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Bill Draft No. 15.0137.01

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. 15.0137.01000**

Dear Sparb:

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

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

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

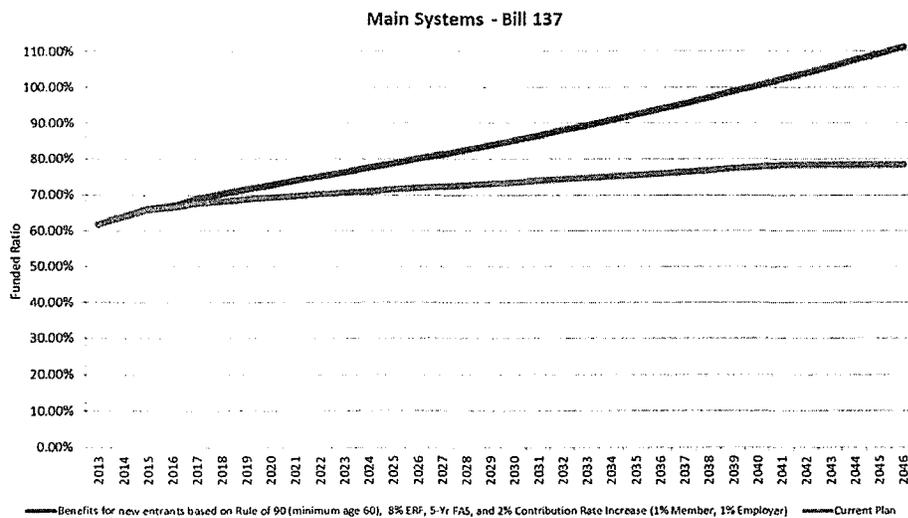
- Peace officers in the Hybrid Plan employed by the State bureau of criminal investigation, for which member contributions would *decrease* by 0.5% of monthly salary, rather than increase. While not part of the draft bill, we have assumed the employer contributions will not decrease in 2016 unless approved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

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

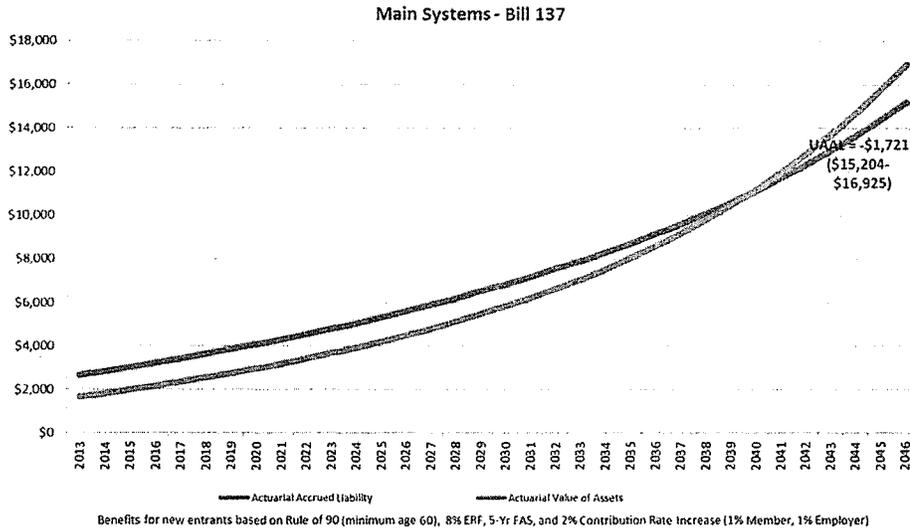
- Final average salary would be based on the five highest periods of twelve consecutive months employed during the one hundred eighty months immediately preceding retirement, excluding months without earnings. Currently, final average salary is based on the highest salary for any thirty six months employed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

Actuarial Cost Analysis:

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



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



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

General

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

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

Benefits Policy Issues

> **Adequacy of Retirement Benefits**

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

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

> **Benefits Equity and Group Integrity**

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

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

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

➤ Competitiveness

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

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

➤ Purchasing Power Retention

No impact.

➤ Preservation of Benefits

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

➤ Portability

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

➤ Ancillary Benefits

- No impact.
- Social Security: No impact.

