

FISCAL NOTE
Requested by Legislative Council
12/21/2018

Amendment to: SB 2049

- 1 A. **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.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill clarifies the computation of Final Average Salary.

- 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.*

There is no fiscal impact for this bill.

3. **State fiscal effect detail:** *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.*

N/A

- 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.*

N/A

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

N/A

Name: Bryan Reinhardt

Agency: NDPERS

Telephone: 701-328-3919

Date Prepared: 12/26/2018

FISCAL NOTE
Requested by Legislative Council
12/21/2018

Bill/Resolution No.: SB 2049

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N/A

Name: Bryan Reinhardt

Agency: NDPERS

Telephone: 701-328-3919

Date Prepared: 12/26/2018

2019 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2049

2019 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Sheyenne River Room, State Capitol

SB2049
1/11/2019
30696

- Subcommittee
 Conference Committee

Committee Clerk: Pam Dever

Explanation or reason for introduction of bill/resolution:

A bill relating to the computation of final average salary for employees who terminated employment after December 31, 2021.

Minutes:

Att #1 – Scott Miller

Chairman Davison: Open SB2049.

Scott Miller, Executive Director North Dakota PERS: (see att #1) This bill is not a funding bill but a clarification of how we calculate final average salary or FAS. Benefits under the main PERS plan are determined by multiplying a person's years of service times the benefit multiplier times their final average salary. (1.20) This bill changes the definition of final average salary to level salary fluctuations resulting from different pay schedules. It changed to take the average of the three highest periods of 12 consequent months in the last 180 months. We want consistency.

Chairman Davison: (4.39) Do we know how many employees that is?

Scott: We don't know. 50% of employee are employed by political subdivisions.

Chairman Davison: This could have an impact when you go to December 31, 2021. If you can earn 6% more and you are within a year from retiring, that additional 6% may be significant amount of dollars depending how long you live. Is there a way to get a report to see how many this impacts? People close to retirement. Would they lose that after December 31?

Scott: It would be the higher of the two calculations of 2020. After December 31, 2021, if the amount is higher than the new amount, they would get the higher amount.

Chairman Davison: More questions? Thank you. More testimony? Against? Seeing none, we will close the hearing.

2019 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Sheyenne River Room, State Capitol

SB2049
2/7/2019
32395

- Subcommittee
 Conference Committee

Committee Clerk Signature : Pam Dever

Explanation or reason for introduction of bill/resolution:

Relating to the computation of final average salary for employees who terminated employment after December 21, 2021.

Minutes:

Att #1 – Sen Davison amendment

Chairman Davison: Let's look at SB2049. The PERS retirement had an audit and they discovered they were unintentionally paying out differently. It was different if you got paid 26 weeks or 24 weeks. So if you made \$40,000 and they worked the same amount of days for the same amount of years, and one was paid 26 weeks' schedule and one was paid with 24 weeks, they discovered the 26 weeks' person made 6% more in their retirement. Because they take the highest months, there is one month you get three pay checks. I visited with Scott and Sharon, to understand why they needed to wait until 2021 to make the change. I see no reason to wait. As a tax payer, we should not over pay someone when we are told by the audit, this is incorrect. That is what this amendment does. (see att #1)

Sen. Shawn Vedaa: We are overpaying the 26 weeks?

Chairman Davison: Yes. They are changing the formula in here. They take the final average salary. I am saying there is no reason to wait. If this gets to the House, I suspect they will find out how many people this affects. (4.56)

Vice Chair Meyer: I move to adopt the amendment 19.0135.01001.

Sen. Shawn Vedaa: I second.

Chairman Davison: Any discussion? Roll: **YES -- 7 NO -- 0 -0-absent**
Amendment passed.

Vice Chair Meyer: I move a DO PASS as amended.

Sen. Shawn Vedaa: I second.

Chairman Davison: Any discussion? I just remembered that in Fargo, there are 55% of their state people get paid twice a month. Roll: **YES --7 NO -- 0, -0-absent.**
SB2049 PASSED as AMENDED. Sen. Shawn Vedaa will carry the bill.

February 1, 2019

SL
1201

PROPOSED AMENDMENTS TO SENATE BILL NO. 2049

Page 1, line 3, replace "2021" with "2019"

Page 1, line 18, replace "2021" with "2019"

Page 1, line 19, replace "2021" with "2019"

Page 2, line 16, replace "2021" with "2019"

Page 2, line 17, replace "2021" with "2019"

Renumber accordingly

2/7/19

Date:
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES SB 2049
BILL/RESOLUTION NO.

