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Bill Draft No. 15.0136.01

August 27, 2014

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

Re: **Technical Comments – Bill Draft No. 15.0136.01000**

Dear Sparb:

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

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

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

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

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

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

General

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

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

Benefits Policy Issues

> **Adequacy of Retirement Benefits**

No impact.

> **Benefits Equity and Group Integrity**

No impact.

> **Competitiveness**

No impact.

> **Purchasing Power Retention**

No impact.

> **Preservation of Benefits**

No impact.

> **Portability**

No impact.

> **Ancillary Benefits**

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

Funding Policy Issues

➤ **Actuarial Impacts**

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

➤ **Investment Impacts**

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

Administration Issues

➤ **Implementation Issues**

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

➤ **Administrative Costs**

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

➤ **Needed Authority**

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

➤ **Integration**

No impact.

➤ **Employee Communications**

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

➤ **Compliance Issues**

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

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

➤ Miscellaneous and Drafting Issues

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

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

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

Sincerely,

Sincerely,

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

Melanie Walker, JD
Vice President

/cz

cc: Tammy Dixon
Laura Mitchell

Memo

Date: September 16, 2014
To: Sparb Collins, Executive Director NDPERS
From: Josh Johnson and Pat Pechacek
Subject: REVIEW OF PROPOSED BILL 15.0136.0100 SECTIONS 8, 9, 10 AND 11

Deloitte Consulting was asked to review sections 8 through 11 of proposed bill 15.0136.0100 specifically to provide our opinion as to whether the proposed changes will have any actuarial cost impact. We reviewed the applicable sections of the proposed bill and discussed with NDPERS staff. The following summarizes our understanding of each section's proposed changes and the potential for actuarial cost impact.

Section 8

The purpose of this amendment is to allow automatic enrollment of eligible individuals into the employer paid basic life and employee assistance programs. In discussions with NDPERS staff, it was confirmed that this amendment will not increase enrollment in either benefit program or otherwise change the underlying demographics of plan enrollment. Due to this, we would not expect any impact on program cost or experience as a result of the amendment.

Section 9

The purpose of this amendment is to clarify that only those political subdivisions large enough to be eligible to join the group under federal ACA regulations can do so. We would not anticipate any material actuarial impact due to this clarification.

Section 10

The purpose of this amendment is to clarify temporary employee eligibility due to the delay in the enforcement of the shared responsibility penalties of the federal ACA regulations (i.e. change the eligibility end date from 12/31/13 to 12/31/14). We do not anticipate any actuarial impact due to this change.

To: Sparb Collins

Subject: REVIEW OF PROPOSED BILL 15.0136.01000

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Section 11

The intent of this amendment is to clarify that if a political subdivision wants to offer the HDHP, they cannot also offer the PPO/Basic plan to their employees. After discussions with NDPERS staff we understand the reasoning behind this amendment to be to avoid ACA and administrative issues with a political subdivision potentially offering the non-grandfathered HDHP along with the grandfathered PPO/Basic plan. We would not anticipate any material actuarial impact due to this requirement.

Attachment A – HEART Act Provisions
PROPOSED AMENDMENTS TO Bill NO. 15.0136.01000

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

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

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

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

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

Page 1, after line 12, insert:

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

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

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

provided under the plan if the participating member had resumed employment and then terminated employment on account of death. The period of such member's qualified military service is treated as vesting service under the plan."

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

Page 6, line 11, after second comma, insert "as amended,"

Page 11, after line 8, insert:

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

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

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

Renumber accordingly.

Attachment B: Additional Technical Corrections
PROPOSED AMENDMENTS TO BILL NO. 15.0136.01000

Page 1, line 2, after third comma, add "subsection 3 of section 54-52-17"

Page 4, after line 18, insert:

SECTION 5. AMENDMENT. Subsection 3 of section 54-52-17 of the North Dakota Century Code is amended and reenacted as follows:

3. Retirement dates are defined as follows:
 - a. Normal retirement date, except for a national guard security officer or firefighter or a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, is:
 - (1) The first day of the month next following the month in which the member attains the age of sixty-five years; or
 - (2) When the member has a combined total of years of service credit and years of age equal to eighty-five and has not received a retirement benefit under this chapter.
 - b. Normal retirement date for a national guard security officer or firefighter is the first day of the month next following the month in which the national guard security officer or firefighter attains the age of fifty-five years and has completed at least three eligible years of employment-as-a national guard security officer or firefighter.
 - c. Normal retirement date for a peace officer or correctional officer employed by a political subdivision is:
 - (1) The first day of the month next following the month in which the peace officer or correctional officer attains the age of fifty-five years and has completed at least three eligible years of employment-as-a peace officer or correctional officer; or
 - (2) When the peace officer or correctional officer has a combined total of years of service credit and years of

age equal to eighty-five and has not received a retirement benefit under this chapter.

