u>terminate employment</u> on or after August 1, 2010, rather than those employees who <u>retire</u> on or after July 1, 2009. Also, for employees who terminate employment between July 1, 2005 and August 1, 2010, final average salary would be the highest salary for 36 months for any period for which the Board has accurate salary records, but no longer than the last 180 months of employment;

Updates federal compliance provisions of the Hybrid Plan and Highway Patrolmen's Retirement System;

Provides record confidentiality rules under the Hybrid Plan and Highway Patrolmen's Retirement Plan to limit disclosure of information regarding employer service purchases to the minimum, necessary elements of data;

Permits conversion of sick leave to retirement credit under the Hybrid Plan and Highway Patrolmen's Retirement System at any time, rather than within 60 days of termination only;

Clarifies that employer service purchases on an actuarial equivalent basis under the Hybrid Plan must include contributions for both retirement and the Retiree Health Benefits Fund;

Clarifies that temporary employees may not purchase any additional service credit, including repurchase of past service upon reemployment;

Permits members who retire and commence receiving benefits after their normal retirement date under the Hybrid Plan or Highway Patrolmen's Retirement System to elect between a single lump sum payment equal to missed payments since normal retirement date or an increase in monthly retirement benefits that reflects the missed payments;

Permits conversion of sick leave under the Defined Contribution Plan after four or more years of service, instead of after 25 or more years of service;

Provides for automatic refund of member accounts under the Defined Contribution Plan if the vested account balance is less than $1,000, instead of $5,000.

Actuarial Cost Analysis: It appears that this bill would have no significant actuarial impact on the Hybrid Plan or the Highway Patrolmen's Retirement System.

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

Benefits Policy Issues

- Adequacy of Retirement Benefits

  No impact.

- Benefits Equity and Group Integrity

  The bill enhances equity within the Hybrid Plan and Highway Patrolmen's Retirement System by applying the same definition of final average salary to a larger group of members.

  The bill enhances equity between the Hybrid Plan and Defined Contribution Plan by applying similar rules and restrictions on the timing of conversion of sick leave.

- Competitiveness

  No impact.

- Purchasing Power Retention

  No impact.

- Preservation of Benefits

  No impact.

➢ Portability

No impact.

➢ Ancillary Benefits

No impact.

Funding Policy Issues

➢ Actuarial Impacts

The bill would likely have no significant actuarial impact on the System, as noted earlier.

➢ Investment Impacts

- Asset Allocation: The bill does not create new investment asset allocation issues.

- Cash Flow Impacts: The bill does not create new cash flow needs.

Administration Issues

➢ Implementation Issues

The bill will require development of actuarial factors to calculate the increase in monthly benefits to reflect missed payments for members who retire after their normal retirement date and elect the increase versus a lump sum.

The bill may require changes to the method or system for tracking members' final average salary to apply the most recent definition of final average salary to a larger group of members.

The bill may require that the System develop forms and procedures for implementing the rules on confidentiality of records regarding employer service purchases.

➢ Administrative Costs

The bill will have an impact on administrative resources due to the implementation issues described above, as well as because a smaller number of member accounts will be automatically refunded from the Defined Contribution Plan.

➢ Needed Authority

The bill appears to provide sufficient levels of administrative and governance authority to the PERS Board to implement the changes made by the bill.

- <u>Cross Impact on Other Plans</u>

  The provision of the bill that requires employer service purchases to include contributions to the Retiree Health Benefits Fund would diminish the current subsidy from that Fund for purchased service.

- <u>Employee Communications</u>

  Employee communications will be necessary to explain the ability of members in the Hybrid Plan or Highway Patrolmen's Retirement System who retire after normal retirement date to elect between a lump sum or benefit increase to reflect missed payments, as well as the new rules regarding timing of conversion of sick leave under Hybrid Plan, Defined Contribution Plan and Highway Patrolmen's Retirement System.

Please call if you have any questions or comments.

Sincerely,

Michael Moehle, FSA, MAAA, EA
Vice President and Actuary

Melanie Walker, JD
Vice President

cc: Brad Ramirez, FSA, MAAA, EA

THE SEGAL COMPANY
6300 South Syracuse Way, Suite 750 Englewood, CO 80111
T 303.714.9900 F 303.714.9990 www.segalco.com

October 16, 2006

Representative Matthew M. Klein
Chairman, Legislative Employee Benefits Committee
State of North Dakota
Bismarck, North Dakota

Re: **Technical Comments – Bill Draft No. 70077.0100**

Dear Representative Klein:

The following presents our analysis of the proposed changes found in Bill Draft No. 70077.0100:

Systems Affected: North Dakota Deferred Compensation Program, North Dakota Public Employees Retirement System (Hybrid Plan)

Summary: The proposed legislation would automatically enroll new employees after August 1, 2007 in the Deferred Compensation Program and defer $25 per month into the Program into a default investment option selected by the Board, unless the new employee opts out of enrollment within 30 days of beginning employment.

Actuarial Cost Analysis: Full actuarial cost analysis of the proposed changes is not requested at this time. However, it appears that this bill would have an actuarial impact on the Hybrid Plan. Automatic enrollment of new employees in the Deferred Compensation Program is likely to increase the percentage of employees contributing a sufficient amount to the Program to vest in employer contributions to the Hybrid Plan under the PEP program. Therefore, the amount of employer contributions that become vested and may be paid out to participants is likely to increase to some extent. With 100% enrollment, the additional cost to the PERS Plan would be an estimated immediate increase to the required contribution of 0.15% of payroll. Participation is likely to be less than 100%, however, and the cost will be less with lower participation.

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

Benefits Policy Issues

- Adequacy of Retirement Benefits

  Automatic enrollment in a supplemental retirement plan has been shown to increase worker participation, and therefore enhance overall assets available for retirement. The IRS promotes automatic enrollment in §457 plans through Revenue Ruling 2000-33, which specifically permits automatic enrollment in such plans, because studies suggest that automatic enrollment increases participation among moderate- and lower-income workers. However, please note that unlike other tax-advantaged defined contribution plans, §457(b) plans do not impose a tax penalty for early distributions. Therefore employees who terminate employment prior to retirement age may elect to receive a distribution of their §457 plan account balance upon termination, and thus those assets would no longer be available for retirement.

- Benefits Equity and Group Integrity

  The bill creates some level of benefits inequity between current and new employees, since new employees automatically participate in the Deferred Compensation Program (unless the employee opts out), and therefore new employees are likely to accumulate greater overall retirement assets.

- Competitiveness

  No impact.

- Purchasing Power Retention

  While the bill does not directly impact retirement benefits under the main retirement plans of the System, it indirectly enhances the purchasing power of retirement benefits by increasing overall retirement assets for members who contribute to the Deferred Compensation Program.

- Preservation of Benefits

  No impact.

- Portability

  The bill may enhance the portability of assets by providing for a means to accumulate additional retirement savings in the Deferred Compensation Program that may be used to purchase service in the Hybrid Plan.

