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10/15/03  
Date

2003 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2058

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2058

Senate Government and Veterans Affairs Committee

Conference Committee

Hearing Date 01/16/03

Tape Number	Side A	Side B	Meter #
Tape 1	x		1250-2885 & 3085-3300
Committee Clerk Signature <i>[Signature]</i>			

Minutes:

**Senator Karen Krebsbach, Chairman** opens SB 2058. All senators present.

**Sparbs Collins, Public Employees Retirement System** to testify in favor of SB 2058.

(Testimony and additional information attached)

**Senator Krebsbach**: I noticed that you are utilizing the term public employer instead of governmental unit.

**S. Collins**: The has to do with provision on that purchase where now you are restricted, you can only do it for non PERS public employees, now it can be any public employees.

**Senator Krebsbach**: Other than the confidentiality is the HIPPA regulations affecting your industry in other ways?

**S. Collins**: Yes, not in the retirement area, it could in the disability benefits. In the health insurance area is much more than that.

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Page 2

Senate Government and Veterans Affairs Committee

Bill/Resolution Number SB 2058

Hearing Date 01/16/03

**Senator Krebsbach** : Is there any further testimony in favor of SB 2058,...Neutral or in

Opposition...

SB 2058 Closed

**Tape 1 Side A Meter # 3100**

**Senator Wardner** : I make motion for an adoption of amendment

**Senator Nelson** : 2nd

6 Yes, 0 No, 0 Absent and not voting

**Senator Brown**: I make a motion for a DO Pass as amended

**Senator Wardner** : 2nd

6 Yes, 0 No, 0 Absent and not voting

Carrier: Senator Nelson

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**FISCAL NOTE**  
 Requested by Legislative Council  
 01/20/2003

Amendment to: SB 2058

1A. **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.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

This bill as amended is not anticipated to have any actuarial or fiscal impact upon PERS

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.

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.

C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

<b>Name:</b>	Sparb Collins	<b>Agency:</b>	Public Employees Retirement System
<b>Phone Number:</b>	328-3901	<b>Date Prepared:</b>	01/20/2003

**FISCAL NOTE**  
 Requested by Legislative Council  
 01/02/2003

Bill/Resolution No.: SB 2058

1A. **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.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

This bill is not anticipated to have any actuarial or fiscal impact upon PERS

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.

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.

C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

<b>Name:</b>	Sparb Collins	<b>Agency:</b>	PERS
<b>Phone Number:</b>	701-328-3901	<b>Date Prepared:</b>	01/06/2003

*S. Costa Rickford* 10/15/03  
 Operator's Signature Date

30053.0301  
Title.0400

Adopted by the Government and Veterans  
Affairs Committee  
January 16, 2003

93  
1-16-03  
1 of 2

PROPOSED AMENDMENTS TO SENATE BILL NO. 2058

Page 1, line 2, replace the second "two" with "three"

Page 15, line 5, overstrike "governmental unit that does not"

Page 15, line 6, overstrike "participate in the" and overstrike "employees retirement system under this chapter" and insert immediately thereafter "employer"

Page 17, line 9, overstrike "member's present monthly" and after "salary" insert "the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period."

Page 17, line 21, overstrike "governmental unit that does not"

Page 17, line 22, overstrike "participate in the" and overstrike "employees retirement system under this chapter" and insert immediately thereafter "employer"

Page 18, line 18, replace "on" with "or"

Page 19, line 26, overstrike "member's present monthly" and after "salary" insert "the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period."

Page 20, line 26, replace "Two" with "Three"

Page 21, after line 3, insert:

"Any person if the board determines disclosure is necessary for treatment, operational, or payment purposes, including the completion of necessary documents."

Page 24, line 22, remove "member's present monthly" and after "salary" insert "the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period

Immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period."

2 of 2

Page 25, line 5, replace "54-52.2-03.2" with "54-52.2-03.3"

Renumber accordingly

Page No. 2

30053.0301

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REPORT OF STANDING COMMITTEE (410)  
January 17, 2003 9:58 a.m.