Funding Policy Issues

➤ Actuarial Impacts

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

➤ Investment Impacts

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

Administration Issues

➤ Implementation Issues

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

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

➤ Administrative Costs

No impact.

➤ Needed Authority

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

➤ Integration

No impact.

➤ Employee Communications

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

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

> Miscellaneous and Drafting Issues

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

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

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

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

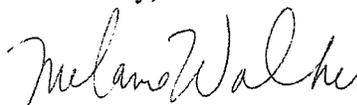
The information contained in this letter is provided within our role as the plan's actuary and benefits consultant and is not intended to provide tax or legal advice. We recommend that you address all issues described herein with your legal counsel. Please call if you have any questions or comments.

Sincerely,



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

Sincerely,



Melanie Walker, JD
Vice President

/cz

cc: Tammy Dixon
Laura Mitchell

NDPERS Retirement Legislation
2015 Session
LC 15.0137.01000

Proposed Legislation	Reason	Comments
<p>SECTION 1. AMENDMENT. Section 54-52-02.9 of the North Dakota Century Code is amended and reenacted as follows:</p> <p>54-52-02.9. Participation by temporary employees. A temporary employee may elect, within one hundred eighty days of beginning employment, to participate in the public employees retirement system and receive credit for service after enrollment. The temporary employee shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and; with an additional two percent increase, beginning with the reporting period of January 2013, and; with an additional increase of two percent, beginning with the monthly reporting period of January 2014; <u>and with an additional increase of two percent, beginning with the monthly reporting period of January 2016.</u> The temporary employee shall also pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. An employer may not pay the temporary employee's contributions. A temporary employee may continue to participate as a temporary employee in the public employees retirement system until termination of employment or reclassification of</p>	<p>Increases the contribution rate for temporary employees by 2% for participation in the Main retirement plan January of 2016</p>	

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

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

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

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

Proposed Legislation	Reason	Comments
<p><u>supreme court or district court judge, for members first enrolled after December 31, 2015, final average salary is the average salary earned in the five highest periods of twelve consecutive months employed during the one hundred eighty months immediately preceding retirement. Months not employed without earnings are excluded in arriving at the thirty-six months to be used for the purpose of computing an average. If the For a participating member first enrolled before January 1, 2016, who has worked for less than thirty-six months at the normal retirement date, the final average salary is the average salary for the total months of employment. Except for a national guard security officer or firefighter, a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, or a supreme court or district court judge, for members first enrolled after December 31, 2015, who worked for less than sixty months at the normal retirement date, the final average salary is the average salary for the total months of employment.</u></p> <p>3. Retirement dates are defined as follows:</p> <p>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:</p> <p>(1) The first day of the month next following the month in which the member attains the age of sixty-five years; or</p> <p>(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.</p> <p>b. <u>Except for a national guard security officer or firefighter, a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, or a supreme court or district court judge, normal retirement</u></p>	<p>2016 and after, replaces highest 36 months with a 60 month period of highest five twelve month periods</p>	<p>After "the" insert "last"</p> <p>Replace "immediately preceding retirement" with "of employment"</p>

Proposed Legislation	Reason	Comments
<p>date for members first enrolled after December 31, 2015 is:</p> <p><u>(1) The first day of the month next following the month in which the member attains the age of sixty-five years; or</u></p> <p><u>(2) When the member has a combined total of years of service credit and years of age equal to ninety and the member attains a minimum age of sixty and has not received a retirement benefit under this chapter.</u></p> <p><u>c.</u> Normal retirement date for a national guard security officer or firefighter is the first day of the month next following the month in which the national guard security officer or firefighter attains the age of fifty-five years and has completed at least three eligible years of employment as a national guard security officer or firefighter.</p> <p><u>e.d.</u> Normal retirement date for a peace officer or correctional officer employed by a political subdivision is:</p> <p>(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</p> <p>(2) When the peace officer or correctional officer has a combined total of years of service credit and years of age equal to eighty-five and has not received a retirement benefit under this chapter.</p> <p><u>d.e.</u> Normal retirement date for a peace officer employed by the bureau of criminal investigation is:</p> <p>(1) The first day of the month next following the month in which the peace officer attains the age of fifty-five years and has completed at least three eligible years of employment as a peace officer; or</p> <p>(2) When the peace officer has a combined total of years of service credit and years of age equal to eighty-five and has not received a retirement benefit under this chapter.</p> <p><u>e.f.</u> Postponed retirement date is the first day of the month next following the month in which the member, on or after July</p>	<p>For those hired January 1, 2016 and after, changes the Rule of 85 to the rule of 90 and requires a minimum age of 60</p>	