- Ancillary Benefits

  No impact.

Funding Policy Issues

- Actuarial Impacts

  This bill would likely have an actuarial impact on the Hybrid Plan, as noted earlier.

- Investment Impacts

  - Asset Allocation: The bill does not create new investment asset allocation issues.

  - Cash Flow Impacts: The bill does not create new cash flow needs.

Administration Issues

- Implementation Issues

  The bill will require substantial administrative resources for implementation, including the following tasks:

  - Amend the Deferred Compensation Program plan documents to permit automatic enrollment;

  - Develop forms and procedures for employees to opt out of the automatic enrollment feature;

  - Select a default investment vehicle for employees automatically enrolled in the Deferred Compensation Program who do not select an investment option on their own;

  - Distribute initial employee communications about the automatic enrollment provisions, opt out process and default investment vehicle, as well as periodic reminders to employees who have not selected an investment option to do so.

- Administrative Costs

  The bill will have an impact on administrative resources due to necessary implementation measures. In addition, automatic enrollment is likely to increase the number of small accounts that must be administered, thereby increasing overall administrative and recordkeeping costs for the Deferred Compensation Program. This financial impact may be offset to some extent by lower administrative fees charged by the Deferred Compensation Program vendors if total assets increase to specified levels.

- <u>Needed Authority</u>

  The bill does appear to provide sufficient levels of administrative and governance authority to the PERS Board to implement the changes made by the bill. N.D.C.C. §34-14-04.1, which requires written authorization by employees in order to withhold any amounts from compensation, provides a specific exception for amounts required to be withheld under State (and federal) law.

- <u>Cross Impact on Other Plans</u>

  No impact.

- <u>Employee Communications</u>

  Employee communications will be necessary to explain the automatic enrollment provisions, opt out process and default investment vehicle.

<u>Miscellaneous and Drafting Issues</u>

Please note that the Pension Protection Act of 2006 was signed into law on August 17, 2006. The Act addresses automatic enrollment in tax-qualified defined contribution plans that may affect the implementation of this bill. The Act includes a provision that directly affects eligible §457(b) plans with respect to corrective distributions. That is, automatic contributions that an employee elects to treat as an erroneous contribution may be distributed from the plan no later than 90 days after the date of the first elective contribution. An erroneous automatic contribution that is corrected is treated at compensation and not a distribution from the plan.

Please call if you have any questions or comments.

Sincerely,

Michael Moehle, FSA, MAAA, EA	Melanie Walker, JD
Vice President and Actuary	Vice President

cc: Brad Ramirez, FSA, MAAA, EA

DRAFT

September 22, 2006

Representative Matthew M. Klein
Chairman, Legislative Employees Benefits Committee
State of North Dakota
P. O. Box 1657
Bismarck, ND 58502-1657

Re: Review of Proposed Bill:

.

70078.0100 – A bill relating to payment of unused annual leave into a trust to pay future healthcare expenses; increase employee basic life and AD&D insurance to $5,000; establish a separate retired Medicare-eligible prescription drug plan; modify the application of the retiree credit for married couples; change uniform group insurance program eligibility for temporary employees of certain political subdivisions; allow the NDPERS Board to receive separate bids for retired Medicare eligible prescription drug coverage; and, permit the establishment of a qualified trust to allow employees to pay for future health care expenses.

Dear Representative Klein,

The following summarizes the above referenced proposed legislation and our professional comments on the financial and technical impact of the bill.

Overview of Proposed Bill

As proposed, this broad-ranging bill addresses the following employee benefits issues:

- Section 1 requires that employees' lump sum accrued sick leave payout and unused annual leave at termination be deposited into a trust (as established under Section 7).

- Section 2 increases basic and AD&D life insurance coverage to $5,000 from the current $1,000 benefit.

- Section 3 creates a new subsection to the Century Code that creates separate coverage for "retired Medicare-eligible group prescription drug coverage" in response to the new federal Medicare Part D drug plan.

- Section 4 revises the policy on how the retiree health care credit will be applied for married couples where both parties are eligible for the credit.

- Section 5 changes the eligibility requirements for a "temporary employee" of political subdivisions to a minimum of twenty hours per week and at least twenty weeks per year.

- Section 6 relates to Section 3 above and authorizes the Board to bid and contract for a separate Medicare retiree drug plan distinct from the active employees' plan.

- Section 7 gives the Board the authority to establish a trust to maintain employer and employee funds resulting from Section 1 above to be used for future health care expenses.

<u>Expected Financial Impact</u>

Most of the provisions in proposed bill 70078.0100 are cost neutral and do not warrant financial analysis. For those provisions that do have a potential financial impact, we have addressed below. As noted, we have not done an actuarial analysis of any of the provisions. Should the State require more extensive analysis, including an actuarial assessment, we would be pleased to provide those services.

- Section 1 – No financial impact other than administrative time and cost to establish trust and track and allocate sick and annual leave.

- Section 2 – Financial impact will be increased life insurance premium costs to the State and participating employers (and employees if there are any contributions required).

- Section 3 – No financial impact. However, when combined with Section 6 (described below), there are potential savings to PERS.

- Section 4 – The Segal Company has been retained to provide the financial analysis for this section.

- Section 5 – The enrollment data needed to perform a detailed financial impact analysis was not provided. However, due to the prospective nature of the proposed bill (effective for employees employed on or after August 1, 2007), the immediate impact would be negligible. From an actuarial and underwriting perspective, increasing the number of minimum hours required to become eligible for coverage should improve the program's claim experience. We should note that insurance industry standard minimum hours for eligibility range from 20 to 30 per week. Therefore, the proposed change puts PERS more in line with traditional underwriting requirements.

- Section 6 – As a result of Medicare Part D retiree drug coverage that became effective in 2006, a number of organizations specializing in retiree drug administration have entered the market. Although we cannot qualify or even speculate that NDPERS will achieve savings from "unbundling" Medicare retiree drug coverage from its active and early retiree medical plan, we do believe that it is prudent to do so. By unbundling this specific line of coverage, NDPERS can independently assess the most cost effective alternative for its retirees. Further, because NDPERS is eligible to receive the federal Medicare drug subsidy, it is wise to determine if it is optimizing federal payments.

  There are costs associated with this provision, most notably the time and expense associated with issuing and evaluating a separate RFP for Medicare drug administration services. Should NDPERS select a different carrier or vendor from the one used for its medical plan, there would be added administrative costs associated with overseeing two separate contracts. However, the potential for savings to Medicare retirees and NDPERS could easily offset the added costs, especially in the longer term. Consequently, we recommend support of this provision of the proposed bill.

- Section 7 – There would be, primarily one-time, costs associated with the establishment of the trust vehicle. Additionally, there could be costs for an outside administrator of the individual trust accounts and financial management of those accounts. If these administrative and financial functions are handled externally, there would likely be costs associated with selecting vendors through a competitive bid process. Alternatively, if NDPERS elects to handle these functions internally, there would be staff and other resource costs. We do not have enough data to estimate the relative financial impact of these two alternative approaches to trust account administration. If provided with more specific information, we would be pleased to perform costs estimates.

