

NDTFFR Legislative Proposal – Bill No. 15.0140.01000**LEGISLATIVE COUNCIL EMPLOYEE BENEFITS PROGRAMS COMMITTEE
September 18, 2014****Fay Kopp, Chief Retirement Officer - Deputy Executive Director
ND Retirement and Investment Office - ND Teachers' Fund for Retirement**

Bill No. 140 was submitted by the TFFR Board in March 2014. The bill as currently written updates certain dates to stay current with federal IRC tax law changes as they relate to qualified governmental pension plans. TFFR is required to follow federal tax law in order to maintain its status as a qualified governmental plan.

TFFR's actuarial and benefit consultant, Segal, has reviewed the bill (letter attached), and noted that the plan should be reviewed to determine whether any amendments are needed in order to comply with a recent U.S. Supreme Court ruling in *United States v. Windsor* relating to same-gender marriages. The TFFR Board (jointly with the PERS Board) hired outside tax counsel to conduct a legal analysis to determine what TFFR statutes and operations are implicated by that Supreme Court decision, and subsequently issued IRS guidance, including Rev. Ruling 2013-17. In the *Windsor* decision, the Supreme Court ruled that for purposes of federal law, the term "spouse" shall include both same-sex and opposite-sex spouses. The primary effect of this decision and the subsequent issued IRS guidance for TFFR to maintain its status as a qualified plan is that for federal tax purposes only, a same-sex spouse must be treated the same as an opposite-sex spouse, although for state benefit design purposes, North Dakota may continue to distinguish same-sex spouses from opposite-sex spouses.

Outside tax counsel has identified specific areas of potential IRS concern such as how TFFR administers rollovers of death benefits, benefit limitations, and required minimum distributions. TFFR statutes require the plan to follow federal tax law in these areas. Outside tax counsel has recommended that specific dates be removed from TFFR statutes since it appears to limit the reference to the IRC section to a specific date and time. Such a limitation could raise IRS interpretation questions since that date predates the *Windsor* decision or subsequent IRS guidance.

In reviewing this recommendation with TFFR's legal counsel from the Attorney General's Office and Legislative Council, it was found that Art. X, Sec. 3, of the ND Constitution, allows adoption by reference of federal income tax laws as amended in the future.

Consequently, the TFFR Board has approved a proposed amendment to Bill No. 140 (attached) to remove all IRC date references, and to add "as amended" language to clearly indicate that future IRC changes are intended to be incorporated.

Technical comments from TFFR's actuarial consultant on the amended version of Bill No. 140 will be provided at the Committee's October 2014 meeting.

Section 1. NDCC 15-39.1-04 (10) Definitions: Eligible Retirement Salary

Increases the maximum annual compensation limit that can be used in benefit calculations (\$260,000 in 2014). No active TFFR member currently has a salary large enough to be affected by this limit.

Section 2. NDCC 15-39.1-10(4) Eligibility for benefits

Provision relates to minimum distribution requirements requiring payment of retirement benefits at age 70.5 or termination of employment, whichever is later.

Section 3. NDCC 15-39.1-10.6 Benefit limitations

Increases the Section 415 maximum annual benefit limit (\$210,000 in 2014). To date, no retiree's benefit has exceeded the annual benefit limit.

Section 4. NDCC 15-39.1-20 Withdrawal from Fund

Provides that a member or a member's beneficiary may elect to have an eligible rollover distribution paid to an eligible retirement plan as allowed under IRC regulations.

Section 5. NDCC 15-39.1-24 (8) and (11) Purchase of additional credit

Provides for purchase of up to 5 years of nonqualified service credit and acceptance of eligible rollover distributions and transfers from eligible retirement plans as allowed under IRC regulations.

Section 6. NDCC 15-39.1-34 Internal Revenue Code compliance

Requires the board to administer the TFFR plan in compliance with various sections of the IRC and regulations as they apply to governmental plans.



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September 12, 2014

Senator Dick Dever, Chairman
Employee Benefits Program Committee
c/o Jennifer Clark
North Dakota Legislative Council
State Capitol
600 East Boulevard
Bismarck, ND 58505

Re: **Technical Comments on Draft Bill No. 15.0140.01000**

Dear Senator Dever:

As requested, we reviewed draft Bill No. 15.0140.01000, which proposes technical and administrative changes to the North Dakota Teachers' Fund for Retirement (TFFR). The following presents our analysis of such proposed changes found in the draft bill.