Senate Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: 19.0135.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Sen. Meyer Seconded By Sen. Vedaa

Senators	Yes	No	Senators	Yes	No
Chairman Davison	/		Sen. Oban	/	
Vice Chair Meyer	/		Sen. Marcellais	/	
Sen. Elkin	/				
Sen. K. Roers	/				
Sen. Vedaa	/				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
amend. passed

Date: 2/5/19
 Roll Call Vote #: 2

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES SB 2049
BILL/RESOLUTION NO.

Senate Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Sen. Meyer Seconded By Sen. Vedaa

Senators	Yes	No	Senators	Yes	No
Chairman Davison	/		Sen. Oban	/	
Vice Chair Meyer	/		Sen. Marcellais	/	
Sen. Elkin	/				
Sen. K. Roers	/				
Sen. Vedaa	/				

Total (Yes) 7 No 0

Absent -0-

Floor Assignment Sen. Vedaa

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2049: Government and Veterans Affairs Committee (Sen. Davison, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2049 was placed on the Sixth order on the calendar.

Page 1, line 3, replace "2021" with "2019"

Page 1, line 18, replace "2021" with "2019"

Page 1, line 19, replace "2021" with "2019"

Page 2, line 16, replace "2021" with "2019"

Page 2, line 17, replace "2021" with "2019"

Renumber accordingly

2019 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2049

2019 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Fort Union Room, State Capitol

SB 2049
3/1/2019
33047

- Subcommittee
 Conference Committee

Committee Clerk: Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to the computation of final average salary for employees who terminate employment after December 31, 2019

Minutes:

Attachment 1

Chairman Kasper opened the hearing on SB 2049.

Scott Miller, Executive Director of the ND Public Employees Retirement System, appeared in support. Attachment 1. (:16-4:18)

Rep. Laning: In essence you were able to cherry pick out high paid months rather than take an annual salary?

Mr. Miller: We don't. Our system does, which is the high 36 inside of the past 15 years.

Rep. Laning: You are picking the months, not taking a consecutive 12 months to make a year?

Mr. Miller: That is what was happening, and that is why we are proposing to make it 12 consecutive months instead of the high 36 months.

Rep. B. Koppelman: Why do we have such a long look back when it comes to the highest in our plan?

Mr. Miller: I am not sure what went into that decision. The only thing I can surmise is to increase the longevity of people from the state, to encourage them to stay here longer.

Rep. Rohr: How was the abnormality discovered and why was undetected for so long?

Mr. Miller: I believe it was our internal audit section that discovered it.

Chairman Kasper: The senate did not take action. Had you proposed these amendments in the senate, or did it come after the bill went through committee?

Mr. Miller: The original draft of this had that 2022 effective date and the senate committee actually proposed the amendment to bring that back to an effective January 1, 2020. This is essentially reversing their amendment from the senate.

Chairman Kasper: Why did they do it?

Mr. Miller: Senator Davison who is chair of that committee was not comfortable allowing to go on. It does result in about a 6% increase in retirement benefit for these individuals. He preferred to have that stopped as quickly as possible at the end of this year rather than allowing to _ for us to take a look and ensure that we weren't doing anything that we were going to regret later on.

Chairman Kasper: You have not investigated this very fully as far as the 36-months situation? You are not that comfortable with the change until you get to look at it longer? You think might find something you still do not know about?

Mr. Miller: Our actuaries do actual evaluation on an annual compensation rather than the monthly compensation. Our evaluation is based on this 6% not being in there. When they did the analysis, they did bring up situations like seasonal workers. We are not sure how this is going to affect seasonal workers until we actually get a program into our system and see those calculations side by side.

Rep. Schauer: Budget wise, do you have an idea what this will be long term?

Mr. Miller: It will not result in a significant increase. For those people who would be subject to this, it will reduce their benefit by 6% moving forward. It is more of a fairness change.

Chairman Kasper: The end result will be the employees who are benefiting are going back to where they should have been, and the potential unfunded liability in the future might be reduced.

Mr. Miller: I would agree with that.

Chairman Kasper closed the hearing.

Rep. B. Koppelman: I think I agree with the senate's amendment.

Rep. Hoverson: I think if a person has worked for 15 years, they should be able to get their top 36 months.