Technical Comments

Our only technical comments are directed to Section 1 of the proposed bill. As long as applicable state and federal requirements are followed, there does not appear to be any compliance concerns with the remaining sections.

As we have reported previously to NDPERS, it is our understanding of federal regulations that in order to be tax exempt, contributions of unused sick and vacation leave to a trust for healthcare expenses, must not be done on an elective basis. If an employee has the option to elect payment of unused leave or take cash, then the payments to the trust must be done on an after-tax basis.

Reviewing the proposed legislation, it is not clear to us whether it requires all eligible employees to have accrued unused sick and annual leave paid on their behalf to the trust. It required, it then appears to meet federal regulations to have the transfer to the trust done on a tax exempt basis. However, if this is not required for either or both of the leaves, then the ability to avoid taxation appears problematic.

One section of the proposed bill states, “An employer payment of unused annual leave *must* be paid on the employee’s behalf into the trust established under section 7 of this Act.” This appears to imply that payout of annual leave to the trust is mandatory. If that were the case, then the funds would move to the trust on a tax exempt basis.

The treatment of accrued sick leave does not appear to be as conclusive in the proposed bill. We could not find any language that requires mandatory (non-elective) payout of accrued sick leave directly to the trust. Without that requirement, we are concerned that sick leave could not be contributed on a tax exempt basis. If the intent of the bill’s authors is to allow sick leave to be contributed on a tax exempt basis, then we suggest that the bill’s language be made clearer regarding the mandatory nature of the election.

Gallagher Benefit Services, Inc. is not licensed to provide legal advice. If NDPERS desires to have a qualified legal opinion concerning this proposed piece of legislation, we suggest that it consult qualified employee benefits legal counsel.

We appreciate the opportunity to provide input on this proposed bill. Please let me know if we can provide any further assistance.

Sincerely,

William F. Robinson, Jr.
Area Vice President

cc: Sparb Collin

THE SEGAL COMPANY
6300 South Syracuse Way, Suite 750 Englewood, CO 80111
T 303.714.9900 F 303.714.9990 www.segalco.com

October 16, 2006

Representative Matthew M. Klein
Chairman, Legislative Employee Benefits Committee
State of North Dakota
Bismarck, North Dakota

Re: **Technical Comments – Bill Draft No. 70078.0100**

Dear Representative Klein:

The following presents our analysis of the proposed changes found in Bill Draft No. 70078.0100, Section 4:

Systems Affected: Retiree Health Benefit Fund

Summary: Section 4. of the proposed legislation would permit those members where both the member and spouse have credit in the Fund to combine credits towards monthly retiree premiums under the uniform group insurance program.

Actuarial Cost Analysis: It appears that this bill would have no significant actuarial impact on the Retiree Health Benefit Fund.

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

Benefits Policy Issues

➢ Adequacy of Retirement Benefits

The bill has no direct impact on retirement benefits. However, the bill indirectly enhances retirement benefits for a limited group of retirees, who have spouses with credit under the Retiree Health Benefit Fund and desire family coverage under the uniform group insurance program, by reducing the need for such retirees to use their retirement benefits to pay for retiree health premiums.

- <u>Benefits Equity and Group Integrity</u>

  The bill allows married members the opportunity to receive all of the benefit they have earned.

- <u>Purchasing Power Retention</u>

  The bill indirectly helps maintain purchasing power of retirement benefits by increasing funds available to certain members for retiree health benefits, and thus reducing the need for such retirees to use retirement benefits to pay retiree health premiums.

- <u>Preservation of Benefits</u>

  No impact.

- <u>Portability</u>

  No impact.

- <u>Ancillary Benefits</u>

  No impact.

<u>Funding Policy Issues</u>

- <u>Actuarial Impacts</u>

  The bill would likely have no significant actuarial impact on the Retiree Health Benefit Fund, as noted earlier.

- <u>Investment Impacts</u>

  - Asset Allocation: The bill does not create new investment asset allocation issues.

  - Cash Flow Impacts: The bill does not create new cash flow needs.

<u>Administration Issues</u>

- <u>Implementation Issues</u>

  Administrative changes will need to be made to implement this provision on the PERS business system.

- <u>Administrative Costs</u>

Minimal costs will be incurred relating to implementing this change on the PERS business system.

- Needed Authority

  The bill does appear to provide sufficient levels of administrative and governance authority to the PERS Board to implement the changes made by the bill.

- Cross Impact on Other Plans

  As noted earlier, the ability to combine credits towards family coverage for affected retirees will reduce the need for such retirees to use retirement benefits to pay for retiree health premiums.

- Employee Communications

  Employee communications will be necessary to explain the new rules applicable to spouses combining credit under the Retiree Health Benefit Fund.

Please call if you have any questions or comments.

Sincerely,

Michael Moehle, FSA, MAAA, EA
Vice President and Actuary

Melanie Walker, JD
Vice President

cc: Brad Ramirez, FSA, MAAA, EA

147465v1/01640.004

THE SEGAL COMPANY
6300 South Syracuse Way, Suite 750 Englewood, CO 80111
T 303.714.9900 F 303.714.9990 www.segalco.com

October 16, 2006

Representative Matthew M. Klein
Chairman, Legislative Employee Benefits Committee
State of North Dakota
Bismarck, North Dakota

Re: **Technical Comments – Bill Draft No. 70079.0100**

Dear Representative Klein:

The following presents our analysis of the proposed changes found in Bill Draft No. 70079.0100:

Systems Affected: Retiree Health Benefit Fund

Summary: The proposed legislation would increase the required monthly contribution to the Retiree Health Benefit Fund from 1.00% of monthly salary to 1.15% of monthly salary and increase the monthly retiree health credit from $4.50 per year of credited service to $5.00 per year of credited service. There is also a corresponding contribution rate increase for nonteaching employees of the superintendent of public instruction with a higher contribution rate for a specified period that is intended to fund past service.

Actuarial Cost Analysis: It appears that this bill would have an actuarial impact on the Retiree Health Benefit Fund. Implementation of the bill would result in an estimated immediate increase to the required contribution of 0.15% of payroll.

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

General

The purpose of the provision of the bill which increases the required contribution to the Retiree Health Benefit Fund is to provide adequate funding for an increased monthly retiree health credit in order to help members keep up with the rising cost of health care.

Benefits Policy Issues

- Adequacy of Retirement Benefits

  The bill has no direct impact on retirement premiums. However, the bill indirectly enhances retirement benefits by reducing the need for retirees to use their retirement benefits to pay for retiree health benefits.

- Benefits Equity and Group Integrity

  The increase in contributions to and benefits payable from the Retiree Health Benefit Fund impact the Hybrid Plan, Highway Patrolmen's Retirement System and Defined Contribution Plan equally.