Module No: SR-09-0712  
Carrier: Nelson  
Insert LC: 30053.0301 Title: .0400

**REPORT OF STANDING COMMITTEE**

**SB 2058: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2058 was placed on the Sixth order on the calendar.

Page 1, line 2, replace the second "two" with "three"

Page 15, line 5, overstrike "governmental unit that does not"

Page 15, line 6, overstrike "participate in the" and overstrike "employees retirement system under this chapter" and insert immediately thereafter "employer"

Page 17, line 9, overstrike "member's present monthly" and after "salary" insert "the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period."

Page 17, line 21, overstrike "governmental unit that does not"

Page 17, line 22, overstrike "participate in the" and overstrike "employees retirement system under this chapter" and insert immediately thereafter "employer"

Page 18, line 18, replace "on" with "or"

Page 19, line 26, overstrike "member's present monthly" and after "salary" insert "the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period."

Page 20, line 26, replace "Two" with "Three"

Page 21, after line 3, insert:

"Any person if the board determines disclosure is necessary for treatment, operational, or payment purposes, including the completion of necessary documents."

Page 24, line 22, remove "member's present monthly" and after "salary" insert "the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period."

Page 25, line 5, replace "54-52.2-03.2" with "54-52.2-03.3"

Renumber accordingly

2003 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2058

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10/15/03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2058

House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 3-13-03

Tape Number	Side A	Side B	Meter #
1	x		36.1-end
1		x	0-4.4
Committee Clerk Signature <i>Greg Rucke</i>			

Minutes: Chairman Klein: called the hearing to order on SB 2058. All committee members were present.

Sparb Collins, Public Employees Retirement System: appeared in support of SB 2058 (SEE ATTACHED TESTIMONY).

Representative Sitte: can you explain what domestic relations orders are?

Sparb Collins: When married couples get separated it is the document that has to do with the division of the assets, in the past we have not be able to accept domestic relations of a deferred comp account by the court, now with this authorization we would be able to segregate them.

Representative Kasper: authorizes pers to establish IRAs, what does it mean how would you implement, who would be providing IRAs.

Sparb Collins: that actually is a carry over of the authorization that is at the federal level in the pers at this point I don't know that we would ever establish IRAs.

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Page 2

House Government and Veterans Affairs Committee

Bill/Resolution Number SB 2058

Hearing Date 3-13-03

Representative Klein: are you telling me that under the present situation you can't share information?

Sparb Collins: yes, we did make some changes to the confidentiality provision last time, what we are talking about here, lets say the estate segregates the account to two or three people, we can sit down and talk to the one person saying you are getting this much out of the account, but we really can't say is that the rest of the account is going this other person.

Representative Klein: don't the employees get credit for their sick leave now?

Sparb Collins: no, employees get credit, but if I was gone for sick leave I would continue to receive my pay for any amount of time that I get. But employees at the time that they finish their career that has 10 years of service or more they can get 10% of their sick leave paid back in cash, so they let it accumulate.

Representative Sitte: what percent of state employees salary do they retire at?

Sparb Collins: the average years of service on the state of retirement is 19. almost 20, teachers is about 30 years. At 20 years is about 40% of their salary. At 25 years they would get about 50% of their salary.

Representative Sitte: made a **DO PASS** motion.

Representative Meier: **SECOND** the do pass motion.

**VOTE: 14-YES 0-NO 0-ABSENT.**

Motion carried.

Representative Tieman: will carry the bill to the floor.

Date: 3-20-03

Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTE  
SENATE BILL/RESOLUTION NO. SB 2058

House GOVERNMENT AND VETERANS AFFAIRS Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken: DO PASS

Motion Made By Seconded By

Representatives	Yes	No	Representatives	Yes	No
Chairman M.M. Klein	X		B. Amernan	X	
Vice Chairman B.B. Grande	X		L. Potter	X	
W.R. Devlin	X		C. Williams	X	
C.B. Haas	X		L. Wittich	X	
J. Kasper	X				
L.R. Klein	X				
L. Meier	X				
M. Sitte	X				
W.W. Tieman	X				
R.H. Wikenheiser	X				

Total (Yes) 11 No 0

Absent 0

Floor Assignment Rep. Tieman

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

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Operator's Signature: Salosta Rickford Date: 10/15/03

REPORT OF STANDING COMMITTEE (410)  
March 21, 2003 7:49 a.m.