Chairman Kasper: The way the formula works right now is the employees who are paid weekly or biweekly are actually getting a larger benefit than what they are entitled to. The formula is for 36 months, but this cherry picks those months where you get an extra pay period to increase the benefit. This will not affect state employees. It is the political subdivision employees.

Rep. P. Anderson: I would the support the _.

Rep. Vetter: By adding this amendment would be prolonging the effects?

Chairman Kasper: It would be prolonged from the end of December 2019 to the end of December 2021.

Rep. P. Anderson: You don't have a legislative session to fix it. This way we would know what they were.

Rep. B. Koppelman: We are just trying to correct the system.

Rep. P. Anderson moved the amendment.

Rep. Rohr seconded the motion.

A roll call vote was taken. 2-11, 1 absent. Failed.

Rep. B. Koppelman made a motion for a DO PASS.

Rep. Schauer seconded the motion.

A roll call vote was taken. 13-0, 1 absent.

Rep. Schneider will carry the bill.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2049

Page 1, line 3, replace "2019" with "2021"

Page 1, line 18, replace "2019" with "2021"

Page 1, line 19, replace "2019" with "2021"

Page 2, line 16, replace "2019" with "2021"

Page 2, line 17, replace "2019" with "2021"

Renumber accordingly

Date: 3-1-19
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2049**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: Mr. Miller's amendment See below

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. P. Anderson Seconded By Rep. John

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper		X	Rep. Pamela Anderson	X	
Vice Chair Vicky Steiner		A	Rep. Mary Schneider	X	
Rep. Jeff Hoverson		X			
Rep. Craig Johnson		X			
Rep. Daniel Johnston		X			
Rep. Karen Karls		X			
Rep. Ben Koppelman		X			
Rep. Vernon Laning		X			
Rep. Scott Louser		X			
Rep. Karen Rohr		X			
Rep. Austen Schauer		X			
Rep. Steve Vetter		X			

Failed

Total (Yes) 2 No 11

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

*Replace 2019 with 2021 on Page 1, Lines 3, 18, 19
 and Page 2, Lines 16+17*

Date: 3-1-19
 Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2049**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. B. Koppelman Seconded By Rep. Schauer

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Pamela Anderson	X	
Vice Chair Vicky Steiner	A		Rep. Mary Schneider	X	
Rep. Jeff Hoverson	X				
Rep. Craig Johnson	X				
Rep. Daniel Johnston	X				
Rep. Karen Karls	X				
Rep. Ben Koppelman	X				
Rep. Vernon Laning	X				
Rep. Scott Louser	X				
Rep. Karen Rohr	X				
Rep. Austen Schauer	X				
Rep. Steve Vetter	X				

Total (Yes) 13 No 0

Absent _____

Floor Assignment Rep. Schneider

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2049, as engrossed: Government and Veterans Affairs Committee (Rep. Kasper, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2049 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

SB 2049

SB 2049
1-11-19
AH #1
Pg. 1

TESTIMONY OF SCOTT MILLER

Senate Bill 2049 – Prospective Clarification of Final Average Salary Calculation

Good Morning, my name is Scott Miller. I am the Executive Director of the North Dakota Public Employees Retirement System, or NDPERS. I appear before you today in support of Senate Bill 2049.

Senate Bill 2049 prospectively clarifies how we calculate “Final Average Salary” (FAS) for purposes of determining a person’s retirement benefit. The Employee Benefits Programs Committee gave this bill a favorable recommendation.

Statute provides the following formula for determining a person’s retirement benefit:

$$\text{Benefit} = \textit{Final Average Salary} \times \text{Years of Service} \times \text{Benefit Multiplier}$$

FAS is currently defined as, “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.” That definition was initially derived for use with state employees, who are generally paid once every month.

NDPERS’ internal audit section discovered an anomaly in using that definition for people who are paid on a weekly or bi-weekly basis, which is the case for some employers that participate in our retirement plan. People who are paid on a bi-weekly basis have two months a year in which they receive three paychecks. Under the current statute, the high 36 months out of the past 15 years are selected for calculating the final average salary, which routinely picks the months in which those people receive three paychecks. As a result, the FAS calculation for those people becomes inflated, resulting in a retirement benefit that is about 6% higher than it should be when their annual compensation is taken into account.