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<p>1, 1977, actually severs or has severed the member's employment after reaching the normal retirement date.</p> <p>f.g. Early retirement date, except for a national guard security officer or firefighter or a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, is the first day of the month next following the month in which the member attains the age of fifty-five years and has completed three years of eligible employment. For a national guard security officer or firefighter, early retirement date is the first day of the month next following the month in which the national guard security officer or firefighter attains the age of fifty years and has completed at least three years of eligible employment. For a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, early retirement date is the first day of the month next following the month in which the peace officer or correctional officer attains the age of fifty years and has completed at least three years of eligible employment.</p> <p>g. <u>h</u>. Disability retirement date is the first day of the month after a member becomes permanently and totally disabled, according to medical evidence called for under the rules of the board, and has completed at least one hundred eighty days of eligible employment. For supreme and district court judges, permanent and total disability is based solely on a judge's inability to perform judicial duties arising out of physical or mental impairment, as determined pursuant to rules adopted by the board or as provided by subdivision a of subsection 3 of section 27-23-03. A member is eligible to receive disability retirement benefits only if the member:</p> <p>(1) Became disabled during the period of eligible employment; and</p> <p>(2) Applies for disability retirement benefits within twelve months of the date the member terminates employment. A</p>		

Proposed Legislation	Reason	Comments
<p>member is eligible to continue to receive disability benefits as long as the permanent and total disability continues and the member submits the necessary documentation and undergoes medical testing required by the board, or for as long as the member participates in a rehabilitation program required by the board, or both. If the board determines that a member no longer meets the eligibility definition, the board may discontinue the disability retirement benefit. The board may pay the cost of any medical testing or rehabilitation services it deems necessary and these payments are appropriated from the retirement fund for those purposes.</p> <p>4. The board shall calculate retirement benefits as follows:</p> <p>a. Normal retirement benefits for all retirees, except supreme and district court judges, reaching normal retirement date equal an annual amount, payable monthly, comprised of a service benefit and a prior service benefit, as defined in this chapter, which is determined as follows:</p> <p>(1) Service benefit equals two percent of final average salary multiplied by the number of years of service employment.</p> <p>(2) Prior service benefit equals two percent of final average salary multiplied by the number of years of prior service employment.</p> <p>b. Normal retirement benefits for all supreme and district court judges under the public employees retirement system reaching normal retirement date equal an annual amount, payable monthly, comprised of a benefit as defined in this chapter, determined as follows:</p> <p>(1) Benefits must be calculated from the time of appointment or election to the bench and must equal three and one-half percent of final average salary multiplied by the first ten years of judicial service, two and eighty hundredths percent of final average salary multiplied by the second ten years of judicial service, and one and one-fourth percent of final average salary multiplied by the number of years of judicial service exceeding</p>		

Proposed Legislation	Reason	Comments
<p>twenty years.</p> <p>(2) Service benefits must include, in addition, an amount equal to the percent specified in subdivision a of final average salary multiplied by the number of years of nonjudicial employee service and employment.</p> <p>c. Postponed retirement benefits are calculated as for single life benefits for those members who retired on or after July 1, 1977.</p> <p>d. Early retirement benefits are calculated as for single life benefits accrued to the date of termination of employment, but must be actuarially reduced to account for benefit payments beginning prior to the normal retirement date, which is the earlier of age sixty-five or the age at which current service plus age equals eighty-five. <u>Except for a national guard security officer or firefighter, a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, or a supreme court or district court judge, early retirement benefits for members first enrolled after December 31, 2015, are calculated for single life benefits accrued to the date of termination of employment, but must be reduced by a fixed rate of eight percent to account benefit payments beginning before the normal retirement date.</u> A retiree, other than a supreme or district court judge, is eligible for early retirement benefits only after having completed three years of eligible employment. A supreme or district court judge retiree is eligible for early retirement benefits only after having completed five years of eligible employment.</p> <p>e. Except for supreme and district court judges, disability retirement benefits are twenty-five percent of the member's final average salary. Disability retirement benefits for supreme and district court judges are seventy percent of final average salary reduced by the member's primary social security benefits and by any workforce safety and insurance benefits paid. The minimum monthly disability retirement</p>	<p>For those hired after 1/1/2016 increases early retirement reduction applicable for retiring earlier than 65 from 6% per year to 8%</p>	<p>Insert "per year" after "percent" to clarify simple interest is used</p>

