



NORTH DAKOTA
PUBLIC EMPLOYEES
RETIREMENT SYSTEM

Board Special Meeting Agenda

Location: Virtual only [Click here to join the meeting](#)
By phone: 701.328.0950 Conference ID: 166 843 181#
Date: **Thursday, October 19, 2023**
Time: 9:30 A.M.

I. MINUTES

- A. September 12, 2023

II. CONFLICT OF INTEREST DISCLOSURE CONSIDERATION (Board Action)

III. DEFERRED COMPENSATION / DEFINED CONTRIBUTION

- A. HB 1040 Implementation Update – Rebecca (Information)

IV. DEFINED BENEFIT

- A. Job Service COLA – MaryJo (Board Action)

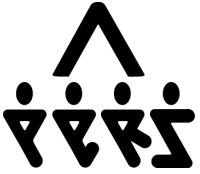
V. GROUP INSURANCE / FLEXCOMP

- A. Uniform Group Insurance Consultant Request For Proposal Update
***EXECUTIVE SESSION** – Katheryne (Board Action)
- B. Update from Sanford Health Plan Regarding Humira – Rebecca (Information)

VI. MISCELLANEOUS

- A. Quarterly Consultant Fees – Derrick (Information)
- B. Contracts Under \$10,000 – Scott (Information)
- C. November Board Meeting Topics – Scott (Board Action)
- D. Committee Assignments – Scott (Board Action)
- E. Special Session Bill Guidance – Scott (Board Action)
- F. Litigation Versus Legislative Assembly – Scott (Board Action)

*Executive Session pursuant to N.D.C.C. §§ 44-04-17.1(2) and (5), 44-04-18.4(6), and 44-04-19.2(1) to reviews bids or proposals received by a public entity in response to a request for proposal.



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Memorandum

TO: NDPERS Board

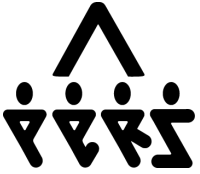
FROM: Scott

DATE: October 19, 2023

SUBJECT: Conflict of Interest Disclosure Consideration

Allyson Hicks from the Attorney General's Office advised us over the summer that this will need to be on the agenda every meeting for the Board to consider any conflict of interest disclosures we received concerning any of the agenda topics. Please review the agenda and consider whether you have a conflict with any of the topics. If so, please complete the disclosure form for the Board's consideration.

Board Action Requested: Address any conflict of interest disclosures submitted. This will be the same Board Action for this topic in future meetings.



Memorandum

TO: NDPERS Board

FROM: Rebecca

DATE: October 19, 2023

SUBJECT: HB 1040 Implementation Update

Staff will be providing ongoing updates to the Board as we continue to implement the provisions of HB 1040 with a January 1, 2025 effective date. The following activities have occurred since our last discussion at the September Board meeting:

- Record-keeper RFP responses have been received from 6 vendors. Callan is currently reviewing the responses
- Extended the job opening for the Defined Contribution Retirement Programs Manager position through HRMS
 - Interviews to be held and completed in October
 - Hope to have position filled in November
- Staff from GRS, NDPERS and Sagitec (business system vendor) met to discuss the special election window transfer calculation and the development of a table of factors to be programmed into the business system for use in the estimate calculations and final transfer amounts. The meeting allowed all parties to discuss the calculation and how the factors will be used to ensure the provisions of the bill are fulfilled for those eligible for the transfer
- Continued discussions with Sagitec, our business system vendor, regarding requirements of the bill and updates needed for programming
 - Responded to initial list of questions related to certain provisions of the bill and the necessary programming on the business system to ensure compliance
- Provided additional update to the list of needed modifications to administrative rules to legal counsel
 - It was necessary to reach out to Legislative Council to request a delay in our rules effective date in order to coincide with January 1, 2025, as we'll need old rules to remain effective through December 31, 2024, and then transition to

the new rules on January 1, 2025. Legislative Council requested that Scott appear before the Administrative Rules Committee at their next meeting to provide this information, which is expected to be in December

- Requested legal counsel provide first draft of rules to staff by Thanksgiving so staff can review with the goal of bringing the first draft of proposed rule changes to the Board at its January meeting. The final rules will need to be approved by the Board no later than April to ensure the required time for rule promulgation with notices and public comment are met
- Sought guidance from Ice Miller related to the provisions of participation in the new tier for temporary employees. Staff previously received guidance that for an employee to make their additional contributions into the DC plan, a new hire that is a permanent employee will need to make this election within the first 30 days of employment. However, HB 1040 provides similar language as current law in that a temporary employee has 180 days to elect to participate in the current DB plan and if elected, will be able to contribute up to an additional 6% to the DC plan. Staff followed up with Ice Miller to determine how to reconcile the timeframe a new employee, whether permanent or temporary, will elect to contribute the additional employee contributions. It does appear there can be some variance for temporary employees due to the after-tax nature of their contributions. However, staff continue to review this issue to determine the best way to implement the provision for temporary employees and whether additional administrative rules are necessary to ensure compliance with both the provisions of HB 1040 and the IRC

An additional item came to light related to the ability for political subdivisions to join the NDPERS retirement plan. It was determined that the provisions that allow a political subdivision to join were discontinued, as expected, for the DB plan as of January 1, 2025. However, provisions were not added to NDCC 54-52.6, which is the DC plan section of code, to allow political subdivisions to join and offer the DC plan to their employees. Scott reached out to Legislative Council and it was confirmed that the way the law reads, new employers will not be able to join as of January 1, 2025, and also that this was likely an oversight as the bill was developed. Staff will update the Retirement Committee so that if legislators intend to offer the plan in the future to political subdivisions not participating as of January 1, 2025, they can propose legislation next session to allow it.

This item was informational and does not require any action by the Board.



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Memorandum

TO: NDPERS Board

FROM: MaryJo Anderson

DATE: October 19, 2023

SUBJECT: Job Service COLA

According to Article VII(3) of the plan document for the Retirement Plan for Employees of Job Service North Dakota, “effective each December 1 of any year, the monthly amount of each retirement annuity, death benefit, or disability benefit then payable shall be increased by the percent increase, if any, in the Consumer Price Index.” It further states, “no increase in retirement allowance granted under the Plan, or the date for commencement of such increase, will become effective unless the same increase has been authorized for the Civil Service Retirement System, and unless the increase has been authorized by the NDPERS Board.” This provision for a COLA increase was authorized by the United States Department of Labor as part of a larger agreement reached with the USDOL in the late 1970’s. Since that time, the Plan practice has been to provide COLAs consistent with the Federal Civil Service Plan. The plan assumes a post-retirement COLA of 2.25%.

This year the COLA index for the Federal Civil Service Plan is 3.20%. Therefore, a 3.20% COLA increase is indicated for the Job Service retirees paid by NDPERS as well as for the Job Service retirees paid by MetLife/Brighthouse. The increase would be effective December 1, 2023. The last increase for annuitants in this system was 8.70% effective December 1, 2022.

The actuarial assumption used in the annual valuation for the COLA is 2.25% per year; therefore, the 3.20% increase represents a loss to the system.

Board Action Requested

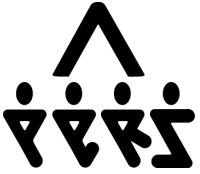
Determine whether to approve the 3.20% COLA increase for Job Service annuitants.

V. GROUP INSURANCE / FLEXCOMP

A. Uniform Group Insurance Consultant Request For Proposal Update *EXECUTIVE SESSION – Katheryne (Board Action)

***Executive Session pursuant to N.D.C.C. §§ 44-04-17.1(2) and (5), 44-04-18.4(6), and 44-04-19.2(1) to reviews bids or proposals received by a public entity in response to a request for proposal.**

Material for the Closed Session will be sent under separate cover.