- Purchasing Power Retention

  The retiree health credit has diminished in value over the years in terms of offsetting the cost of health insurance. Since the credit has remained fairly constant over time but the cost of insurance has continued to escalate the percent offset by the plan has been getting smaller. The following table shows how the benefit has diminished over the years as health premiums have increased:

Year	Credit	Credit with 25 Years of Service	NonMedicare Family Premium	%	Medicare Family Premium	%
1989	$3.00	$ 75.00	$360.07	21%	$190.50	39%
1991	$4.00	$100.00	$321.00	31%	$230.00	43%
1993	$4.50	$112.50	$368.00	31%	$230.00	49%
1995	$4.50	$112.50	$390.00	29%	$239.00	47%
1997	$4.50	$112.50	$438.48	26%	$264.98	42%
1999	$4.50	$112.50	$500.38	22%	$308.62	36%
2001	$4.50	$112.50	$570.00	20%	$339.30	33%
2003	$4.50	$112.50	$702.47	16%	$415.18	27%
2005	$4.50	$112.50	$781.86	14%	$427.24	26%
2006	$4.50	$112.50	$781.86	14%	$329.24	34%

- Preservation of Benefits

  The bill proposes an increase in contributions to 1.15%. The proposed level of increase will pay for the increase from $4.50 to $5.00. It may also provide additional funds to pay down the unfunded actuarial accrued liability of the system at a faster rate. This in turn will free up additional funds that can be used to continue to increase the credit in future years. By setting up this mechanism it will help to preserve the value of the benefit for several years.

- Portability

  No impact.

- Ancillary Benefits

  No impact.

Funding Policy Issues

- Actuarial Impacts

  The bill would have an actuarial impact on the System, as noted earlier. The increased employer contributions that would be required are estimated to have the following effect on the PERS employer groups:

NDPERS MAIN SYSTEM COSTS 8/2006
$5.00 Health Credit / 1.15% Contribution

GROUP	EMPLOYEES	MONTHLY PAYROLL	BIENNIAL PAYROLL	1% HEALTH CREDIT	1.15% HEALTH CREDIT	INCREASE	INCREASE General (45.83%)	INCREASE Other
STATE	6,965	$21,436,119	$514,466,856	$5,144,669	$5,916,369	$771,700	$353,670	$418,030
HIGHER ED	2,683	$5,791,137	$138,987,288	$1,389,873	$1,598,354	$208,481		$208,481
COUNTY	3,162	$7,910,106	$189,842,544	$1,898,425	$2,183,189	$284,764		$284,764
SCHOOLS	4,145	$6,866,897	$164,805,528	$1,648,055	$1,895,264	$247,208		$247,208
CITIES	519	$1,482,604	$35,582,496	$355,825	$409,199	$53,374		$53,374
OTHERS	434	$1,047,747	$25,145,928	$251,459	$289,178	$37,719		$37,719
TOTAL:	17,908	$44,534,610	$1,068,830,640	$10,688,306	$12,291,552	$1,603,246	$353,670	$1,249,576

- Investment Impacts

  - Asset Allocation: The bill does not create new investment asset allocation issues.

  - Cash Flow Impacts: The bill would have a substantial, positive impact on cash flow.

Administration Issues

- Implementation Issues

  While this bill would have minimal effect on PERS administrative costs as noted above.

- Administrative Costs

  No impact.

- Needed Authority

  The bill appears to provide sufficient levels of administrative and governance authority to the PERS Board to implement the changes made by the bill.

- Cross Impact on Other Plans

  As noted earlier, an increase in the monthly amount of the retiree health credit will reduce the need for retirees to use benefit payments from the retirement systems for retiree health benefits.

- Employee Communications

  Employee communications will be necessary to explain the increase in the retiree health credit amount.

Please call if you have any questions or comments.

Sincerely,

Michael Moehle, FSA, MAAA, EA
Vice President and Actuary

Melanie Walker, JD
Vice President

cc: Brad Ramirez, FSA, MAAA, EA

THE SEGAL COMPANY
6300 South Syracuse Way, Suite 750 Englewood, CO 80111
T 303.714.9900 F 303.714.9990 www.segalco.com

October 16, 2006

Representative Matthew M. Klein
Chairman, Legislative Employee Benefits Committee
State of North Dakota
Bismarck, North Dakota

Re: **Technical Comments – Bill Draft No. 70080.0100**

Dear Representative Klein:

The following presents our analysis of the proposed changes found in Bill Draft No. 70080.0100:

Systems Affected: North Dakota Public Employees Retirement System (Hybrid Plan and Defined Contribution Plan) and Highway Patrolmen's Retirement System

Summary: The proposed legislation would increase the employer contribution rate from 16.17% to 21.7% of salary for the Highway Patrolmen's Retirement System and from 4.12% to 5.12% of salary for the Hybrid Plan and Defined Contribution Plan. In addition, the proposed legislation would provide for an increase of 2% of monthly retirement benefits to retirees and their beneficiaries in both the Hybrid Plan and the Highway Patrolmen's Retirement System effective August 1, 2009.

Actuarial Cost Analysis: It appears that this bill would have an actuarial impact on the Hybrid Plan and Highway Patrolmen's Retirement System. Based upon a two-year amortization, the cost to each of the divisions as a percent of payroll is given in the following table:

	Two-year Amortization (% of Payroll)
Main	0.64%
Judges	1.43%
National Guard	0.36%
Law Enforcement (with Prior Service)	0.00%*
Law Enforcement (without Prior Service)	0.00%*
Highway Patrol	3.95%

** The cost of this bill to the Law Enforcement plans is estimated to be less than 0.05% of pay.*

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

Benefits Policy Issues

- Adequacy of Retirement Benefits

  No impact.

- Benefits Equity and Group Integrity

  Post-retirement increases to the monthly benefits from the Hybrid Plan create some level of benefits inequity between the Hybrid Plan and the Defined Contribution Plan because, although contributions to both Plans remain the same, there are no post-retirement increases paid from the Defined Contribution Plan.

- Competitiveness

  No impact.

- Purchasing Power Retention

  The proposed post-retirement increase continues the Board's policy of maintaining purchasing power of retirement benefits through ad hoc increases when such are affordable. However, a 2% increase in monthly benefits is not anticipated to fully maintain the purchasing power of retirement benefits whenever price inflation exceeds the amount of the post-retirement payment.

- Preservation of Benefits

  Increased funding to the Systems in the form of additional employer contributions will more than pay for the proposed post-retirement increases. It may also provide additional funds to pay down the unfunded actuarial accrued liability of the Systems at a faster rate. This in turn will free up additional funds that may be used to increase retirement and/or post-retirement benefits in future years. By setting up this additional funding mechanism it will help preserve the value of benefits from the Systems for several years.

- Portability

  No impact.

- Ancillary Benefits

  No impact.

Funding Policy Issues

- Actuarial Impacts

  The bill would have an actuarial impact on the System, as noted earlier.

