

# Affordable Care Act House Bill 1059

NDPERS  
August 2013

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## HB 1059

*“Section 2 of the bill would amend Section 54-52.1-03.4 of the North Dakota Century Code to modify the uniform group insurance program’s eligibility rules for temporary employees first employed **after December 31, 2013**, and to limit the amount any temporary employee can be required to contribute towards the cost of coverage. **The purpose of the proposed changes is to prevent the State of North Dakota from being subjected to the Employer Shared Responsibility penalties with respect to its temporary employees under the Affordable Care Act. The Shared Responsibility penalty for No Coverage will be \$2,000 per FTE per year. This No Coverage penalty will be imposed only if at least one FTE purchases coverage in a Health Insurance Exchange and qualifies for a Premium Tax Credit or Cost-Sharing Reduction.**”*

Testimony of Sparb Collins

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# HB 1059 & HB 1015

"The fiscal implications in this bill relate to adjusting the definition of temporary employees and their premium payments to comply with the shared responsibility provisions of the Affordable Care Act (ACA)."

"...the bill would change the definition of temporary employee to comply with the definition requirement to meet the shared responsibility requirement of the Affordable Care Act (ACA) and to avoid any penalties for noncompliance.

Pursuant to the ACA, these employees can be charged no more than 9.5% of household income. This additional employer premium requirement is estimated in the expenditures and the additional appropriation is shown as well. The appropriation for this expenditure is in the OMB budget under Health Insurance Pool - Temporary Employees. "

**FISCAL NOTE**  
Requested by Legislative Council  
01/28/2013

Revised  
Amendment to: HB 1059

1. **State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

2. **County, city, school district and township fiscal effect:** Identify the fiscal effect on the appropriate political subdivision.

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
	Counties	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

2. **Bill and fiscal impact summary:** Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 200 characters).

The fiscal implications in this bill relate to adjusting the definition of temporary employees and their premium payments to comply with the shared responsibility provisions of the Affordable Care Act (ACA).

**B. Fiscal impact sections:** Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.

Section 1 of the bill would change the definition of temporary employee to comply with the definition requirement to meet the shared responsibility requirement of the Affordable Care Act (ACA) and to avoid any penalties for non-compliance. Pursuant to the ACA, these employees can be charged no more than 9.5% of household income. This additional employer premium requirement is estimated in the expenditures and the additional appropriation is shown as well. The appropriation for this expenditure is in the OMB budget under Health Insurance Pool - Temporary Employees.

3. **State fiscal effect details:** For information shown under state fiscal effect in 1A, please:

**A. Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

**B. Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

This expenditure is in the executive budget. The intent language is in HB1015 Section 7.

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## New Federal Guidance Announced on July 2, 2013

Treasury Department's July 2, 2013 announcement that it would not enforce IRC §§ 4980H, 6055, and 6056 in 2014,

"As noted, IRS Notice 2013-45 confirms that no employer shared responsibility penalties pursuant to IRC § 4980H will be assessed for 2014."

### What Does this mean?

- **Compliance date in HB 1059 is one year earlier than required to avoid the penalties for noncompliance and to comply with the ACA**
- **State and political subdivisions will incur premium costs that are no longer required to comply**
- **The final regulations almost certainly will be different from the proposed regulations, but the magnitude of change is difficult to predict. However, the additional time afforded by the one-year enforcement delay of the Employer Shared Responsibility penalties affords IRS more opportunity to review the proposed regulations and consider comments by employers and other stakeholders. Thus, the possibility of more significant changes might be greater than otherwise would have been the case.**

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## What Can be Done?

### **54-52.1-08.2. Uniform group insurance program - Compliance with federal requirements - Group purchasing arrangements.**

**If the board determines that any section or the phraseology of any section of this chapter does not comply with applicable federal statutes or rules, the board shall adopt appropriate terminology with respect to that section to comply with the federal statutes or rules, subject to the approval of the legislative management's employee benefits programs committee.**

The board may assume responsibility for group purchasing arrangements as provided by federal law. Any plan modifications made by the board under this section are effective until the effective date of any measure enacted by the legislative assembly providing the necessary amendments to this chapter to ensure compliance with the federal statutes or rules.

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## PER'S Board Mtg – July 25, 2013



- An argument can be “made that the statute may appropriately be used to achieve levels of compliance, or in this instance mirror federal law by acting in accordance with the delayed implementation of the ACA penalty provisions.”
- “In addition, application of statutory rules of interpretation set forth in N.D.C.C. may be used under these circumstances.”
- “The legislative history of 1059 indicated that the primary motivation in passing these amendments was to achieve compliance with the ACA and avoid the responsibility penalties...”
- “Finally, the cost to the State and participating political subdivisions could be mitigated by such a delay.”

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**PER'S Board Mtg –  
July 25, 2013**



*“Therefore, when comparing the result to the State and participating political subdivisions depending on the ability of the NDPER'S Board to use N.D.C.C. 54-52.1-08.2 to achieve a delay in implementation of the amendment to N.D.C.C. 54-52.1-03.4, the presumptions that a just and reasonable result is intended, a result feasible of execution is intended, and the public interest is favored could be argued to favor use of N.D.C.C. 54-52.1-08.2 by the NDPER'S Board in this instance”*

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**PER'S Board Mtg – July 25, 2013**

- In recognition of the purpose for this section of HB 1059 and the legal advice, the Board:

**...MOVED TO HAVE THE DATE IN SECTION 2 OF HOUSE BILL 1059 MOVED BACK ONE YEAR PURSUANT TO THE ACTION OF THE FEDERAL GOVERNMENT IN DELAYING EMPLOYER PENALTIES FOR THE AFFORDABLE CARE ACT.**

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What Can be Done?

**54-52.1-08.2.  
Uniform group  
insurance program  
- Compliance with  
federal  
requirements -  
Group purchasing  
arrangements.**

*If the board determines that any section or the phraseology of any section of this chapter does not comply with applicable federal statutes or rules, the board shall adopt appropriate terminology with respect to that section to comply with the federal statutes or rules, **subject to the approval of the legislative management's employee benefits programs committee.** The board may assume responsibility for group purchasing arrangements as provided by federal law. Any plan modifications made by the board under this section are effective until the effective date of any measure enacted by the legislative assembly providing the necessary amendments to this chapter to ensure compliance with the federal statutes or rules.*