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Memorandum

TO: NDPERS Board

FROM: Rebecca

DATE: October 24, 2023

SUBJECT: Update from Sanford Health Plan Regarding Humira

Sanford Health Plan (SHP) has provided Attachment 1 to NDPERS regarding the prescription drug Humira and a change that they will be implementing effective December 1, 2023. The change will remove Humira as a preferred drug on the NDPERS formulary. Instead, 3 biosimilar therapies will be added as preferred options. Notification was sent at the end of September to the 169 impacted members to notify them of this upcoming change (Attachments 2 and 3).

Representatives from SHP will be available to answer questions you may have.

This item is informational and requires no action by the Board.

Memo

To: Rebecca Fricke

From: Steve Webster

Date: October 6, 2023

Re: Humira Formulary Change effective December 1, 2023

Effective Dec. 1, 2023, Humira will no longer be a preferred drug on the Sanford Health Plan (SHP) NDPERS formulary; instead, 3 biosimilar therapies will be added as preferred options:

- [adalimumab-fkjp](#)
- [adalimumab-adaz](#)
- [Hadlima](#)

Humira will remain on the formulary, but with a brand penalty. A brand penalty is the price difference between a brand-name drug and the generic or biosimilar alternative; members pay this amount in addition to benefit plan cost-share. Brand penalties do not apply to the member's deductible or maximum out-of-pocket costs.

Exceptions will be made on a case-by-case basis for members who have specific medical contradictions and certain circumstances that require them to stay on Humira. Providers have been advised to begin the prior authorization process for members in this situation.

This change will affect approximately 169 NDPERS members. A letter notifying those impacted were mailed Friday, Sept. 29. Attached you will find a sample letter being mailed to existing members utilizing Humira along with a biosimilar fact sheet. Providers have also been informed and will work with our members through the transition.

October 2023

Attachment 2

September 29, 2023

«Member_First_Name» «Member_Last_Name»
«Member_Address_1»
«Member_Address_2»
«Member_City», «Member_State» «Member_Zip»

Dear «Member_First_Name»,

Sanford Health Plan's covered drug list (formulary) is changing December 1, 2023. The drug below will be changing to Non-preferred brand with penalty as of December 1, 2023. This means the medication will still be covered but will have a penalty* associated with it. If you no longer take this drug, please disregard this letter.

We encourage you to speak with your doctor about other possible drug option(s) that may be available to suit your needs.

Current Non-Preferred Drug	Preferred Drug Option(s)
«Drug_Name»	«Alternatives»

If you or your doctor feel you should not stop taking the current drug or change to the new preferred drug option, please have your doctor complete and submit a request for prior authorization through our provider portal.

We apologize for any inconvenience this disruption has caused. If you have questions about this change, your prescription drug benefits, or would like a free copy of your formulary, please call us toll-free at (855) 305-5062 (TTY: 711). You can also contact us through your secure member portal at sanfordhealthplan.com/memberlogin.

Sincerely,

Pharmacy Management
Sanford Health Plan

Enc: Biosimilars hand out
Non-discrimination Notice

**The penalty is the difference in cost between the non-preferred drug and the preferred alternative as defined in your plan documents. Penalties are not applied to deductible or maximum out of pocket.*

Biosimilars:

What Patients Need To Know

Attachment 3

Biosimilars are a type of biologic medication that is **safe** and **effective** for the treatment of many chronic and severe conditions, including:



Chronic skin diseases

(such as psoriasis)



Macular Degeneration



Chronic bowel diseases

(such as colitis, Crohn's disease, and irritable bowel disorder)



Arthritis



Diabetes



Kidney conditions



Some cancers

(such as breast, lung, and colon)

A biosimilar is very similar, but not identical, to an original biologic medication (also known as a reference product) that FDA has already approved. For biosimilars to be approved by FDA, studies must show that there are no differences in the safety and effectiveness of biosimilars and the original biologics.

Both a biosimilar and its original biologic:

- Are made from the same types of sources (e.g., living sources)
- Provide the same benefits when treating diseases or medical conditions
- Are given at the same strength and dosage
- Are not expected to cause new or worsening side effects

FDA has approved many biosimilars and expects to approve more in the future. For more information about individual biosimilars and the conditions they treat, please visit <https://purplebooksearch.fda.gov>.

What are biologic medications? How are they different from other types of medications?

Most biologics are made from living sources, such as animal cells and microorganisms like bacteria or yeast. Because biologics generally come from living sources and have natural differences, they can be more complicated to produce than drugs made from chemicals. Drugs made from chemicals, such as aspirin, can generally be more easily copied.

What are interchangeable biosimilars?

An interchangeable product is a biosimilar that may be substituted without consulting the prescribing doctor, because it meets additional requirements related to the potential for automatic substitution. This practice is called "pharmacy-level substitution" and is subject to state law.

Both biosimilars and interchangeable biosimilars are as safe and effective as the original product they were compared to.

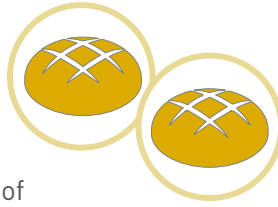
For more information on biosimilars, visit

www.FDA.gov/biosimilars

and talk to your doctor to learn more.



All biologic medications, including biosimilars, are similar to loaves of bread if they were made with the same recipe: No one loaf is an exact copy of another, but they are all the same type of bread. The same is true for biologics: Each batch of a biologic medication is made with a mix of ingredients that include living sources. Because living sources have slight variations, each batch is not an exact copy, but each batch provides the same treatment benefits.



Are biosimilars the same as generic drugs?

Biosimilars and generics are both versions of medications already approved by FDA. Biosimilars are like generics in some ways, but there are differences. Both biosimilars and generics may offer more affordable treatment options to more patients.

Biosimilars	Generics
Generally made from living sources	Generally made from chemicals
Require a specialized process to produce	Have a simpler process to copy
Very similar, but not identical, to original biologics	Copy of brand-name drugs
Faster development process using public information from original biologic approval	Faster development process using public information from brand-name drug approval
Usually less expensive than original biologics	Usually less expensive than brand-name drugs

Biosimilars may be available at a lower cost than the original biologics. Similar to generic drugs, biosimilars may cost less because manufacturers rely on FDA's finding that the original biologics are safe and effective. The lower cost is not a reflection of the safety or effectiveness of biosimilars. Because of the lower cost, biosimilars may be covered by more insurance companies and offer patients additional treatment options.

Why aren't biosimilars identical to the original biologics?

Because most biologics are made from living sources, it is normal for both biosimilars and original biologics to have minor differences between batches of the same medication. This means that biologics cannot be copied exactly, and that is why biosimilars are not identical to the original biologic.

FDA carefully reviews the differences between the original biologic and the biosimilar to ensure that biosimilars are as safe and effective as the original biologics.

Similar to generic drugs, biosimilars may cost less because manufacturers rely on FDA's finding that the original biologics are safe and effective. The lower cost is not a reflection of the effectiveness or safety of biosimilars.

For more information on biosimilars, visit

www.FDA.gov/biosimilars

and talk to your doctor to learn more.

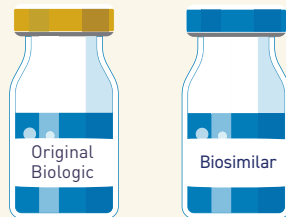


Biosimilars are safe and effective. As it does with all medication approvals, FDA carefully reviews the data provided by pharmaceutical companies and takes a number of steps to ensure that all biosimilars meet standards for patient use. Patients and health care providers can rely on a biosimilar to be as safe and effective as the original biologic. FDA takes the same precautions to help ensure the safety and effectiveness of biosimilars as it does for all medications.

Before approving a biosimilar, FDA:



Carefully reviews data, studies, and tests to decide whether a biosimilar meets FDA's high standards for approval



Ensures that manufacturers show that there are no differences in side effects, including that the side effects of the biosimilar are not more frequent or more severe than those of the original biologic

After approval, FDA:



Continues to check on the quality of the biosimilar production



Reviews reports from patients and health care providers on the biosimilar's safety and effectiveness

As with all treatment decisions, you should talk to your health care providers and check other trusted sources of information related to your specific condition to learn more about biosimilar treatment options.