Proposed Legislation	Reason	Comments
<p>benefit under this section is one hundred dollars.</p> <p>5. Upon termination of employment after completing three years of eligible employment, except for supreme and district court judges, who must complete five years of eligible employment, but before normal retirement date, a member who does not elect to receive early retirement benefits is eligible to receive deferred vested retirement benefits payable commencing on the member's normal retirement date in one of the optional forms provided in subsection 9. Members who have delayed or inadvertently failed to apply for retirement benefits to commence on their normal retirement date may choose to receive either a lump sum payment equal to the amount of missed payments, or an actuarial increase to the form of benefit the member has selected, which increase must reflect the missed payments.</p> <p>6. If before retiring a member dies after completing three years of eligible employment, except for supreme and district court judges, who must have completed five years of eligible employment, the board shall pay the member's account balance to the member's designated beneficiary as provided in this subsection. If the member has designated an alternate beneficiary with the surviving spouse's written consent, the board shall pay the member's account balance to the named beneficiary. If the member has named more than one primary beneficiary, the board shall pay the member's account balance to the named primary beneficiaries in the percentages designated by the member or, if the member has not designated a percentage for the beneficiaries, in equal percentages. If one or more of the primary beneficiaries has predeceased the member, the board shall pay the predeceased beneficiary's share to the remaining primary beneficiaries. If any beneficiary survives the member, yet dies before distribution of the beneficiary's share, the beneficiary must be treated as if the beneficiary predeceased the member.</p>		

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<p>If there are no remaining primary beneficiaries, the board shall pay the member's account balance to the contingent beneficiaries in the same manner. If there are no remaining designated beneficiaries, the board shall pay the member's account balance to the member's estate. If the member has not designated an alternate beneficiary or the surviving spouse is the beneficiary, the surviving spouse of the member may select a form of payment as follows:</p> <p>a. If the member was a supreme or district court judge, the surviving spouse may select one of the following optional forms of payment: (1) A lump sum payment of the member's retirement account as of the date of death. (2) Payments as calculated for the deceased member as if the member was of normal retirement age at the date of death, payable until the spouse dies.</p> <p>b. The surviving spouse of all other members may select one of the following options:</p> <p>(1) A lump sum payment of the member's retirement account as of the date of death. (2) Payment of a monthly retirement benefit equal to fifty percent of the deceased member's accrued single life retirement benefits until the spouse dies. (3) If the member dies on or after the member's normal retirement date, the payment of a monthly retirement benefit equal to an amount that would have been paid to the surviving spouse if the member had retired on the day of the member's death and had selected a one hundred percent joint and survivor annuity, payable until the spouse dies. A surviving spouse who received a benefit under this subsection as of July 31, 1995, is entitled to the higher of that person's existing benefit or the equivalent of the accrued benefit available under the one hundred percent joint and survivor provision as if the deceased member were of normal retirement age, with the increase payable beginning August 1,</p>		