- Investment Impacts

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

Administration Issues

- Implementation Issues

  While this bill would have no impact on administrative costs of the Systems, it would have an effect on the participating employers since their required contributions would increase substantially.

- Administrative Costs

  No impact.

- Needed Authority

  The bill appears to provide sufficient levels of administrative and governance authority to the PERS Board to implement the changes made by the bill.

- Cross Impact on Other Plans

  No impact.

- Employee Communications

  Employee communications will be necessary to explain the post-retirement increase to monthly retirement benefits.

Please call if you have any questions or comments.

Sincerely,

Michael Moehle, FSA, MAAA, EA
Vice President and Actuary

Melanie Walker, JD
Vice President

cc: Brad Ramirez, FSA, MAAA, EA

147100v1/01640.004

DRAFT

September 22, 2006

Representative Matthew M. Klein
Chairman, Legislative Employees Benefits Committee
State of North Dakota
P. O. Box 1657
Bismarck, ND 58502-1657

Re: Review of Proposed Bill:

700100.0100 – A bill relating to expansion of the uniform group insurance program to allow participation by employees of private sector employers and individuals and to allow licensed agents to sell the program and receive commissions.

Dear Representative Klein,

The following summarizes the above referenced proposed legislation and our professional comments on the financial and technical impact of the bill.

Overview of Proposed Bill

As proposed, this bill would expand the uniform group insurance program to allow participation by permanent and temporary employees of private sector employers and any other individual who is without health insurance coverage. It would also authorize the Board to allow licensed agents to sell the uniform program and receive commissions.

Expected Financial Impact

From a general health benefits actuarial and underwriting perspective, our concerns with this bill are as follows.

- The bill allows employers and individuals to voluntarily elect coverage in the uniform group insurance program. The potential of "adverse selection" against the program is significant. This is especially true for individuals, who would elect coverage on personal or family medical needs without adequate financial protection for the program.

- The bill, as written, appears to require integrating the voluntary private sector groups and individuals with the existing PERS experience. This would inevitably result in adverse claim experience to the PERS risk pool by increasing the proportion of individuals whose participation is elective rather than mandatory.

- Unlike the existing uniform program that requires an employer-employee relationship (which is a traditional requirement of group insurance) and a minimum employee contribution, this proposed bill contains neither of these requirements. The absence of these two conditions further increases the adverse selection against the program, which ultimately affects the costs for the State and its covered employees.

- With limited ability to medically underwrite the risk (see Technical section), private sector groups and individuals with no access to medical coverage or those with prohibitively high premiums will be attracted to the uniform program. This would negatively impact costs for the State and its covered employees.

- The bill would allow "temporary" employees of private sector employers to enroll in the program. It is not insurance industry standard practice to allow temporary employees to participate in health coverages. The potential for adverse selection is too great to reasonably underwrite this category of employee.

Because NDPERS' medical and life insurance coverages are insured and not self-funded, its insurance carriers would need to determine if they are willing to underwrite any additional risks created by this proposed bill. If they were not at risk, they would then determine if premium rates would need to be increased for the State and covered employees to offset any additional risk.

Technical Comments

We have two primary technical concerns with the proposed bill. First, is its potential impact on NDPERS governmental status. Second, is the ability to apply reasonable risk selection techniques to minimize adverse risk to the program.

The proposed bill would permit non-governmental employees to join the uniform group insurance program, which currently only permits governmental entities to participate. Including non-governmental employees in the program raises the question whether it would jeopardize its government plan status.

This proposed bill includes a provision for the Board to operate the group insurance program as a governmental plan provided that the Board applies to the federal government and receives exempt status under the Employee Retirement Income Security Act (ERISA) for the uniform group insurance plan.

At PERS request, our Compliance Department previously researched the question relating to allowing non-governmental employees to enroll in the NDPERS benefit plan. In an effort to address the impact of this legislation, we have identified five (5) Department of Labor Advisory Opinion letters that address the question whether the status of the Plan as a "governmental plan" under section 3(32) of ERISA would be adversely affected if it were to extend benefits to certain private sector employees.

The common areas of response in Department of Labor's five Advisory Opinions regarding coverage of private sector individuals under governmental plans are as follows.

ERISA section 4(b)(1) provides that Title I of ERISA does not apply to any employee benefit plan that is a "governmental plan" as defined in ERISA section 3(32). Section 3(32) of ERISA defines the term "governmental plan," in pertinent part, as "a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing."

In the Advisory Opinion letters provided, the DOL consistently indicates that a plan's governmental status would not be adversely affected by participation of a de minimis number of private sector employees. However, if a benefit arrangement is extended to cover more than a de minimis number of private sector employees, the Department may not consider it a governmental plan under Title 1 of ERISA.

The specific circumstances in each of the cases provided do not allow for any direct comparison to the proposed NDPERS legislation; however, it appears that if the number of non-governmental participants meets the de minimis test cited above, your non-ERISA status would remain. For your reference the Advisory Opinion Letters used in our research are as follows:

2005-21A ERISA Sec.3 (32), 2005-17A ERISA Sec.3 (32), 95-27A ERISA Sec.3 (32), 2002-11A ERISA Sec.3 (32), and 2000-08A ERISA Sec.3 (32)

The DOL Advisory Opinion Letters for these cases and others can be accessed from their website at www.dol.gov/ebsa/regs/Aos/main.html. Advisory Opinion Letters are not necessarily conclusive. However, it appears likely that the number of non-governmental members electing coverage under this proposed bill could eventually exceed the de minimis standard.

The proposed bill would not have a significant impact upon the PERS plan if PERS can use appropriate underwriting rules and premium adjustments to make sure that the introduction of these additional groups and individuals will not increase the overall risk profile of the existing plan. The bill as written states that the "Board may apply medical underwriting requirements and risk adjusted premiums to an employer seeking coverage and.... and to deny coverage if …the risk created by the employer is undesirable." There is a question whether HIPAA would allow PERS the ability to underwrite new applicants to its plans in a manner to eliminate adverse selection.

In 1996, the federal government passed the Health Insurance Portability and Accountability Act (HIPAA). In particular, HIPAA's nondiscrimination rules several restricted the use of medical underwriting and risk-adjusted premiums for healthcare coverage. The pertinent question is whether HIPAA would prohibit NDPERS from using medical underwriting and risk-adjusted premiums when adding the new groups to the uniform group insurance program.

It is our understanding that the HIPAA nondiscrimination standards adopted by the Department of Health and Human Services apply to any entity that is:

- A *health* care provider that conducts certain transactions in electronic form
- A *health* care clearing house, or
- A *health* care plan

PERS' uniform insurance program clearly meets the HIPAA definition of a "covered entity" as a health plan. Therefore, it is our opinion that PERS is subject to the non-discrimination requirements unless it qualifies for an exemption as described below.