Biosimilars are a growing field of critical treatment options for a range of conditions. FDA is committed to educating patients and caregivers about biosimilars so they understand all potential treatment options. More detailed information on the approval process and published studies is available for doctors and patients on the FDA biosimilars website, www.fda.gov/biosimilars.

Why would a patient switch from an original biologic to a biosimilar?

A biosimilar is not safer or more effective than the original biologic, but a patient might switch to a biosimilar because of a change in insurance coverage or to save money. Depending on the law in your state, a pharmacist may give you an interchangeable biosimilar, much like they would give you a generic. FDA does not control the cost of drugs, but you can learn more about the price of a specific biosimilar by contacting your pharmacy or insurance company.



For more information on biosimilars, visit

www.FDA.gov/biosimilars

and talk to your doctor to learn more.





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Memorandum

TO: NDPERS Board

FROM: Derrick Hohbein, CPA

DATE: October 19, 2023

SUBJECT: Consultant Fees for the Quarter Ended September 2023

Attached is a quarterly report showing the consulting, investment, and administrative fees paid during the quarter ended September 2023.

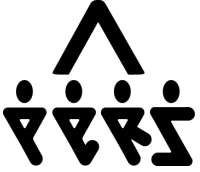
This is informational only.

Attachment

**North Dakota Public Employees Retirement System
Consulting/Investment/Administrative Fees
For the Quarter ended September 30, 2023**

Program/Project	Fee Type	Jul-23	Aug-23	Sep-23	Fees Paid During The Quarter	Fees Paid Fiscal Year-To-Date
Actuary/Consulting Fees:						
Deloitte	Insurance Legislative Analysis	Time Charges	406		406 \$	406
Deloitte	Health & Part D Claims Projections	Time Charges			-	-
Deloitte	Insurance Consulting	Time Charges	163	4,225	3,575	7,963 \$
Buck Consulting	Life/Dental/Vision RFP	Fixed Fee	3,333			3,333 \$
Callan & Associates	Asset Allocation & Liability Study	Fixed Fee			-	-
Callan & Associates	Investment Consultant Expenses	Fixed Fee	12,824		12,824 \$	12,824
Callan & Associates	Record Keeper Search	Fixed Fee			-	-
Gabriel Roeder Smith & Company	Retirement Actuarial Valuation	Fixed Fee		3,500	15,000	18,500 \$
Gabriel Roeder Smith & Company	RHIC Actuarial Valuation	Fixed Fee		1,000	1,000	1,000 \$
Gabriel Roeder Smith & Company	GASB 67/68 (Retirement) Valuation	Fixed Fee			-	-
Gabriel Roeder Smith & Company	GASB 74/75 (RHIC) Valuation	Fixed Fee			-	-
Gabriel Roeder Smith & Company	Actuarial Factor Updates for 1040	Fixed Fee			-	-
Gabriel Roeder Smith & Company	Retirement Legislation	Time Charges		438	3,700	4,138 \$
Gabriel Roeder Smith & Company	Retirement Consulting/Actuarial Analysis	Time Charges	3,060	1,758	925	5,743 \$
Gabriel Roeder Smith & Company	RHIC	Time Charges			-	-
Mid Dakota Clinic	Retirement Disability Consultant	Time charges	1,800		1,800	1,800 \$
Nexus	IT Consulting	Per Hour Fee	18,785	358	8,483	27,626 \$
Audit Fees:						
Clifton Larson Allen	Annual Audit Fee	Fixed Fee	26,250		42,000	68,250 \$
Legal Fees:						
ND Attorney General	Legal Fees on All Plans	Time charges	3,718	4,165	6,189	14,072 \$
Ice Miller - Federal Tax Consultant	Legal Fees on All Plans	Time charges	4,590		2,430	7,020 \$
Klausner, Kaufman, Jensen & Levinson	Litigation vs Legislature	Per Hour Fee	50,480	22,400	1,000	73,880 \$
Klausner, Kaufman, Jensen & Levinson	Litigation vs Legislature	Travel & Misc Expenses	3,279	315		3,594 \$
Elsberry & Shively Inc	Litigation vs Legislature	Per Hour Fee	2,356	7,274		9,630 \$
Investment Fees:						
SIB - Investment Fees	Retirement (DB)	% Allocation	2,278,387	2,278,387	*	4,556,774 \$
SIB - Investment Fees	Ret Health Credit	% Allocation	245,495	248,008	*	493,503 \$
SIB - Investment Fees	Insurance	% Allocation	29,510	30,404	*	59,914 \$
SIB - Investment Fees	Job Service	% Allocation	138,023	139,295	*	277,318 \$
SIB - Administrative Fees	Retirement (DB)	% Allocation	195,021	61,509	*	256,530 \$
Administrative Fee:						
Sanford Health Plan	Health Plan	Fixed fee	1,257,584	1,257,893	1,259,844	3,775,322 \$

* fees not yet available



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Memorandum

TO: NDPERS Board

FROM: Scott Miller

DATE: October 19, 2023

SUBJECT: Contracts under \$10,000

Attached is a document that shows the contracts under \$10,000 that I have signed since the last update. Please let me know if you have any questions on any of these contracts.

This topic is informational only.

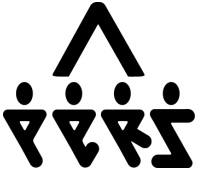
Attachment

Contracts Signed During 2023:

Vendor	Amount	Notes
NDIT	\$ -	Service Level Agreement (January 2023)
Spherion Staffing	~ \$7,200	Temporary Staffing for Admin Services
Marco	\$ 3,654.49	Replacement of North & Batch Printers
Inter Office	\$ 1,179.44	Chair
Central Services	\$ -	Staff authorization to pickup printed materials
Inter Office	\$ 280.00	Adjust height of workstation in scanning room
NDIT	\$ -	Service Level Agreement (June 2023)
Callan	\$ -	Recordkeeper RFP scope of work.
ND Safety Council	\$ 874.00	AED/CPR training for 19 staff
Inter Office	\$ 2,323.88	Chairs x 2
Inter Office	\$ 824.76	Rising Desk

Contracts Signed Since Last Reported:

Vendor	Amount	Notes
GRS	\$ 9,000.00	Programing for DC incentive
Inter Office	\$ 2,358.88	Chairs x 2



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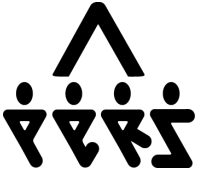
FROM: Scott Miller

DATE: October 19, 2023

SUBJECT: November Board Meeting Topics

The odd-year November Board meetings are usually our Board Planning Meeting. However, given the disruption in the Board's meeting schedule due to the Special Legislative Session, the Board may consider moving the Planning Meeting to the December meeting. We would propose having the valuation presentation at the November meeting and the Board's consideration of the actions taken by the Board during the June, July, August and September meetings.

BOARD ACTION REQUESTED: Determine whether to re-schedule the items for the Board's upcoming meetings.



Memorandum

TO: NDPERS Board

FROM: Scott

DATE: October 19, 2023

SUBJECT: Board Subcommittee/State Investment Board Assignments

The NDPERS Board has two standing subcommittees, the Audit Subcommittee and the Investment Subcommittee, and two ad hoc committees, the Election Subcommittee and the Performance Review and Compensation Subcommittee. The Board also has two members on the State Investment Board (SIB).

The Audit Subcommittee membership is described in its charter:

The audit committee will consist of two to five members with the majority of the members selected from the Board of Directors, and one may be selected from outside the organization. The Board or its nominating committee will appoint committee members and the committee chair. The Board should attempt to appoint committee members who are knowledgeable and experienced in financial matters, including the review of financial statements.

Mona (Chair) and Adam are the only remaining Audit Subcommittee members. As such, the Board should consider appointing one or two additional Board members, and perhaps an at-large member. Nina Sand had been appointed as the at-large member. Mona and Shawna can provide more information on Nina. However, because the Board action in July has been nullified, the Board would need to appoint her again. The Audit Subcommittee typically meets quarterly.