Module No: HR-51-5388  
Carrier: Tieman  
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE  
SB 2058, as engrossed: Government and Veterans Affairs Committee (Rep. M. Klein,  
Chairman) recommends DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT  
VOTING). Engrossed SB 2058 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-51-5388

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Date



2003 TESTIMONY

SB 2058

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**REPORT OF THE LEGISLATIVE COUNCIL'S  
EMPLOYEE BENEFITS PROGRAMS COMMITTEE  
SENATE BILL NO. 2058**

**Sponsor:** Retirement Board

**Proposal:** Changes the definition of governmental unit to exclude the Highway Patrol for members of the Highway Patrolmen's retirement plan; changes the definition of retirement to include termination of participation in the retirement plan and meeting the normal retirement date as well as termination of employment; allows elected officials of participating counties, at their individual option, to enroll in the defined benefit plan within the first six months of their term; allows non-state-appointed officials of participating employers appointed on or after August 1, 1999, who meet the participation requirements of NDCC Chapter 54-52 to enroll in the defined benefit plan effective within the first month of taking office; allows the PERS Board to accept trustee-to-trustee transfers as permitted by Internal Revenue Code Sections 403 and 457 from a Section 403 annuity or Section 457 deferred compensation plan for the purchase of permissive service credit or as repayment of a cashout from a governmental plan; allows a board to establish individual retirement accounts and individual retirement annuities to allow employees to make voluntary employee contributions; provides that for purposes of multiple plan membership, service credit in TFFR, Highway Patrolmen's retirement system, or TIAA-CREF may not exceed 12 months of credit per year; provides that for purposes of determining benefits in multiple plan membership situations an employee may elect to have benefits calculated using the average of the highest salary received by the member for any 36 months employed during the last 120 months of employment in PERS or the average of the highest salary received by the member for any 36 consecutive months during the last 120 months of employment with any of the eligible employers with service credit that exceed one month in any month when combined with the service credit earned in the alternate retirement system; provides that employees who have dual membership rights may elect to begin participation in an alternate plan or continue participation in PERS; clarifies that a member or a surviving spouse is entitled to receive retiree health benefits beginning on the date retirement benefits are effective unless the premium is billed to the member's employer; and establishes standards for apportioning deferred compensation assets under qualified domestic relations orders.

The committee amended the bill at the request of the Retirement Board to clarify that the purchase provision is available to vested members instead of members with five years of service and to change the reference to prior service to other eligible service; to amend the bill as a result of a July 12, 2002, Attorney General's opinion stating that certain provisions of the retirement statutes are in conflict with the Uniformed Services Employment and Reemployment Rights Act of 1994 to bring the retirement statutes into compliance with federal law; to allow participating employers to purchase additional service credit on behalf of members under certain conditions; to amend the confidentiality provisions of the retirement statutes to allow the Retirement Board to publish the names of members the Retirement Board has been unable to contact; to provide that former participating members of the defined contribution retirement plan who are receiving retirement benefits or the surviving spouse of a former participating member who is eligible to receive or was receiving defined contribution retirement plan benefits is eligible to receive retiree health benefits; to extend the time period within which a member of the defined contribution retirement plan may waive a refund of the member's vested account balance from 30 days after termination to 120 days after termination; to allow employers of employees participating in the defined contribution retirement plan to make contributions for the conversion of sick leave and for the equivalent of up to five years of service credit unrelated to any other eligible service; and to add a provision to the deferred compensation authorization statute to require alternate payees to transfer to their own plan under a qualified domestic relations order.