A nonfederal governmental employer that provides self-funded group heath plan coverage to its employees may elect to exempt its plan from the non-discrimination requirements of HIPAA. However, applicability is very limited. It does not apply to either insured or self-funded plans of employers that are not governmental employers, or to insured plans of governmental employers. An election must be completed annually. However, it is likely that this exception may not apply if NDPERS allows private sector plans into its program as permitted by the proposed bill. As noted, the exception only applies to self-funded "governmental employers."

In conclusion, as long as NDPERS continues to insure its health plans, it is our opinion that it must comply with HIPAA's nondiscrimination requirements. Consequently, it would not be able to "apply medical underwriting and risk-adjusted premiums" as stated in the proposed bill. Alternatively, if it decides to self-fund and allow non-governmental employees in the plan as allowed by the proposed bill, we question whether the governmental exemption would then apply.

Section 10 of the bill appears to recognize potential obstacles with ERISA and HIPAA. It states that the bill would only be enacted if the Board receives an ERISA exemption and HIPAA portability provisions are not violated. Further, it states an insurer must agree to underwrite the expanded group.

Gallagher Benefit Services, Inc. is not licensed to provide legal advice. If NDPERS desires to have a qualified legal opinion concerning this proposed piece of legislation, we suggest that it consult qualified employee benefits legal counsel.

We appreciate the opportunity to provide input on this proposed bill. Please let me know if we can provide any further assistance.

Sincerely,

William F. Robinson, Jr.
Area Vice President

cc: Sparb Collin

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

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

FAX: (701) 328-3920 ● EMAIL: NDPERS@state.nd.us ● discovernd.com/NDPERS

Memorandum

TO: **NDPERS Board**

FROM: **Kathy**

DATE: **October 13, 2006**

SUBJECT: **Deferred Compensation – Sunset Life Participation**

We annually update the Investment Options Summary booklet for plan participants. According to Section II.N of the Provider Administrative Agreement the Provider….”must report annually such information as the Board may require related to the Provider’s investment products. In connection with this report, the Provider must also provide a list of fees and distribution options in a format as specified by the Retirement Board. “

We recently requested this information from Sunset Life and they responded that Sunset Life will no longer be issuing any new policies and, therefore, assume that they will no longer need to provide this information. They did indicate they will continue to honor the Administrative Agreement which includes providing the quarterly and annual reports as well as the quarterly employee statements. Following is the current status of the plan:

Participants:	8
Contributing Participants:	4
Participants in Payout Status:	0
Total Assets:	$354,895.31

Failure to comply with the provisions of the Provider Agreement is cause for the Board to consider the Loss of Active Provider Status suspension. Under this type of suspension, Sunset Life and its agents may not enroll any new participants. However, it may continue to receive contributions from existing participants. Sunset Life Insurance Company has acknowledged that it is closed to new business and will no longer enroll NDPERS members in its deferred compensation product. Kansas City Life will continue to administer all previously issued Sunset Life policies under the Sunset Life banner.

Attached is a notice from the authorized representative for Sunset Life, Marci Alexander, verifying its position. As such, we are bringing this to the Board’s attention in order to formalize the suspension of Sunset Life as an active provider.

Staff recommends that the Board approve the Loss of Active Provider Status for Sunset Life.

Board Action Requested

Approve staff recommendation

From: Alexander, Marci [malexander@kclife.com]
Sent: Wednesday, October 04, 2006 3:30 PM
To: Allen, Kathy M.
Cc: Latimer, Ken
Subject: Sunset Life

October 4, 2006

Kathy Allen
NDPERS
400 E Broadway, Ste 505
Bismarck, ND 58502

Dear Ms. Allen:

Sunset Life Insurance Company has been closed to new business. Kansas City Life will continue to administer all previously issued Sunset Life policies under the Sunset Life banner. We will also continue to honor the Administrative Contract, providing employer/employee reports as required.

We recently received your request for the annual performance report but we do not believe it's applicable any longer. Since Sunset Life is not issuing any new contracts, we do not want to cause any confusion. However, we would be happy to provide you with any information regarding the policies currently in-force.

If you have questions or require any assistance do not hesitate to contact me at 800-678-3668 extension 8474 or Ken Latimer at extension 8360.

Respectfully,

Marci R. Alexander
Assistant Vice President,
Special Plan Administration

L.R. Wechsler, Ltd.

North Dakota Public Employees Retirement System

Legacy Application System Review Project

Monthly Status Report – September 30, 2006

Activities and tasks accomplished this reporting period

- General
  - Assisted Deb with ITD Quarterly Status report.
  - Began work of consolidating all workbook material into the RFP.
- Workbook 1 – Procurement Information
  - No additional work this reporting period.
- Workbook 2 – To Be Business Requirements – Checklist
  - No additional work this reporting period.
- Workbook 3 – Desired To Be Functionality – Narrative
  - No additional work this reporting period.
- Workbook 4 – Technical Requirements
  - Workbook was delivered on 9/10 for review prior to consolidation into final draft of RFP.
- Workbook 5 – Other Requirements
  - Table of contents for the workbook was reviewed and sections assigned to staff.
  - Requirements gathering sessions were held through the month.
  - The completed workbook was delivered on 10/2 to NDPERS to review and hold for consolidation.
- Workbook 6 – Mandatory Options
  - Data gathering sessions were conducted through the month.
  - Some options initially added to the list were subsequently removed. Specifically, they were: Insurance Claims Processing; Health Savings Accounts, HRAs and Debit Card Administration; Transition to NDPERS- provided Post Implementation Support.
  - Final draft of workbook was submitted for review with a meeting scheduled to determine what remaining options might be pulled.
  - After some discussion the options were divided into "Mandatory Options" and "Other Options." The bidder may or may not respond to the Other Options. The must respond to Mandatory Options or the proposal will be considered non-responsive.
  - Revisions arising from "Mandatory Options" versus "Other Options" discussion were incorporated in the Options workbook.
- Workbook 7 – Terms and Conditions

- The workbook draft was delivered on 9/7 for review with an action item for NDPERS regarding insurance coverage.
    - Deb and Andy discussed the Insurance and Indemnification section with Jo Zschomler of the Risk Management Division. The recommended revisions were made to the workbook.
- Workbook 8 – Proposal Format
    - Modifications were made to the evaluation criteria section following a discussion between Sparb, Sherry Neas (OMB), Chris Fikes and Andy regarding the level of detail required of that area.
- Attachments
    - NDPERS gathered appendices material through the month.
    - LRWL reviewed the structure of the appendices directory. The directory will be copied to CD-ROM for distribution to the bidders as necessary.

Activities planned for the next month

- General
    - Provide evaluation criteria to Sparb for board meeting.
- RFP Development
    - Develop the RFP from the various workbooks
    - Conduct internal QA on the RFP.
    - Submit consolidated RFP to NDPERS on 10/23 with review instructions.
    - Meet with NDPERS week of 10/30 to address any open items and finalize the RFP for publication in November.