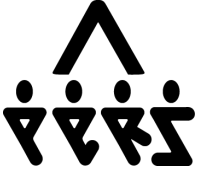
The Investment Subcommittee typically has between three and four members, and one alternate. Currently, the only remaining members are Adam (Chair) and Mona. The Board Chair appoints these members. As such, Mona will need to appoint one or two more members, and an alternate. The Investment Subcommittee also usually meets quarterly.

We just completed an election, and so we do not need an active Election Subcommittee until the next election.

The Performance Review and Compensation Subcommittee typically has three members. This Subcommittee's purpose is to review the performance evaluations for the Executive Director and recommend a compensation figure to the full Board. This interim the Board has also tasked the Subcommittee with doing a compensation study of the Executive Director position for purposes of taking any possible change to the next Legislative Assembly for any necessary appropriation. Because Casey (Chair) is the only remaining Subcommittee member, I would suggest appointing an additional two members. The Board Chair appoints these members. This Subcommittee meets on an ad hoc basis.

Last Session, the Legislative Assembly reduced the number of PERS Board members on the SIB from three to two. Adam is the only Board member remaining on the SIB. As such, the Board needs to appoint an additional Board member to the SIB. We also usually have a Board member appointed as an alternate, in the event the regular SIB member cannot attend. That is currently Mona. The SIB meets monthly.

BOARD ACTION REQUESTED: Prior to the Board meeting, consider whether you would like to serve on one of these subcommittees or the SIB. The Chair and the Board will need to appoint the necessary Board members to the appropriate Subcommittees and the SIB.



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FROM: Scott Miller

DATE: October 19, 2023

SUBJECT: Special Session Bill Guidance

There will be a Special Legislative Session beginning Monday, October 23. Two of the known bills are the change to the effective date of HB 1040 and the change in the Board makeup (attached). We anticipate there may be many more and will forward the bills that may affect NDPERS as we receive them. Nonetheless, I will need direction from the Board on how it would like me to approach the bills that may affect NDPERS.

BOARD ACTION REQUESTED: Direct staff how to approach NDPERS-related bills.

23.1138.01000

Sixty-eighth
Legislative Assembly
of North Dakota

FIRST DRAFT:

Prepared by the Legislative Council staff for the
Legislative Management

October 2023

Introduced by

1 A BILL for an Act to reenact portions of Senate Bill No. 2015, as approved by the sixty-eighth
2 legislative assembly, to amend and reenact sections 54-52-02.5, 54-52-02.9, 54-52-02.11, and
3 54-52-02.12, as amended in sections 3, 4, 5, and 6 of House Bill No. 1040, as approved by the
4 sixty-eighth legislative assembly, sections 54-52-02.15 and 54-52.2-09, as created in sections 7
5 and 13 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly,
6 subsection 3 of section 54-52.6-01 and section 54-52.6-02, as amended in sections 14 and 15
7 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, subsection 1 of
8 section 54-52.6-02.1 and section 54-52.6-02.2, as created in sections 16 and 17 of House Bill
9 No. 1040, as approved by the sixty-eighth legislative assembly, and subsection 2 of section
10 54-52.6-03 and section 54-52.6-09, as amended in sections 18 and 22 of House Bill No. 1040,
11 as approved by the sixty-eighth legislative assembly, of the North Dakota Century Code, relating
12 to the public employees retirement system retirement plans; to provide an exemption; to provide
13 a contingent effective date; and to provide an effective date.

14 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

15 **SECTION 1. REENACTMENT.** The portion of Senate Bill No. 2015, as approved by the
16 sixty-eighth legislative assembly, and published in section 36 of chapter 47 of the 2023 Session
17 Laws, is reenacted as follows:

18 **SECTION 36. AMENDMENT.** Section 54-52-02.5 of the North Dakota Century
19 Code, as amended in section 3 of House Bill No. 1040, as approved by the sixty-
20 eighth legislative assembly, is amended and reenacted as follows:

21 **54-52-02.5. Newly elected and appointed state officials.**

22 1. After December 31, 1999, but before January 1, 2024, an individual elected or
23 appointed to a state office for the first time must, from and after the date that
24 individual qualifies and takes office, be a participating member of the public

1 employees retirement system unless that person makes an election at any time
2 during the first six months after the date the person takes office to participate in
3 the defined contribution retirement plan established under chapter 54-52.6.

4 2. After December 31, 2023, an individual elected or appointed to a state office for
5 the first time, from and after the date that individual qualifies and takes office,
6 must be a participating member of the defined contribution retirement plan
7 established under chapter 54-52.6, unless at the time of election or appointment
8 the individual is a participating or deferred member under this chapter, in which
9 case the official remains a participating member under this chapter.

10 3. As used in this section, the phrase "for the first time" means an individual
11 appointed, who, after December 31, 1999, does not hold office as an appointed
12 official at the time of that individual's appointment.

13 **SECTION 2. REENACTMENT.** The portion of Senate Bill No. 2015, as approved by the
14 sixty-eighth legislative assembly, and published in section 37 of chapter 47 of the 2023 Session
15 Laws, is reenacted as follows:

16 **SECTION 37. AMENDMENT.** Section 54-52-02.9 of the North Dakota Century
17 Code, as amended in section 4 of House Bill No. 1040, as approved by the sixty-
18 eighth legislative assembly, is amended and reenacted as follows:

19 **54-52-02.9. Participation by temporary employees.**

20 1. Before January 1, 2024, within one hundred eighty days of beginning
21 employment, a temporary employee may elect to participate in the public
22 employees retirement system under this chapter and receive credit for service
23 after enrollment. Monthly, the temporary employee shall pay to the fund an
24 amount equal to fourteen and twelve hundredths percent times the temporary
25 employee's present monthly salary. The amount required to be paid by a
26 temporary employee increases by one percent times the temporary employee's
27 present monthly salary beginning with the monthly reporting period of
28 January 2024.

29 2. If the temporary employee first enrolled:

30 a. Before January 1, 2020, in addition the temporary employee shall pay the
31 required monthly contribution to the retiree health benefit fund established

1 under section 54-52.1-03.2. This contribution must be recorded as a
2 member contribution pursuant to section 54-52.1-03.2.

3 b. After December 31, 2019, the temporary employee shall pay to the fund an
4 additional amount equal to one and fourteen hundredths percent times the
5 temporary employee's present monthly salary.

6 3. A temporary employee who is a participating member under this chapter due to
7 employment before January 1, 2024, who becomes a permanent employee after
8 December 31, 2023, qualifies to participate in the defined benefit retirement plan
9 under this chapter and receive credit for service after enrollment.

10 4. After December 31, 2023, and within one hundred eighty days of beginning
11 employment, a temporary employee may elect to participate in the defined
12 contribution retirement plan under chapter 54-52.6.

13 5. An employer may not pay the temporary employee's contributions. A temporary
14 employee may continue to participate as a temporary employee in the public
15 employees retirement system until termination of employment or reclassification
16 of the temporary employee as a permanent employee. A temporary employee
17 may not purchase any additional credit, including additional credit under section
18 54-52-17.4 or past service under section 54-52-02.6.

19 **SECTION 3. REENACTMENT.** The portion of Senate Bill No. 2015, as approved by the
20 sixty-eighth legislative assembly, and published in section 38 of chapter 47 of the 2023 Session
21 Laws, is reenacted as follows:

22 **SECTION 38. AMENDMENT.** Section 54-52-02.11 of the North Dakota Century
23 Code, as amended in section 5 of House Bill No. 1040, as approved by the sixty-
24 eighth legislative assembly, is amended and reenacted as follows:

25 **54-52-02.11. Participation requirements for nonstate elected officials.**

26 1. Before January 1, 2024, eligible elected officials of participating counties, at their
27 individual option, may enroll in the defined benefit plan within the first six months
28 of their term.