Proposed Legislation	Reason	Comments
<p>1995.</p> <p>7. If a member not coming under the provisions of subsection 6 terminates employment because of death, permanent and total disability, or any voluntary or involuntary reason prior to retirement, the member or the member's designated beneficiary is entitled to the member's account balance at termination. The board automatically shall refund a member's account balance if the member has completed less than three years of eligible employment, has an account balance of less than one thousand dollars, and was not a supreme or district court judge. If the member was a supreme or district court judge, the board automatically shall refund a member's account balance if the member completed less than five years of eligible employment. A member may waive the refund if the member submits a written statement to the board, within thirty days after termination, requesting that the member's account balance remain in the fund.</p> <p>8. The surviving spouse of a member receiving retirement benefits must be the member's primary beneficiary unless there is no surviving spouse or the surviving spouse designates an alternate beneficiary in writing. If a member receiving retirement benefits or the member's surviving spouse receiving retirement benefits dies before the total amount of benefits paid to either or both equals the amount of the member's account balance at retirement, the difference must be paid to the named beneficiary of the recipient or, if there is no named beneficiary, to the recipient's estate.</p> <p>9. The board shall adopt rules providing for the receipt of retirement benefits in the following optional forms:</p> <ul style="list-style-type: none"> a. Single life. b. An actuarially equivalent joint and survivor option, with fifty percent or one hundred percent options. c. Actuarially equivalent life with ten-year or twenty-year certain options. 		

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

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<p>under this section.</p> <p>SECTION 6. AMENDMENT. Subsection 1 of section 54-52-17.2 of the North Dakota Century Code is amended and reenacted as follows:</p> <p>1. a. For the purpose of determining eligibility for benefits under this chapter, an employee's years of service credit is the total of the years of service credit earned in the public employees retirement system and the years of service credit earned in any number of the following:</p> <p>(1) The teachers' fund for retirement.</p> <p>(2) The highway patrolmen's retirement system.</p> <p>(3) The teachers' insurance and annuity association of America - college retirement equities fund (TIAA-CREF), for service credit earned while employed by North Dakota institutions of higher education. Service credit may not exceed twelve months of credit per year.</p> <p>b. Pursuant to rules adopted by the board, an employee who has service credit in the system and in any of the plans described in paragraphs 1 and 2 of subdivision a is entitled to benefits under this chapter. The employee may elect to have benefits calculated using the benefit formula in section 54-52-17 under either of the following methods:</p> <p>(1) The average of the highest salary received by the member for any thirty-six months employed during the last one hundred twenty months of employment in the public employees retirement system. If the participating member has worked for less than thirty-six months at retirement, the final average salary is the average salary for the total months of employment. <u>If the participating member was first enrolled</u></p>	<p>Keeps language consistent with</p>	

Proposed Legislation	Reason	Comments
<p>after December 31, 2015, and worked for less than sixty months at retirement, the final average salary is the average salary for the total months of employment.</p> <p>(2) The average of the highest salary received by the member for any thirty-six consecutive months during the last one hundred twenty months of employment with any of the three eligible employers under this subdivision, with service credit not to exceed one month in any month when combined with the service credit earned in the alternate retirement system. The board shall calculate benefits for an employee under this subsection by using only those years of service credit earned under this chapter.</p>	<p>earlier changes.</p>	
<p>SECTION 7. AMENDMENT. Section 54-52.6-02 of the North Dakota Century Code is amended and reenacted as follows:</p> <p>54-52.6-02. (Effective through July 31, 2017) Election.</p> <p>1. The board shall provide an opportunity for eligible employees who are new members of the public employees retirement system under chapter 54-52 to transfer to the defined contribution plan under this chapter pursuant to the rules and policies adopted by the board. An election made by a member of the public employees retirement system under chapter 54-52 to transfer to the defined contribution retirement plan under this chapter is irrevocable. For an individual who elects to transfer membership from the public employees</p>		

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<p>retirement system under chapter 54-52 to the defined contribution retirement plan under this chapter, the board shall transfer a lump sum amount from the public employees retirement system fund to the participating member's account in the defined contribution retirement plan under this chapter. However, if the individual terminates employment prior to receiving the lump sum transfer under this section, the election made is ineffective and the individual remains a member of the public employees retirement system under chapter 54-52 and retains all the rights and privileges under that chapter. This section does not affect an individual's right to health benefits or retiree health benefits under chapter 54-52.1.</p> <p>2. If the board receives notification from the internal revenue service that this section or any portion of this section will cause the public employees retirement system or the retirement plan established under this chapter to be disqualified for tax purposes under the Internal Revenue Code, then the portion that will cause the disqualification does not apply.</p> <p>3. A participating member who becomes a temporary employee may still participate in the defined contribution retirement plan upon filing an election with the board within one hundred eighty days of transferring to temporary employee status. The participating member may not become a member of the defined benefit plan as a temporary employee. The temporary employee electing to participate in the defined contribution retirement plan shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012 and, with an additional increase of two percent, beginning with the monthly reporting period of January 2013, and, with an additional increase of two percent, beginning with</p>	<p>Increases the contribution for DC temporary employees by 2%</p>	