The committee amended the bill at the request of the Retirement Board to add a provision clarifying the pretax purchase of service credit to address concerns of the Internal Revenue Service relating to the issuance of a letter ruling on the pretax purchase of service credit.

**Actuarial Analysis:** The consulting actuary reported that the actuarial impact of the proposal, as amended, is minimal.

**Committee Report:** Favorable recommendation.

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Date

**TESTIMONY  
OF  
SPARB COLLINS  
ON SENATE BILL 2058**

Madame Chair, members of the committee, good morning. My name is Sparb Collins and I am with the Public Employees Retirement System (PERS). I appear before you in support of SB 2058 which relates to the PERS Main Retirement System, the Deferred Comp Program, the Retiree Health Plan and the Defined Contribution Plan. This bill was reviewed during the interim by the Legislative Employee Benefits Committee and given a favorable recommendation. The bill was also determined to have no actuarial impact. Since the bill provides for numerous changes in our statutes, I have attached a section by section analysis of the bill and changes. Also, you will note we are proposing several amendments to the bill. To facilitate your review, I will summarize the changes by program in my testimony. If you would like to discuss any particular section in more detail we can use the attached analysis.

**DEFERRED COMP PROGRAM**

Sections 1, 17 and 20 relate to the Deferred Comp Program. The primary changes proposed in this bill relating to the Deferred Comp Program are to authorize PERS to accept domestic relations orders (DRO's). Recent changes at the federal level now facilitate this procedure for this program. We presently do DRO's in the main, HP, Judges, National Guard Plans and defined contribution plans.

Page 1 of 6

**MAIN SYSTEM**

Sections 2 through 15 and 22 relate to the Main Retirement System. Section 2 is changes in some of the definitions. These changes relate to standardizing the definition of an eligible employee so it is the same for retirement and group insurance by clarifying the minimum time of employment for eligibility during a specific year from 5 months to 20 weeks, and defining that HP retirement plan members are not part of this system. The change in Section 3 relates to multiple plan membership requirements that are addressed in more detail in Section 9.

Sections 4, 5, and 6 relate to defining in statute the procedures for elected and appointed official's participation at the state and political subdivision levels. These clarifications will establish in statute the administrative procedures the agency presently follows.

Section 7 clarifies the process for pretaxing employer contributions. This change is also done in concert with changes in Sections 11 and 13 of the bill that authorize the employer to purchase service on behalf of its employees.

Section 8 of the bill implements several changes that were recently authorized at the federal level. Specifically, it authorizes employees to rollover funds from 457 and 403(b) plans, do trustee to trustee transfers of funds from the 457 plan, and authorizes PERS to establish IRA's.

Section 9 changes the multiple plan membership procedures and is one of the primary initiatives in this bill. Multiple plan membership is how we coordinate our benefits with other state systems such as TFFR, HP and TIAA/CREF. This provision was originally enacted to provide portability to members of the state's retirement plans as employees went from one type of public employment to another. To accomplish this, present law provides that a multiple plan member must be assigned entirely to one system or another. We must use the final average salary from the last system of participation to calculate the benefit. Two problems have arisen relating to this existing provision. The first problem is administrative and concerns the difficulty in identifying the individuals who come under this provision, the difficulty participating employers have in understanding this provision, and the difficulty members have understanding the assignment process to one system or another in cases of service credit under both plans. The result is that when these situations are discovered, administrative transactions have had to be altered and in some cases the resulting change has adversely affected the member's expectation. The second problem area has been with using the final average salary from the last system to calculate benefits in all systems. While this provides portability between systems and is extremely beneficial to most members, for a few individuals this can result in a dramatic and inequitable drop in benefits. Therefore, the purpose of these changes is to address these two problems, and thereby, make it easier to administer for our participating employers and make it clearer and more equitable for all our members. First, the proposed new method would not require that a member be assigned entirely to one system or another. Instead the member would be allowed to participate in both systems and the employer would report contributions to both systems based upon the