29 2. After December 31, 2023, eligible elected officials of participating counties, at
30 their individual option, may enroll in the defined contribution retirement plan
31 under chapter 54-52.6 within the first six months of their term.

1 **SECTION 4. REENACTMENT.** The portion of Senate Bill No. 2015, as approved by the
2 sixty-eighth legislative assembly, and published in section 39 of chapter 47 of the 2023 Session
3 Laws, is reenacted as follows:

4 **SECTION 39. AMENDMENT.** Section 54-52-02.12 of the North Dakota Century
5 Code, as amended in section 6 of House Bill No. 1040, as approved by the sixty-
6 eighth legislative assembly, is amended and reenacted as follows:

7 **54-52-02.12. Participation requirements for nonstate appointed officials.**

- 8 1. Nonstate appointed officials of participating employers appointed on or after
9 August 1, 1999, but before January 1, 2024, who meet the participation
10 requirements of this chapter must be enrolled in the defined benefit plan effective
11 within the first month of taking office.
- 12 2. After December 31, 2023, nonstate appointed officials of participating employers
13 who meet the participation requirements must be enrolled in the defined
14 contribution retirement plan under chapter 54-52.6 effective within the first month
15 of taking office.

16 **SECTION 5. REENACTMENT.** The portion of Senate Bill No. 2015, as approved by the
17 sixty-eighth legislative assembly, and published in section 40 of chapter 47 of the 2023 Session
18 Laws, is reenacted as follows:

19 **SECTION 40. AMENDMENT.** Section 54-52-02.15 of the North Dakota Century
20 Code, as created in section 7 of House Bill No. 1040, as approved by the sixty-eighth
21 legislative assembly, is amended and reenacted as follows:

22 **54-52-02.15. Public employees retirement system main plan - Closure to**
23 **new hires - Multiple plan membership.**

- 24 1. Under this section "eligible employee" means a permanent employee who:
25 a. Meets all the eligibility requirements set by this chapter;
26 b. Is at least eighteen years of age;
27 c. Becomes a participating member after December 31, 2023; and
28 d. Is not eligible to participate in the law enforcement plan, judges' plan,
29 highway patrol plan, teachers' fund for retirement plan, or alternative
30 retirement program established under section 15-10-17 for university
31 system employees.

- 1 2. Effective January 1, 2024, the public employees retirement system defined
2 benefit main plan maintained for employees is closed to new eligible employees.
3 However, an employee who becomes a participating or deferred member under
4 this chapter before January 1, 2024, remains in the defined benefit retirement
5 plan under this chapter, regardless of being rehired after December 31, 2023.
- 6 3. Except as otherwise provided under this section, effective January 1, 2024, an
7 eligible employee who begins employment with an employer shall participate in
8 the defined contribution retirement plan under chapter 54-52.6 as provided under
9 section 54-52.6-02.1.
- 10 4. This section does not impact an employee to the extent the employee is a
11 participating member in one or more of the following enumerated plans: law
12 enforcement plan, judges' plan, highway patrol plan, teachers' fund for retirement
13 plan, or alternative retirement program established under section 15-10-17 for
14 university system employees.
 - 15 a. A participating or deferred member in the defined contribution retirement
16 plan under chapter 54-52.6 who becomes eligible to participate in a plan
17 enumerated under this subsection is eligible to participate in the retirement
18 plan enumerated under this subsection.
 - 19 b. A participating member of a retirement plan enumerated under this
20 subsection who becomes an eligible employee is not eligible to participate in
21 the defined benefit retirement plan under this chapter but instead
22 participates in the defined contribution retirement plan under chapter
23 54-52.6. However, this subdivision does not apply to an individual who
24 before January 1, 2024, is a participating or a deferred member under this
25 chapter, as that individual continues to participate in the defined benefit
26 retirement plan under this chapter.
- 27 5. The board shall adopt rules to implement this section.

28 **SECTION 6. REENACTMENT.** The portion of Senate Bill No. 2015, as approved by the
29 sixty-eighth legislative assembly, and published in section 44 of chapter 47 of the 2023 Session
30 Laws, is reenacted as follows:

1 **SECTION 44. AMENDMENT.** Section 54-52.2-09 of the North Dakota Century
2 Code, as created in section 13 of House Bill No. 1040, as approved by the sixty-eighth
3 legislative assembly, is amended and reenacted as follows:

4 **54-52.2-09. Employer match for members of defined contribution retirement**
5 **plan.**

6 An employee who first participated in the defined contribution retirement plan
7 under chapter 54-52.6 after December 31, 2023, who elects to contribute less than the
8 optional three percent of wages or salary under subdivision b of subsection 1 of
9 section 54-52.6-09, who participates in the deferred compensation program under this
10 chapter, qualifies for employer matching of contributions made under this section. The
11 employee may elect to contribute an amount of wages or salary which does not
12 exceed any remaining balance of the optional three percent contribution and the
13 employer shall match this contribution. This section does not limit the ability of an
14 employee to contribute unmatched wages or salary under this chapter, subject to
15 federal contribution limitations.

16 **SECTION 7. REENACTMENT.** The portion of Senate Bill No. 2015, as approved by the
17 sixty-eighth legislative assembly, and published in section 45 of chapter 47 of the 2023 Session
18 Laws, is reenacted as follows:

19 **SECTION 45. AMENDMENT.** Subsection 3 of section 54-52.6-01 of the North
20 Dakota Century Code, as amended in section 14 of House Bill No. 1040, as approved
21 by the sixty-eighth legislative assembly, is amended and reenacted as follows:

- 22 3. "Eligible employee", for employees who become participating members after
23 December 31, 2023, has the same meaning as provided under section
24 54-52-02.15. For employees who elected to join the defined contribution
25 retirement plan under this chapter before January 1, 2024, the term includes a
26 permanent state employee, except an employee of the judicial branch or an
27 employee of the board of higher education and state institutions under the
28 jurisdiction of the board of higher education, who is at least eighteen years of age
29 and who is in a position not classified by the North Dakota human resource
30 management services.

1 **SECTION 8. REENACTMENT.** The portion of Senate Bill No. 2015, as approved by the
2 sixty-eighth legislative assembly, and published in section 46 of chapter 47 of the 2023 Session
3 Laws, is reenacted as follows:

4 **SECTION 46. AMENDMENT.** Section 54-52.6-02 of the North Dakota Century
5 Code, as amended in section 15 of House Bill No. 1040, as approved by the sixty-
6 eighth legislative assembly, is amended and reenacted as follows:

7 **54-52.6-02. Election through December 31, 2023.**

- 8 1. The board shall provide an opportunity for each eligible employee who is a
9 member of the public employees retirement system on September 30, 2001, and
10 who has not made a written election under this section to transfer to the defined
11 contribution retirement plan before October 1, 2001, to elect in writing to
12 terminate membership in the public employees retirement system and elect to
13 become a participating member under this chapter. Except as provided in section
14 54-52.6-03, an election made by an eligible employee under this section is
15 irrevocable. The board shall accept written elections under this section from
16 eligible employees during the period beginning on July 1, 1999, and ending
17 12:01 a.m. December 14, 2001. An eligible employee who does not make a
18 written election or who does not file the election during the period specified in this
19 section continues to be a member of the public employees retirement system. An
20 eligible employee who makes and files a written election under this section
21 ceases to be a member of the public employees retirement system effective
22 twelve midnight December 31, 2001; becomes a participating member in the
23 defined contribution retirement plan under this chapter effective 12:01 a.m.
24 January 1, 2002; and waives all of that person's rights to a pension, annuity,
25 retirement allowance, insurance benefit, or any other benefit under the public
26 employees retirement system effective December 31, 2001. This section does
27 not affect an individual's right to health benefits or retiree health benefits under
28 chapter 54-52.1. An eligible employee who is first employed and entered upon
29 the payroll of that person's employer after September 30, 2001, and before
30 January 1, 2024, may make an election to participate in the defined contribution
31 retirement plan established under this chapter at any time during the first six

1 months after the date of employment. If the board, in its sole discretion,
2 determines that the employee was not adequately notified of the employee's
3 option to participate in the defined contribution retirement plan, the board may
4 provide the employee a reasonable time within which to make that election,
5 which may extend beyond the original six-month decision window.