Problems Encountered this Period

- None

Reconciliation of Progress

- None

Problems Anticipated Next Period

- None

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

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

FAX: (701) 328-3920 ● EMAIL: NDPERS@state.nd.us ● discovernd.com/NDPERS

Memorandum

TO: PERS Board

FROM: Sparb & Deb

DATE: **October 16, 2006**

SUBJECT: **Proposed Evaluation Methodology for System Replacement Request for Proposal Results**

Attached is a matrix illustrating the proposed methodology for evaluating the responses we receive from the Request for Proposals for our system replacement project. This method includes six steps:

1. Minimum Qualifications
2. Cost Review
3. Detailed Proposal Scoring
4. Finalists Scoring – Reference Checks
5. Site Visits
6. Consolidated Scoring

As you review each of the steps, you will see what is involved in each tier as well as who will be participating. This process has been drafted to comply with OMB bid requirements and we have met with an OMB procurement representative to gather input and review. She has indicated that this process is consistent with these requirements. Subject to your approval of this methodology, we will utilize this approach when responses have been received. Request for Proposals will be sent out in mid – to late November.

NDPERS - Proposal Evaluation Process Matrix

Step	Process Description	Rating Method
I	**Minimum Qualifications** Conducted by LASR Project Manager and LRWL Resource ▪ Conduct high-level review of material provided by the bidder in the proposal package. ▪ Determine whether bidder and proposal package meet the minimum requirements set forth in the RFP. ▪ Separate “Compliant” proposals from “Noncompliant” proposals. ▪ Report results to IT Steering Committee and determine if minor deficiencies may be remedied. ▪ Advance list of “Compliant” proposals to Step II. Outcome – Forward on for Cost Review proposals that meet minimum qualifications.	Pass/Fail
II	**Cost Review** Conducted by Executive Director, Research & Planning Analyst and LRWL Resource ▪ Open cost proposals for bidders advancing from Step I ▪ Determine whether cost is within funding level. ▪ Dismiss those significantly above funding level or significantly below (where it is clear bidder did not understand level of effort required). ▪ Report results to IT Steering Committee and determine if deficiencies may be remedied. ▪ Advance list of proposals to Step III. Outcome – Forward proposals that are within budget for Detail Proposal Review.	Pass/Fail

NDPERS - Proposal Evaluation Process Matrix

<table>
<tr><th>Step</th><th>Process Description</th><th>Rating Method</th></tr>
<tr><td>III</td><td>Detailed Proposal Scoring

Conducted by IT Steering Committee with assistance where necessary from NDPERS Subject Matter Experts and ITD Personnel.

▪ Assign proposal sections to IT Steering Committee members and, for each assigned section:
  o Review proposal section, generate questions from proposal and distribute to bidders. Incorporate feedback when bidder response is returned.
  o Review proposals relative to RFP requirements. As group, discuss strengths and weaknesses of sections under review. Two IT Steering Committee members independently determine score. Dialog and arrive at consensus score.
  o Submit consensus score to LASR Project Manager for section under review. Enter score in scoring spreadsheet.
▪ Incorporate cost data from cost proposals in scoring spreadsheet.
▪ Rank order bidders based on outcome from Step III.
▪ Report results to IT Steering Committee.
▪ Advance list of proposals for finalists to Step IV.

Outcome – Proposals are scored 0-100 with finalists moving to Finalists Scoring.</td><td>Scoring 0-100

Weights
Solution Features – 30%
Vendor Qualifications and Experience – 20%
Proposed Project Methodology and Work Plan – 25%
Cost – 25%</td></tr>
<tr><td>IV</td><td>Finalists Scoring

Conduct reference check calls using up to four (4) NDPERS personnel. Following each call and for each call:

▪ As group, discuss bidder strengths and weaknesses based on call.
▪ Dialog and arrive at consensus score for reference.</td><td>Scoring 0-65

Weights
References – 30%
Demonstrations – 35%</td></tr>
</table>

NDPERS - Proposal Evaluation Process Matrix

Step	Process Description	Rating Method
	▪ Submit consensus score to LASR Project Manager for reference. Enter score in scoring spreadsheet. ▪ Report results to IT Steering Committee Conduct Bidder Product Demonstrations with all of IT Steering Committee and select NDPERS staff as appropriate in attendance and scoring: ▪ Evaluate demonstration for delivery, project team strength, and satisfaction of Product Demonstration Scenario requirements. ▪ As group, following presentation, discuss bidder strengths and weaknesses based on demonstration. ▪ Dialog and arrive at consensus score for demonstration. ▪ Submit consensus score for bidder to LASR Project Manager. Enter score in scoring spreadsheet. Derive scores for Step IV from scoring spreadsheet. Continue to Step V with those deemed susceptible to award. Outcome – Bidders are scored 0-65 for reference checks and demonstrations.	

NDPERS - Proposal Evaluation Process Matrix

Step	Process Description	Rating Method
V	**Site Visits** Conduct Site Visits for all Bidders deemed reasonably susceptible to award ▪ Evaluate site visits for satisfaction with vendor, project team, product, performance, implementation process, post-implementation support, etc. ▪ As group, discuss bidder strengths and weaknesses based on visit. ▪ Dialog and arrive at consensus score for bidder. ▪ Submit consensus score to LASR Project Manager for bidder. Enter score in scoring spreadsheet. ▪ Report results to IT Steering Committee. Continue to Step VI with scores recorded in spreadsheet. Outcome – Bidders are scored 0-35 for site visits.	Scoring 0-35 **Weights** Site Visits – 35%
VI	**Consolidated Scoring** Conducted by LASR Project Manager. ▪ Combine scores from Steps III, IV and V and rank order bidders. Outcome – Combined score from Step III and IV indicates selected bidder.	Combination of III,IV and V

AGENDA

NORTH DAKOTA STATE INVESTMENT BOARD MEETING

FRIDAY, OCTOBER 20, 2006, 8:30 AM
JOB SERVICE ND
1601 E Century

RECEIVED
OCT 16 '06
ND PERS

I. CALL TO ORDER.

II. APPROVAL OF MINUTES OF SEPTEMBER 22, 2006, MEETING

III. BOARD EDUCATION.

A. Enhanced MBS Strategy in Fixed Income/Insurance Trust - Hyperion Brookfield - Mr. John Dolan, Mr. Richard Torykian

IV. GOVERNANCE.

A. Investments

1. Work on Fixed Income/Insurance Trust - Mr. Cochrane

B. Administration

1. Acceptance of TFFR Investment Guidelines - Mrs. Flanagan (enclosed)
2. Workplan Update - Mr. Cochrane (enclosed)

V. QUARTERLY MONITORING - QUESTIONS ONLY (BOARD APPROVAL NEEDED).

1. Executive Limitations/Staff Relations - Mr. Cochrane (enclosed)
2. Budget/Financial Conditions - Mrs. Flanagan (enclosed)
3. Investment Program - Mr. Cochrane (enclosed)
4. Retirement Program - Mrs. Kopp (enclosed)

VI. OTHER.

SIB Meeting - November 17, 2006, 8:30 a.m. - Job Service ND
SIB Audit Committee Meeting - November 17, 2006, 1:00 p.m. - Job Service ND

VII. ADJOURNMENT.

Any individual requiring an auxiliary aid or service must contact the Executive Director of the Retirement and Investment Office (701) 328-9885 at least three (3) days prior to the scheduled meeting.

