



5990 Greenwood Plaza Boulevard Suite 118 Greenwood Village, CO 80111-4708
T 303.714.9900 www.segalco.com

DIRECT DIAL NUMBER
(303) 714-9952

E-MAIL ADDRESS
bramirez@segalco.com

October 28, 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. 15.0136.03000**

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, Highway Patrolmen's Retirement System (HPRS) and Defined Contribution Plan (DCP)

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

- Revises the definition of “salary” in the HPRS to exclude expense allowances.
- Automatically updates federal compliance provisions of the Hybrid Plan, HPRS and DCP regarding Internal Revenue Code sections 401(a)(17), 401(a)(9), 401(a)(31), 415(b) and (d), and 402(c)(4), as such sections are amended, in North Dakota Century Code (NDCC) sections 39-03.1-11.2 and 54-52-28 and 54-52.6-21..
- Updates federal compliance provisions for qualified military service in the Hybrid Plan, HPRS and DCP to comply with required amendments under the Heroes Earnings Assistance and Tax Relief Act of 2008 (HEART Act) in NDCC sections 54-52-17.14, 39-03.1-10.3 and 54-52.6-09.4.
- 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.
- Provides clarifying language indicating that the three eligible years of employment required to reach normal retirement date for a national guard security officer or firefighter, a peace officer or correctional officer does not have to be earned in that specific job classification.

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 automatically updates the provisions of the plans to comply with current Internal Revenue Code rules for qualified plans, as those rules are amended. 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 54-52.6, 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 instead be automatically updated as those Code sections are amended. 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).

It is our understanding that external legal counsel reviewed your statutes to determine whether any changes were 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, and advised that revising the Internal Revenue Code references to be automatically updated as the Code sections are amended was sufficient for this purpose. Pursuant to IRS Notice 2014-19, any plan amendment necessary to comply with the *Windsor* decision 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

None.

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