- 6 2. If an individual who is a deferred member of the public employees retirement
7 system on September 30, 2001, is re-employed before January 1, 2024, and by
8 virtue of that employment is again eligible for membership in the public
9 employees retirement system under chapter 54-52, the individual may elect in
10 writing to remain a member of the public employees retirement system or if
11 eligible to participate in the defined contribution retirement plan established under
12 this chapter to terminate membership in the public employees retirement system
13 and become a participating member in the defined contribution retirement plan
14 established under this chapter. An election made by a deferred member under
15 this section is irrevocable. The board shall accept written elections under this
16 section from a deferred member during the period beginning on the date of the
17 individual's re-employment and ending upon the expiration of six months after the
18 date of that re-employment. If the board, in its sole discretion, determines that the
19 employee was not adequately notified of the employee's option to participate in
20 the defined contribution retirement plan, the board may provide the employee a
21 reasonable time within which to make that election, which may extend beyond
22 the original six-month decision window. A deferred member who makes and files
23 a written election to remain a member of the public employees retirement system
24 retains all rights and is subject to all conditions as a member of that retirement
25 system. A deferred member who does not make a written election or who does
26 not file the election during the period specified in this section continues to be a
27 member of the public employees retirement system. A deferred member who
28 makes and files a written election to terminate membership in the public
29 employees retirement system ceases to be a member of the public employees
30 retirement system effective on the last day of the payroll period that includes the
31 date of the election; becomes a participating member in the defined contribution

1 retirement plan under this chapter effective the first day of the payroll immediately
2 following the date of the election; and waives all of that person's rights to a
3 pension, an annuity, a retirement allowance, insurance benefit, or any other
4 benefit under the public employees retirement system effective the last day of the
5 payroll that includes the date of the election. This section does not affect any right
6 to health benefits or retiree health benefits to which the deferred member may
7 otherwise be entitled.

- 8 3. An eligible employee who elects under this section to participate in the retirement
9 plan established under this chapter must remain a participant even if that
10 employee returns to the classified service or becomes employed by a political
11 subdivision that participates in the public employees retirement system. The
12 contribution amount must be as provided in this chapter, regardless of the
13 position in which the employee is employed. Notwithstanding the irrevocability
14 provisions of this chapter, if a member who elects to participate in the retirement
15 plan established under this chapter becomes a supreme or district court judge,
16 becomes a member of the highway patrol, becomes employed in a position
17 subject to teachers' fund for retirement membership, or becomes an employee of
18 the board of higher education or state institution under the jurisdiction of the
19 board of higher education who is eligible to participate in an alternative retirement
20 program established under subsection 6 of section 15-10-17, the member's
21 status as a member of the defined contribution retirement plan is suspended, and
22 the member becomes a new member of the retirement plan for which that
23 member's new position is eligible. The member's account balance remains in the
24 defined contribution retirement plan, but no new contributions may be made to
25 that account. The member's service credit and salary history that were forfeited
26 as a result of the member's transfer to the defined contribution retirement plan
27 remain forfeited, and service credit accumulation in the new retirement plan
28 begins from the first day of employment in the new position. If the member later
29 returns to employment that is eligible for the defined contribution retirement plan,
30 the member's suspension must be terminated, the member again becomes a
31 member of the defined contribution retirement plan, and the member's account

- 1 resumes accepting contributions. At the member's option, and pursuant to rules
2 adopted by the board, the member may transfer any available balance as
3 determined by the provisions of the alternate retirement plan into the member's
4 account under this chapter.
- 5 4. After consultation with its actuary, the board shall determine the method by which
6 a participating member or deferred member may make a written election under
7 this section. If the participating member or deferred member is married at the
8 time of the election, the election is not effective unless the election is signed by
9 the individual's spouse. However, the board may waive this requirement if the
10 spouse's signature cannot be obtained because of extenuating circumstances.
- 11 5. If the board receives notification from the internal revenue service that this
12 section or any portion of this section will cause the public employees retirement
13 system or the retirement plan established under this chapter to be disqualified for
14 tax purposes under the Internal Revenue Code, then the portion that will cause
15 the disqualification does not apply.
- 16 6. A participating member under this section who becomes a temporary employee
17 may still participate in the defined contribution retirement plan upon filing an
18 election with the board within one hundred eighty days of transferring to
19 temporary employee status. The participating member may not become a
20 member of the defined benefit plan as a temporary employee.
- 21 a. The temporary employee electing to participate in the defined contribution
22 retirement plan shall pay into the plan as provided under section
23 54-52.6-09.6.
- 24 b. An employer may not pay the temporary employee's contributions.
- 25 c. A temporary employee may continue to participate as a temporary
26 employee until termination of employment or reclassification of the
27 temporary employee as a permanent employee.
- 28 7. A former participating member under this section who has accepted a retirement
29 distribution pursuant to section 54-52.6-13 and who subsequently becomes
30 employed by an entity different from the employer with which the member was
31 employed at the time the member retired but which does participate in any

1 state-sponsored retirement plan may, before re-enrolling in the defined
2 contribution retirement plan, elect to permanently waive future participation in the
3 defined contribution retirement plan, whatever plan in which the new employing
4 entity participates, and the retiree health program and maintain that member's
5 retirement status. Neither the member nor the employer are required to make any
6 future retirement contributions on behalf of that employee.

7 8. After December 31, 2023, an eligible employee is no longer allowed to elect
8 participation under this section.

9 **SECTION 9. REENACTMENT.** The portion of Senate Bill No. 2015, as approved by the
10 sixty-eighth legislative assembly, and published in section 47 of chapter 47 of the 2023 Session
11 Laws, is reenacted as follows:

12 **SECTION 47. AMENDMENT.** Subsection 1 of section 54-52.6-02.1 of the North
13 Dakota Century Code, as created by section 16 of House Bill No. 1040, as approved
14 by the sixty-eighth legislative assembly, is amended and reenacted as follows:

15 1. Except as otherwise provided under section 54-52-02.5 or 54-52-02.15 or this
16 chapter, effective January 1, 2024, an eligible employee who is first enrolled shall
17 participate in the defined contribution retirement plan under this chapter.

18 **SECTION 10. REENACTMENT.** The portion of Senate Bill No. 2015, as approved by the
19 sixty-eighth legislative assembly, and published in section 48 of chapter 47 of the 2023 Session
20 Laws, is reenacted as follows:

21 **SECTION 48. AMENDMENT.** Section 54-52.6-02.2 of the North Dakota Century
22 Code, as created by section 17 of House Bill No. 1040, as approved by the sixty-
23 eighth legislative assembly, is amended and reenacted as follows:

24 **54-52.6-02.2. Election after December 31, 2023 - Additional employer**
25 **contribution.**

26 1. As used in this section, "eligible employee" means a permanent state employee
27 who on December 31, 2023, is a participating member of the public employees
28 retirement system main system plan under chapter 54-42, who has been a
29 participating member under chapter 54-52 for no more than five years, and who
30 is at least eighteen years of age.