STATE INVESTMENT BOARD
MINUTES OF THE
SEPTEMBER 22, 2006, BOARD MEETING

BOARD MEMBERS PRESENT:
Lt. Governor Jack Dalrymple, Chair
Howard Sage, Vice Chair
Sandy Blunt, Workforce Safety & Insurance
Clarence Corneil, TFFR Board
Mike Gessner, TFFR Board
Ron Leingang, PERS Board
Gary Preszler, Land Commissioner
Rosey Sand, PERS Board (via teleconference)
Mark Sanford, TFFR Board
Kelly Schmidt, State Treasurer

MEMBERS ABSENT:
Jim Poolman, Insurance Commissioner

STAFF PRESENT:
Steve Cochrane, Executive Director
Connie Flanagan, Fiscal & Investment Officer
Susan Gefroh, Investment Accountant
Bonnie Heit, Office Manager
Les Mason, Supervisor Internal Audit

OTHERS PRESENT:
Weldee Baetsch, former SIB trustee
John Calamos, Calamos Investments
Martin Coughlin, Calamos Investments
Bill Kalanek, AFPE/NDRTA
Larry Kohn, JP Morgan
Glenn Muscosky, JP Morgan
Aaron Webb, Attorney General's Office
Joe Westby, NDEA

CALL TO ORDER:

Lt. Governor Dalrymple, Chair of the State Investment Board (SIB), called the meeting to order at 8:30 a.m. on Friday, September 22, 2006, at Job Service ND, 1601 E Century, Bismarck, ND.

THE FOLLOWING MEMBERS WERE PRESENT REPRESENTING A QUORUM: MR. BLUNT, MR. LEINGANG, MR. SAGE, TREASURER SCHMIDT, DR. SANFORD, MS. SAND, MR. GESSNER, COMMISSIONER PRESZLER, MR. CORNEIL, AND LT. GOVERNOR DALRYMPLE.

ABSENT: COMMISSIONER POOLMAN

Mr. Steve Cochrane, Executive Director, introduced and welcomed Mr. Aaron Webb, Attorney General's Office to the Board meetings. Mr. Webb replaces Mr. Scott Miller as the SIB's legal counsel.

MINUTES:

The Board considered the minutes of the August 18, 2006, meeting,

TREASURER SCHMIDT MOVED AND MR. CORNEIL SECONDED TO APPROVE THE AUGUST 18, 2006, MEETING MINUTES.

AYES: MR. BLUNT, COMMISSIONER PRESZLER, MR. GESSNER, MR. LEINGANG, LT. GOVERNOR DALRYMPLE, MR. SAGE, MS. SAND, DR. SANFORD, MR. CORNEIL, AND TREASURER SCHMIDT,
NAYS: NONE

MOTION CARRIED
ABSENT: COMMISSIONER POOLMAN

BOARD EDUCATION:

Infrastructure Investment Opportunity - Mr. Larry Kohn and Mr. Glenn Muscosky, reviewed JP Morgan's Infrastructure investment opportunity.

A copy of their presentation is on file at the Retirement and Investment Office.

The Board recessed at 10:00 am and reconvened at 10:15 am.

Convertible Bonds - Mr. John Calamos and Mr. Martin Coughlin, reviewed Calamos' convertible bond investment opportunity.

A copy of their presentation is on file at the Retirement and Investment Office.

GOVERNANCE:

INVESTMENTS

Work on Infrastructure Opportunity - Mr. Cochrane reviewed the Infrastructure investment opportunity with JP Morgan. Mr. Cochrane recommended investing $100 million of the Pension Trust's Fixed Income portfolio with JP Morgan. After discussion,

MR. BLUNT MOVED AND TREASURER SCHMIDT SECONDED TO COMMIT UP TO $100 MILLION OF THE PENSION TRUST'S FIXED INCOME PORTFOLIO INTO JP MORGAN'S INFRASTRUCTURE ALLOCATION. A ROLL CALL VOTE WAS TAKEN:

AYES: DR. SANFORD, TREASURER SCHMIDT, MR. BLUNT, MR. LEINGANG, MR. GESSNER, MR. CORNEIL, LT. GOVERNOR DALRYMPLE, MS. SAND
NAYS: COMMISSIONER PRESZLER, MR. SAGE

MOTION CARRIED.
ABSENT: COMMISSIONER POOLMAN

Work on Convertibles - Mr. Cochrane reviewed the convertible bond portfolio within the Pension Trust's Fixed Income portfolio. He recommended the convertible bond portfolio of approximately $70 million be transferred from Trust Company of the West (TCW) to Calamos Investments.

MR. SAGE MOVED AND DR. SANFORD SECONDED TO TRANSFER THE MANAGEMENT OF THE CONVERTIBLE BOND PORTFOLIO WITHIN THE PENSION TRUST'S FIXED INCOME PORTFOLIO FROM TCW TO CALAMOS INVESTMENTS. A ROLL CALL VOTE WAS TAKEN:

AYES: COMMISSIONER PRESZLER, DR. SANFORD, LT. GOVERNOR DALRYMPLE, MR. SAGE, MR. CORNEIL, MR. GESSNER, MS. SAND, MR. LEINGANG, AND MR. BLUNT
NAYS: NONE

MOTION CARRIED.
ABSENT: COMMISSIONER POOLMAN, TREASURER SCHMIDT

ADMINISTRATION

Workplan Update - Mr. Cochrane reviewed an updated workplan for the Board's consideration.

DR. SANFORD MOVED AND MR. BLUNT SECONDED TO ACCEPT THE REVISED WORKPLAN.

AYES: LT. GOVERNOR DALRYMPLE, MR. BLUNT, COMMISSIONER PRESZLER, MR. LEINGANG, DR. SANFORD, MS. SAND, MR. SAGE, MR. CORNEIL, AND MR. GESSNER
NAYS: NONE

MOTION CARRIED.
ABSENT: COMMISSIONER POOLMAN, TREASURER SCHMIDT

OTHER:

Mr. Cochrane informed the Board, Mr. Jim Pugash, co-founder/chairman of Hearthstone passed away September 20, 2006.

ADJOURNMENT:

The next SIB meeting is scheduled for October 20, 2006 at Job Service ND, 1601 E. Century, Bismarck, ND 58503, at 8:30 a.m.

With no further business to come before the Board, Lt. Governor Dalrymple adjourned the meeting at 12:10 p.m.

Respectfully Submitted:

Lt. Governor Dalrymple Chair, State Investment Board	Bonnie Heit Reporting Secretary