Proposed Legislation	Reason	Comments
<p>the monthly reporting period of January 2014; <u>and with an additional increase of two percent, beginning with the monthly reporting period of January 2016.</u> The temporary employee shall also pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. An employer may not pay the temporary employee's contributions. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee.</p> <p>4. A former participating member who has accepted a retirement distribution pursuant to section 54-52.6-13 and who subsequently becomes employed by an entity different from the employer with which the member was employed at the time the member retired but which does participate in any state-sponsored retirement plan may, before reenrolling in the defined contribution retirement plan, elect to permanently waive future participation in the defined contribution retirement plan, whatever plan in which the new employing entity participates, and the retiree health program and maintain that member's retirement status. Neither the member nor the employer are required to make any future retirement contributions on behalf of that employee.</p> <p>(Effective after July 31, 2017) Election.</p> <p>1. The board shall provide an opportunity for each eligible employee who is a member of the public employees retirement system on September 30, 2001, and who has not made a written election under this section to transfer to the defined contribution retirement plan before October 1, 2001, to elect in writing to terminate membership in the public employees retirement system and elect to become a participating member under this chapter. Except as provided in section 54-52.6-03, an election made by an eligible employee under this section is</p>		

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<p>irrevocable. The board shall accept written elections under this section from eligible employees during the period beginning on July 1, 1999, and ending 12:01 a.m. December 14, 2001. An eligible employee who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. An eligible employee who makes and files a written election under this section ceases to be a member of the public employees retirement system effective twelve midnight December 31, 2001; becomes a participating member in the defined contribution retirement plan under this chapter effective 12:01 a.m. January 1, 2002; and waives all of that person's rights to a pension, annuity, retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective December 31, 2001. This section does not affect a person's right to health benefits or retiree health benefits under chapter 54-52.1. An eligible employee who is first employed and entered upon the payroll of that person's employer after September 30, 2001, may make an election to participate in the defined contribution retirement plan established under this chapter at any time during the first six months after the date of employment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window.</p> <p>2. If an individual who is a deferred member of the public employees retirement system on September 30, 2001, is reemployed and by virtue of that employment is again eligible for membership in the public employees retirement system</p>		

Proposed Legislation	Reason	Comments
<p>under chapter 54-52, the individual may elect in writing to remain a member of the public employees retirement system or if eligible to participate in the defined contribution retirement plan established under this chapter to terminate membership in the public employees retirement system and become a participating member in the defined contribution retirement plan established under this chapter. An election made by a deferred member under this section is irrevocable. The board shall accept written elections under this section from a deferred member during the period beginning on the date of the individual's reemployment and ending upon the expiration of six months after the date of that reemployment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window. A deferred member who makes and files a written election to remain a member of the public employees retirement system retains all rights and is subject to all conditions as a member of that retirement system. A deferred member who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. A deferred member who makes and files a written election to terminate membership in the public employees retirement system ceases to be a member of the public employees retirement system effective on the last day of the payroll period that includes the date of the election; becomes a participating member in the defined contribution retirement plan under this chapter effective the first day of the payroll immediately following the date of the election; and waives all of that person's rights to a pension, an annuity, a retirement allowance, insurance benefit, or any other benefit under the</p>		

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

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<p>the member's suspension must be terminated, the member again becomes a member of the defined contribution retirement plan, and the member's account resumes accepting contributions. At the member's option, and pursuant to rules adopted by the board, the member may transfer any available balance as determined by the provisions of the alternate retirement plan into the member's account under this chapter.</p> <p>4. After consultation with its actuary, the board shall determine the method by which a participating member or deferred member may make a written election under this section. If the participating member or deferred member is married at the time of the election, the election is not effective unless the election is signed by the individual's spouse. However, the board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.</p> <p>5. If the board receives notification from the internal revenue service that this section or any portion of this section will cause the public employees retirement system or the retirement plan established under this chapter to be disqualified for tax purposes under the Internal Revenue Code, then the portion that will cause the disqualification does not apply.</p> <p>6. A participating member who becomes a temporary employee may still participate in the defined contribution retirement plan upon filing an election with the board within one hundred eighty days of transferring to temporary employee status. The participating member may not become a member of the defined benefit plan as a temporary employee. The temporary employee electing to participate in the defined contribution retirement plan shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January</p>		