- 1 2. The board shall provide a three-month election period, from January 1, 2024,
2 through March 31, 2024, for an eligible employee to transfer to the defined
3 contribution plan under this chapter pursuant to the rules and policies adopted by
4 the board.
- 5 a. An election under this section made by a member of the public employees
6 retirement system under chapter 54-52 to transfer to the defined
7 contribution retirement plan under this chapter is irrevocable.
- 8 b. For an eligible employee who elects to transfer from the public employees
9 retirement system under chapter 54-52 to the defined contribution
10 retirement plan under this chapter, the board shall transfer a lump sum
11 amount from the public employees retirement system fund to the member's
12 account in the defined contribution retirement plan under this chapter.
13 However, if the eligible employee terminates employment before receiving
14 the lump sum transfer under this section, the election made is ineffective
15 and the eligible employee remains a member of the public employees
16 retirement system under chapter 54-52 and retains all the rights and
17 privileges under that chapter.
- 18 c. The board shall calculate the lump sum amount to be transferred based on
19 the actuarial present value of the eligible employee's accumulated benefit
20 obligation under the public employees retirement system based on the
21 assumption the eligible employee will retire under the earlier applicable
22 normal retirement age, plus interest from January 1, 2024, to the date of
23 transfer, at the rate of one-half of one percent less than the actuarial interest
24 assumption at the time of the election.
- 25 d. This section does not affect an eligible individual's right to health benefits
26 under chapter 54-52.1.
- 27 3. The state employer of an eligible employee who elects under this section to
28 participate in the defined contribution retirement plan under this chapter shall pay
29 an additional annual contribution of three thousand three hundred and thirty-three
30 dollars for up to three years. Under this subsection, the employer shall pay the
31 additional contribution each year the eligible employee continues permanent

1 employment with the state, beginning January 2025, and extending no further
2 than January 2027.

3 4. If the board receives notification from the internal revenue service that this
4 section or any portion of this section will cause the public employees retirement
5 system or the retirement plan established under this chapter to be disqualified for
6 tax purposes under the Internal Revenue Code, that portion that will cause the
7 disqualification does not apply.

8 **SECTION 11. REENACTMENT.** The portion of Senate Bill No. 2015, as approved by the
9 sixty-eighth legislative assembly, and published in section 49 of chapter 47 of the 2023 Session
10 Laws, is reenacted as follows:

11 **SECTION 49. AMENDMENT.** Subsection 2 of section 54-52.6-03 of the North
12 Dakota Century Code, as amended by section 18 of House Bill No. 1040, as approved
13 by the sixty-eighth legislative assembly, is amended and reenacted as follows:

14 2. The board shall calculate the amount to be transferred for persons employed
15 after September 30, 2001, and before January 1, 2024, using only the formula
16 contained in subdivision b of subsection 1.

17 **SECTION 12. REENACTMENT.** The portion of Senate Bill No. 2015, as approved by the
18 sixty-eighth legislative assembly, and published in section 50 of chapter 47 of the 2023 Session
19 Laws, is reenacted as follows:

20 **SECTION 50. AMENDMENT.** Section 54-52.6-09 of the North Dakota Century
21 Code, as amended in section 22 of House Bill No. 1040, as approved by the sixty-
22 eighth legislative assembly, is amended and reenacted as follows:

23 **54-52.6-09. Contributions - Penalty.**

24 1. a. A participating member who first joined the defined contribution retirement
25 plan before January 1, 2024, and an employee who elects to participate in
26 the defined contribution plan under section 54-52.6-02.2, shall contribute
27 monthly seven percent of the monthly salary or wage paid to the participant.
28 b. A participating member who first joined the defined contribution retirement
29 plan after December 31, 2023, except for an employee who elects to
30 participate in the defined contribution plan under section 54-52.6-02.2, shall
31 contribute monthly four percent of the monthly salary or wage paid to the

- 1 participant. In addition, the participating member may elect to contribute
2 monthly up to an additional three percent of the monthly salary or wage paid
3 to the participant.
- 4 c. This assessment must be deducted from the participant's salary in equal
5 monthly installments commencing with the first month of participation in the
6 defined contribution retirement plan established under this chapter.
- 7 2. a. For a participating member who first joined the defined contribution
8 retirement plan before January 1, 2024, and for an employee who elects to
9 participate in the defined contribution plan under section 54-52.6-02.2, the
10 employer shall contribute an amount equal to seven and twelve-hundredths
11 percent of the monthly salary or wage of the participating member.
- 12 b. For a participating member who first joined the defined contribution
13 retirement plan after December 31, 2023, except for an employee who
14 elects to participate in the defined contribution plan under section
15 54-52.6-02.2, the employer shall contribute an amount equal to four and
16 twelve-hundredths percent of the monthly salary or wage of a participating
17 member, plus up to an additional three percent as an employer matching
18 contribution calculated based on the participating member's election under
19 subdivision b of subsection 1.
- 20 c. For a participating member first enrolled after December 31, 2019, the
21 employer contribution includes an additional increase of one and fourteen-
22 hundredths percent.
- 23 d. If the employee's contribution is paid by the employer under subsection 3,
24 the employer shall contribute, in addition, an amount equal to the required
25 employee's contribution. Monthly, the employer shall pay such contribution
26 into the participating member's account from the employer's funds
27 appropriated for payroll and salary or any other funds available for such
28 purposes.
- 29 e. If the employer fails to pay the contributions monthly, or fails to otherwise
30 comply with the board's established wage reporting or payroll reporting
31 process requirements, the employer is subject to a civil penalty of fifty

1 dollars and, as interest, one percent of the amount due for each month of
2 delay or fraction of a month after the payment became due. In lieu of
3 assessing a civil penalty or one percent per month, or both, interest at the
4 actuarial rate of return may be assessed for each month the contributions
5 are delinquent. If contributions are paid within ninety days of the date the
6 contributions became due, penalty and interest to be paid on delinquent
7 contributions may be waived.

- 8 3. Each employer, at its option, may pay the employee contributions required by this
9 section for all compensation earned after December 31, 1999. The amount paid
10 must be paid by the employer in lieu of contributions by the employee. If the
11 employer decides not to pay the contributions, the amount that would have been
12 paid will continue to be deducted from the employee's compensation. If
13 contributions are paid by the employer, they must be treated as employer
14 contributions in determining tax treatment under this code and the federal Internal
15 Revenue Code. Contributions paid by the employer may not be included as gross
16 income of the employee in determining tax treatment under this code and the
17 federal Internal Revenue Code until they are distributed or made available. The
18 employer shall pay these employee contributions from the same source of funds
19 used in paying compensation to the employee. The employer shall pay these
20 contributions by effecting an equal cash reduction in the gross salary of the
21 employee or by an offset against future salary increases or by a combination of a
22 reduction in gross salary and offset against future salary increases. Employee
23 contributions paid by the employer must be treated for the purposes of this
24 chapter in the same manner and to the same extent as employee contributions
25 made before the date on which employee contributions were assumed by the
26 employer. An employer shall exercise its option under this subsection by
27 reporting its choice to the board in writing.

28 **SECTION 13. REENACTMENT.** The portion of Senate Bill No. 2015, as approved by the
29 sixty-eighth legislative assembly, and published in part in section 59 of chapter 47 of the 2023
30 Session Laws, is reenacted as follows:

1 **SECTION 59. EXEMPTION - EMPLOYEE BENEFITS PROGRAMS**

2 **COMMITTEE.** This Act is exempt from the requirements of section 54-35-02.4.

3 **SECTION 14. REENACTMENT.** The portion of Senate Bill No. 2015, as approved by the
4 sixty-eighth legislative assembly, and published in section 66 of chapter 47 of the 2023 Session
5 Laws, is reenacted as follows:

6 **SECTION 66. CONTINGENT EFFECTIVE DATE.** Sections 1 through 12 of this
7 Act become effective on January 1, 2024, if before that date the retirement board
8 certifies to the legislative council that the public employees retirement system is
9 prepared to close the main system defined benefit retirement plan on December 31,
10 2023, and to open the new defined contribution retirement plan on January 1, 2024.

11 **SECTION 15. EFFECTIVE DATE.** Sections 13 and 14 of this Act become effective on the
12 date this Act is filed with the secretary of state.