Summary: The proposed legislation updates federal compliance provisions of the plan regarding Internal Revenue Code sections 401(a)(17), 401(a)(9), 401(a)(31) and 415(b) and (d) in various sections of the North Dakota Century Code (NDCC), chapter 15-39.1 (Sections 1, 2, 3 and 4). In addition, the proposed legislation updates Internal Revenue Code sections relating to salary reduction or salary deferral amounts, including sections 125, 132(f), 401(k), 403(b), 414(h) and 457.

Actuarial Cost Analysis: This bill would have an immaterial actuarial cost impact on the TFFR.

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

General Comments

The bill makes various provisions of the plan consistent with current federal income tax laws. The provisions of this bill do not appear to directly or significantly impact the benefits payable from the TFFR.

Compliance Issues

The bill amends various sections of the North Dakota Century Code, chapter 15-39.1 to change references under Internal Revenue Code section 401(a)(9), section 401(a)(17) (as well as Code references related to the definition of compensation under section 401(a)(17)), section 401(a)(31) and section 415(b) and (d) 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 an amendment to the TFFR is 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.

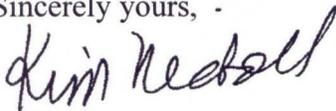
Administrative Issues

In determining whether an amendment for the *Windsor* decision is necessary or desirable, it may be important to review plan operations to ensure that as of June 26, 2013 spouses of participants in legal same-gender marriages have been treated as spouses for all required federal law purposes under the TFFR.

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 contact us if you have any questions or comments.

Sincerely yours, -



Kim M. Nicholl, FSA, EA, FCA
Senior Vice President & Actuary



Melanie Walker, JD
Vice President

cc: Fay Kopp
Matthew Strom

PROPOSED AMENDMENTS TO BILL NO. 15.0140.01000

Page 1, line 2, remove the second “and” and insert a comma

Page 1, line 2, after 15-39.1-20, insert “subsections 8 and 11 of section 15-39.1-24, and section 15-39.1-34”

Page 1, line 13, overstrike “in effect on August 1,”

Page 1, line 13, replace “2015” with “as amended”

Page 1, line 18, overstrike “in effect on August 1,”

Page 1, line 18, replace “2015” with “as amended”

Page 1, line 19, overstrike “in effect on August 1,”

Page 1, line 20, replace “2015” with “as amended”

Page 2, line 23, overstrike “in effect on August 1,”

Page 2, line 23, replace “2015” with “as amended”

Page 2, line 30, overstrike “in effect on August 1,”

Page 2, line 30, replace “2015” with “as amended”

Page 3, line 2, overstrike “subsequent to August 1,”

Page 3, line 2, replace “2015” with “as amended”

Page 3, line 31, overstrike “in effect on August 1,”

Page 3, line 31, replace “2015” with “as amended”

Page 3, after line 31, insert

“SECTION 5. AMENDMENT. Subsections 8 and 11 of section 15-39.1-24 of the North Dakota Century Code are amended and reenacted as follows:

8. A teacher who has at least five years of teaching service credit in the fund may purchase credit not based on service for use toward retirement eligibility and benefits. The purchase of service credit for

such nonqualified service as defined under section 415(n) of the Internal Revenue Code, as amended, is limited to an aggregate of five years.

11. The fund may accept eligible rollovers, direct rollovers, and trustee-to-trustee transfers from eligible retirement plans specified under Internal Revenue Code section 402(c)(8) (B), as amended, to purchase refunded service credit under section 15-39.1-15 and to purchase additional service credit under section 15-39.1-24. The board shall adopt rules to ensure that the rollovers and transfers comply with the requirements of the Internal Revenue Code and internal revenue service regulations. The total amount rolled over or transferred into the fund may not exceed the amount due to purchase service credit.

SECTION 6. AMENDMENT. Section 15-39.1-34 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-34. Internal Revenue Code compliance.

The board shall administer the plan in compliance with section 415, section 401(a)(9), section 401(a)(17), and section 401(a)(31) of the Internal Revenue Code, as amended, and regulations adopted pursuant to those provisions as they apply to governmental plans.”

Renumber accordingly