Proposed Legislation	Reason	Comments
<p>2012, and; with an additional increase of two percent, beginning with the monthly reporting period of January 2013, and; with an additional increase of two percent, beginning with the monthly reporting period of January 2014; <u>and with an additional increase of two percent, beginning with the monthly reporting period of January 2016.</u> The temporary employee shall also pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. An employer may not pay the temporary employee's contributions. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee.</p> <p>7. A former participating member who has accepted a retirement distribution pursuant to section 54-52.6-13 and who subsequently becomes employed by an entity different from the employer with which the member was employed at the time the member retired but which does participate in any state-sponsored retirement plan may, before reenrolling in the defined contribution retirement plan, elect to permanently waive future participation in the defined contribution retirement plan, whatever plan in which the new employing entity participates, and the retiree health program and maintain that member's retirement status. Neither the member nor the employer are required to make any future retirement contributions on behalf of that employee.</p>	<p>Increases the contribution for DC temporary employees by 2%</p>	
<p>SECTION 8. AMENDMENT. Section 54-52.6-09 of the North Dakota Century Code is amended and reenacted as follows:</p> <p>54-52.6-09. Contributions - Penalty.</p> <p>1. Each participating member shall contribute monthly four percent of the monthly salary or wage paid to the participant,</p>		

Proposed Legislation	Reason	Comments
<p>and this assessment must be deducted from the participant's salary in equal monthly installments commencing with the first month of participation in the defined contribution retirement plan established under this chapter. Participating member contributions increase by one percent of the monthly salary or wage paid to the participant beginning with the monthly reporting period of January 2012, and; with an additional increase of one percent, beginning with the reporting period of January 2013, and; with an additional increase of one percent, beginning with the monthly reporting period of January 2014; <u>and with an additional increase of one percent, beginning with the monthly reporting period of January 2016.</u></p> <p>2. The employer shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Employer contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012, and; with an additional increase of one percent, beginning with the monthly reporting period of January 2013, and; with an additional increase of one percent, beginning with the monthly reporting period of January 2014; <u>and with an additional increase of one percent, beginning with the monthly reporting period of January 2016.</u> If the employee's contribution is paid by the employer under subsection 3, the employer shall contribute, in addition, an amount equal to the required employee's contribution. The employer shall pay monthly such contribution into the participating member's account from its funds appropriated for payroll and salary or any other funds available for such purposes. If the employer fails to pay the contributions monthly, it is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due.</p> <p>3. Each employer, at its option, may pay the employee</p>	<p>Increases the active member contribution rate in the Defined Contribution Plan by 1% beginning January 2016</p> <p>Increases the employer contribution rate in the Defined Contribution Plan by 1% beginning January 2016</p>	

Proposed Legislation	Reason	Comments
<p>contributions required by this section for all compensation earned after December 31, 1999. The amount paid must be paid by the employer in lieu of contributions by the employee. If the employer decides not to pay the contributions, the amount that would have been paid will continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the employer may not be included as gross income of the employee in determining tax treatment under this code and the federal Internal Revenue Code until they are distributed or made available. The employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a combination of a reduction in gross salary and offset against future salary increases. Employee contributions paid by the employer must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made before the date on which employee contributions were assumed by the employer. An employer shall exercise its option under this subsection by reporting its choice to the board in writing.</p>		

Proposed Amendments are provided on Attachment A.

Technical comments on Attachment B

Attachment A
PROPOSED AMENDMENTS TO BILL NO. 15.0137.01000

Page 5, line 1, after "the" insert "last"

Page 5, line 1, replace "immediately preceding" with "of employment"

Page 5, line 2, remove "retirement"

Page 8, line 29, after "percent" insert "per year"

Renumber accordingly