23.1153.01000

FIRST DRAFT:
Prepared by the Legislative Council staff for the
Legislative Management
October 2023

Sixty-eighth
Legislative Assembly
of North Dakota

Introduced by

1 A BILL for an Act to reenact portions of Senate Bill No. 2015, as approved by the sixty-eighth
2 legislative assembly, to amend and reenact section 54-52-03 of the North Dakota Century
3 Code, relating to the membership of the public employees retirement system board; to provide
4 for duties of the public employees retirement system and public employees retirement system
5 board; to provide an exemption; to provide for retroactive application; and to provide an effective
6 date.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. REENACTMENT.** The portion of Senate Bill No. 2015, as approved by the
9 sixty-eighth legislative assembly, and published in section 41 of chapter 47 of the 2023 Session
10 Laws, is reenacted as follows:

11 **SECTION 41. AMENDMENT.** Section 54-52-03 of the North Dakota Century
12 Code is amended and reenacted as follows:

13 **54-52-03. Governing authority.**

- 14 1. A state agency is hereby created to constitute the governing authority of the
15 system to consist of a board of eleven individuals known as the retirement
16 board. No more than one elected member of the board may be in the
17 employ of a single department, institution, or agency of the state or in the
18 employ of a political subdivision. An employee of the public employees
19 retirement system or the state retirement and investment office may not
20 serve on the board.
- 21 2. Four members of the legislative assembly must be appointed to serve on
22 the board. The majority leader of the house of representatives shall appoint
23 two members of the house of representatives and the majority leader of the

1 senate shall appoint two members of the senate. The members appointed
2 under this subsection shall serve a term of two years.

3 3. Four members of the board must be appointed by the governor to serve a
4 term of five years. Each appointee under this subsection must be a North
5 Dakota citizen who is not a state or political subdivision employee and who
6 is familiar with retirement and employee benefit plans. The governor shall
7 appoint one citizen member to serve as chairman of the board.

8 4. Three board members must be elected by and from among the active
9 participating members, members of the retirement plan established under
10 chapter 54-52.6, members of the retirement plan established under chapter
11 39-03.1, and members of the job service North Dakota retirement plan.
12 Employees who have terminated their employment for whatever reason are
13 not eligible to serve as elected members of the board under this subsection.
14 Board members must be elected to a five-year term pursuant to an election
15 called by the board. Notice of board elections must be given to all active
16 participating members. The time spent in performing duties as a board
17 member may not be charged against any employee's accumulated annual
18 or any other type of leave.

19 5. The members of the board are entitled to receive one hundred forty-eight
20 dollars per day compensation and necessary mileage and travel expenses
21 as provided in sections 44-08-04 and 54-06-09. This is in addition to any
22 other pay or allowance due the chairman or a member, plus an allowance
23 for expenses they may incur through service on the board.

24 6. A board member shall serve until the board member's successor qualifies.
25 Each board member is entitled to one vote, and six of the eleven board
26 members constitute a quorum. Six votes are necessary for resolution or
27 action by the board at any meeting.

28 **SECTION 2. REENACTMENT.** The portion of Senate Bill No. 2015, as approved by the
29 sixty-eighth legislative assembly, and published in section 56 of chapter 47 of the 2023 Session
30 Laws, is reenacted as follows:

1 **SECTION 56. PUBLIC EMPLOYEES RETIREMENT SYSTEM - MAIN SYSTEM**
2 **DEFINED BENEFIT PLAN INVESTMENTS.** During the 2023-25 biennium, the
3 retirement board may not reduce the actuarial rate of return assumption for the public
4 employees retirement system main system defined benefit plan below six and one-half
5 percent.

6 **SECTION 3. REENACTMENT.** The portion of Senate Bill No. 2015, as approved by the
7 sixty-eighth legislative assembly, and published in section 57 of chapter 47 of the 2023 Session
8 Laws, is reenacted as follows:

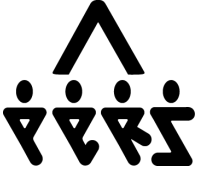
9 **SECTION 57. PUBLIC EMPLOYEES RETIREMENT SYSTEM - RETIREMENT**
10 **PLAN TRANSITION EDUCATION.** During the 2023-25 biennium, the public
11 employees retirement system shall conduct an informational campaign to educate
12 current and prospective state employees of the transition from the defined benefit
13 retirement plan to the defined contribution retirement plan.

14 **SECTION 4. REENACTMENT.** The portion of Senate Bill No. 2015, as approved by the
15 sixty-eighth legislative assembly, and published in part in section 59 of chapter 47 of the 2023
16 Session Laws, is reenacted as follows:

17 **SECTION 59. EXEMPTION - EMPLOYEE BENEFITS PROGRAMS**
18 **COMMITTEE.** This Act is exempt from the requirements of section 54-35-02.4.

19 **SECTION 5. RETROACTIVE APPLICATION.** Section 1 of this Act applies retroactively to
20 June 1, 2023. Sections 2 through 4 of this Act apply retroactively to July 1, 2023.

21 **SECTION 6. EFFECTIVE DATE.** This Act becomes effective immediately upon its filing with
22 the secretary of state.



**North Dakota
Public Employees Retirement System**
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Memorandum

TO: NDPERS Board

FROM: Scott

DATE: October 19, 2023

SUBJECT: Litigation Versus Legislative Assembly

As you are aware, the Board's Supreme Court case against the Legislative Assembly has concluded, with the Court finding the Legislature violated the single subject rule. A memo from Bob Klausner (the Board's outside counsel) is attached. The Court did not address the separation of powers argument (although one Justice did so in a concurring opinion). Bob will be available at the meeting.

BOARD ACTION REQUESTED: Determine next steps in regard to litigation against the Legislative Assembly. This would include consideration of Board Actions since June 1, most likely at the November meeting.

To: Board Of Trustees, North Dakota Public Employees Retirement System
and Scott Miller, Executive Director

From: Klausner, Kaufman, Jensen & Levinson and
Elsberry & Shively

Re: Final Report on Litigation

Date: October 17, 2023

On September 28, 2023, the Supreme Court of North Dakota unanimously invalidated SB 2015 which restructured the Board of Trustees. The Court found that SB 2015, which purported to be an appropriations bill, encompassed a myriad of fiscal and non-fiscal subjects in violation of the “single subject” rule in Article 4, Section 13 of the North Dakota Constitution. The Court determined it was not appropriate to decide which provisions of the bill were fiscal and those which embraced other unrelated subjects. As a result, the Court invalidated the statute in its entirety.

As the Court explained, when a law is declared to be unconstitutional, it is to be treated as if it was never enacted. This has the effect that anything flowing from that void enactment is likewise void and of no effect. Following the issuance of the opinion, the Legislative Assembly moved the Court to stay the effectiveness of the ruling. The Board responded arguing the Court had no authority to stay its own order as there was no legal mechanism to allow it, and it would have the effect of perpetuating an unconstitutional act. On October 12, the Court agreed. It denied the Legislative Assembly’s motion for stay and entered a writ of injunction effective immediately.

This has the immediate effect of reviving the Board of Trustees as structured prior to the passage of SB 2015. Since the Board of Trustees created by SB 2015 is to be treated as if it never existed, the actions taken by that Board are also void. Void actions by a governmental entity which had no power to act in the first instance cannot be ratified. *Fox v. Jones*, 102 N.W. 161, 161-62 (1905); *Provins v. Workforce Safety and Insurance Fund*, 2022 ND 213, 982 N.W.2d 559.

A review of the minutes from the meetings held after the adoption of SB 2015 shows motions and votes made by persons who never constitutionally held office. This is analogous to the effect of action taken at a meeting which violated the open meetings law. *Peters v. Bowman Public School District #1*, 231 N.W.2d 817, 820 (N.D. 1975).

While we would defer to the Board’s regular counsel for advice on procedural matters, in our view, the best fiduciary course of action in light of the Supreme Court’s decision is to rescind and—if desired by the Board—re-vote on all matters previously adopted. While several of the matters were adopted with 5 affirmative votes from trustees who carried over from the pre-SB 2015 board, many of those motions were made by persons whose appointment has been declared void. Additionally, the voting rights of the unlawfully displaced trustees have been diluted by their exclusion from those meetings.

In closing, we appreciate the confidence placed in us by the Board of Trustees in this vital litigation.