Senate Bill 2049 prospectively changes the definition of FAS to level those salary fluctuations resulting from different pay schedules. This Bill changes the definition of FAS from the average salary earned in the high 36 months out of the past 15 years to the average salary earned in the three highest periods of 12 consecutive months during the last 15 years. The change in FAS calculation will only apply to members who terminate employment after December 31, 2021.

SB 2049
1-11-19
AH #1
Pg 2

Between now and the effective date, we intend to build the changes into our business system and run actual FAS calculations in parallel, under both the current definition and under the proposed definition. Doing so will allow us to compare the outcomes to ensure there are no unintended consequences to our members as a result of the change. If we identify any unintended consequences, the delayed effective date will allow us to propose legislation for the next legislative session to correct those issues.

After December 31, 2021, members will receive a benefit determined by the new FAS calculation or as calculated under the old methodology as of December 31, 2021, whichever is higher. The language allowing for the higher of the FAS calculation under either the old or new methodology is intended to limit the impact to members who may be retiring in the short term.

In summary, Senate Bill 2049 is intended to improve consistency in the FAS calculation for members who are paid monthly, bi-weekly and weekly. We have proposed a delayed effective date in order to determine whether there are any unintended consequences to the new FAS calculation, and give us time to fix them. You will note this change does not have a material effect on our actuarial report, funded status or recovery plans.

Thank you for your positive consideration of this Bill.

19.0135.01001
Title.

Prepared by the Legislative Council staff for
Senator Davison

February 1, 2019

SB 2049
2-7-19
Att #1
pg 1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2049

Page 1, line 3, replace "2021" with "2019"

Page 1, line 18, replace "2021" with "2019"

Page 1, line 19, replace "2021" with "2019"

Page 2, line 16, replace "2021" with "2019"

Page 2, line 17, replace "2021" with "2019"

Renumber accordingly

#1
SB 2049
3-1-19

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NDPERS’ internal audit section discovered an anomaly in using that definition for people who are paid on a weekly or bi-weekly basis, which is the case for some employers that participate in our retirement plan. People who are paid on a bi-weekly basis have two months a year in which they receive three paychecks. Under the current statute, the high 36 months out of the past 15 years are selected for calculating the final average salary, which routinely picks the months in which those people receive three paychecks. As a result, the FAS calculation for those people becomes inflated, resulting in a retirement benefit that is about 6% higher than it should be when their annual compensation is taken into account.

Senate Bill 2049 prospectively changes the definition of FAS to level those salary fluctuations resulting from different pay schedules. This Bill changes the definition of FAS from the average salary earned in the high 36 months out of the past 15 years to the average salary earned in the three highest periods of 12 consecutive months during the last 15 years.

After the Bill’s effective date, members will receive a benefit determined by the new FAS calculation or as calculated under the old methodology as of the effective date,

#1
SB 2049
3-1-19

whichever is higher. The language allowing for the higher of the FAS calculation under either the old or new methodology is intended to limit the impact to members who may be retiring in the short term.

Our original draft of Senate Bill 2049 provided that the change in FAS calculation would only apply to members who terminate employment after December 31, 2021. The purpose for the delayed effective date was so that we could build the changes into our business system and run actual FAS calculations in parallel, under both the current definition and under the proposed definition. Doing so would have allowed us to compare the outcomes to ensure there are no unintended consequences to our members as a result of the change. If we identified any unintended consequences, the delayed effective date would have allowed us to propose legislation for the next legislative session to correct those issues.

The House did not agree with that delayed effective date, and amended the bill to make these changes applicable to members who terminate employment after December 31, 2019. Because of our concern that this change may have unintended consequences, we would like to propose the attached amendments to the Bill to return the effective date back to January 1, 2022.

In summary, Senate Bill 2049 is intended to improve consistency in the FAS calculation for members who are paid monthly, bi-weekly and weekly. We have proposed a delayed effective date in order to determine whether there are any unintended consequences to the new FAS calculation, and give us time to fix them. You will note this change does not have a material effect on our actuarial report, funded status or recovery plans.

Thank you for your positive consideration of this Bill.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2049

#1
SB 2049
3-1-19

Page 1, line 3, replace "2019" with "2021"

Page 1, line 18, replace "2019" with "2021"

Page 1, line 19, replace "2019" with "2021"

Page 2, line 16, replace "2019" with "2021"

Page 2, line 17, replace "2019" with "2021"

Renumber accordingly