- d. Normal retirement date for a peace officer employed by the bureau of criminal investigation is:
 - (1) The first day of the month next following the month in which the peace officer attains the age of fifty-five years and has completed at least three eligible years of employment-as-a-peace-officer; or
 - (2) When the peace officer has a combined total of years of service credit and years of age equal to eighty-five and has not received a retirement benefit under this chapter.
- e. Postponed retirement date is the first day of the month next following the month in which the member, on or after July 1, 1977, actually severs or has severed the member's employment after reaching the normal retirement date.
- f. Early retirement date, except for a national guard security officer or firefighter or a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, is the first day of the month next following the month in which the member attains the age of fifty-five years and has completed three years of eligible employment. For a national guard security officer or firefighter, early retirement date is the first day of the month next following the month in which the national guard security officer or firefighter attains the age of fifty years and has completed at least three years of eligible employment. For a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, early retirement date is the first day of the month next following the month in which the peace officer or correctional officer attains the age of fifty years and has completed at least three years of eligible employment.
- g. Disability retirement date is the first day of the month after a member becomes permanently and totally disabled, according to medical evidence called for under the rules of the board, and has completed at least one hundred eighty days of eligible employment. For supreme and district court judges, permanent and total disability is based solely on a judge's inability to perform judicial duties arising out of

physical or mental impairment, as determined pursuant to rules adopted by the board or as provided by subdivision a of subsection 3 of section 27-23-03. A member is eligible to receive disability retirement benefits only if the member:

- (1) Became disabled during the period of eligible employment; and
- (2) Applies for disability retirement benefits within twelve months of the date the member terminates employment.

A member is eligible to continue to receive disability benefits as long as the permanent and total disability continues and the member submits the necessary documentation and undergoes medical testing required by the board, or for as long as the member participates in a rehabilitation program required by the board, or both. If the board determines that a member no longer meets the eligibility definition, the board may discontinue the disability retirement benefit. The board may pay the cost of any medical testing or rehabilitation services it deems necessary and these payments are appropriated from the retirement fund for those purposes.

Page 5, line 5, remove "under the method listed in paragraph 1"

Page 10, line 16, replace "2013" with "2015"

Renumber accordingly

Attachment C - IRS Amendments
PROPOSED AMENDMENTS TO BILL NO. 15.0136.01000

Page 1, line 4, remove the second "and"

Page 1, line 4, after "54-52.1-18" insert ", and 54-52.6-21"

Page 1, line 6 replace "system's" with "system defined benefit and defined contribution plan"

Page 1, line 17, overstrike "in effect on August 1,"

Page 1, line 17, replace "2015" with "as amended"

Page 6, line 21 overstrike "in effect on August 1,"

Page 6, line 21, replace "2015" with "as amended"

Page 11, after line 8, insert:

"SECTION 12. AMENDMENT. Section 54-52.6-21 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-21. Internal Revenue Code compliance.

The board shall administer the plan in compliance with the following sections of the Internal Revenue Code ~~in effect on August 1, 2013~~ as amended, as they apply to governmental plans:

1. Section 415, including the defined contribution limitations under section 415(c)(1)(A) and (B) of the Internal Revenue Code and the Treasury Regulations thereunder, which are incorporated herein by reference.
 - a. In accordance with the defined contribution limitations under section 415(c) of the Internal Revenue Code, annual additions (as defined in section 415(c)(2) of the Internal Revenue Code) under this plan may not exceed the limitations set forth in section 415(c)(1)(A) and (B), as adjusted under section 415(d) of the Internal Revenue Code, effective January first of each year following a regular legislative session.
 - b. If a participating member's aggregate annual additions exceed the defined contribution limitations under section 415(c) of the Internal Revenue Code, the member's annual

additions must be reduced to the extent necessary to comply with section 415(c) of the Internal Revenue Code and the Treasury Regulations thereunder.

2. The minimum distribution rules under section 401(a)(9) of the Internal Revenue Code and the regulations issued under that provision to the extent applicable to governmental plans. Accordingly, benefits must be distributed or begin to be distributed no later than a member's required beginning date, and the required minimum distribution rules override any inconsistent provision of this chapter. A member's required beginning date is April first of the calendar year following the later of the calendar year in which the member attains age seventy and one-half or terminates employment.
3. The annual compensation limitation under section 401(a)(17) of the Internal Revenue Code, as adjusted for cost-of-living increases under section 401(a)(17)(B).
4. The rollover rules under section 401(a)(31) of the Internal Revenue Code. Accordingly, a distributee may elect to have an eligible rollover distribution, as defined in section 402(c)(4) of the Internal Revenue Code, paid in a direct rollover to an eligible retirement plan, as defined in section 402(c)(8)(B) of the Internal Revenue Code, specified by the distributee.
5. If the plan of retirement benefits set forth in this chapter is terminated or discontinued, the rights of all affected participating members to accrued retirement benefits under this chapter as of the date of termination or discontinuance is nonforfeitable, to the extent then funded.”

Renumber accordingly