Page 3 of 6

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10/15/03  
Date

member's employment. . Second, the employee will have the option at retirement to choose between two calculation methods and could select the one that best meets their needs while still maintaining the multiple membership provisions. The first method would be to have their retirement benefit calculated using all years of service and the final average salary in the PERS system. The second method would be to use the final average salary from the last 120 months of employment to calculate the benefit for all retirement plans. However, under this last method, overlapping months of service would be combined in determining the final average salary. Eligibility would be based upon combined years of service for both methods. This change will maintain the multiple membership aspects for state retirement plans, be clearer for the member, and also for the employer. Lastly, this section will allow existing multiple plan members to choose if they want to have their benefit calculated under the existing law or the new law.

Sections 10 and 11 relate to purchases and USERRA. In Section 10 the amount of time an employee can purchase is limited to 5 years. In Section 11 employers are authorized to purchase time for employees. Section 11 also incorporates in statute provisions relating to returning veterans based upon USERRA. The changes proposed are based upon the advice we received in a recent Attorney General's Opinion. We are proposing some additional changes in the attached amendments again based upon that opinion. These changes are on page 17 line 9 and page 19 line 26. These changes incorporate the requirements relating to salary in the federal law. We are also proposing to amend page 15 line 5 & 6 and page 17 line 21 & 22. The same change is proposed in both parts and will allow a member

who is working for an employer in PERS to buy past time with that employer if it was non PERS time. Present statute prohibits purchases of service from PERS employers

Section 12 summarizes provisions we need to include in our plan to maintain our qualified status in compliance with the IRS. Please note the repeal in Section 22 of the bill is the old IRS compliance provision that is being updated with this section.

Section 13 sets forth the conditions that must be met by an employer before they can purchase time for an employee.

Section 14 proposes some changes in our confidentiality provisions. First, we are requesting the authority to share information with a member's beneficiaries in settling an estate and secondly the ability to seek information from the general public on locating lost members. In this section we are also requesting an amendment to clarify administrative exchanges of information for administrative purposes and for HIPPA. This change is on page 21 after line 3 in the attached.

Section 15 grants the employer the authority to purchase sick leave credit for their employees upon termination

#### **RETIREE HEALTH PROGRAM**

Section 16 relates to the retiree health program. This change coordinates the effective date for members to receive the retiree health credit with the effective date of retirement payment.

**DEFINED CONTRIBUTION PLAN**

Sections 18, 19, and 21 relate to the defined contribution plan. Section 18 authorizes an employer to make additional contributions to the plan for an employee. This provision is added since it is intended to be the same type of benefit that is being requested in the Main System. Section 19 is to add the USERRA requirements to the plan. We are requesting an amendment again based upon the Attorney General's opinion. These amendments are on page 24 line 22 of the attached and relate to determining the salary of the veteran. Section 21 extends the timeframe for refunds of account balances under \$5,000 from 30 days to 120 days.

Madame Chair, members of the committee, PERS would appreciate your support of the SB 2058 and the proposed amendments. This completes my testimony

Page 6 of 6

LaCosta Rickford  
Operator's Signature

10/15/03  
Date



# TESTIMONY ON SB 2058

<p>17 SECTION 1. AMENDMENT. Section 28-22-19 of the North Dakota Century Code is 18 amended and reenacted as follows: 19 28-22-19. Exemptions from legal process - Public pensions, assistance, and 20 awards. The following amounts are exempt from liability for debts of the person to or on 21 account of whom the amounts are paid, and are not subject to seizure upon execution or other 22 process: 23 1. All pensions or annuities or retirement, disability, death, or other benefits paid or 24 payable by, or amounts received as a return of contributions and interest from, a 1 retirement system established pursuant to state law by the state except as 2 provided by sections 15-39.1-12.2, 39-03.1-14.2, and 54-52-17.6, and 3 54-52-2.03.3, a state agency, a political subdivision of the state, or a firefighter's 4 relief association for retirement, annuity, pension, disability benefit, or death benefit 5 purposes. 6 2. All awards made pursuant to chapter 54-23.4 as compensation for victims of 7 crimes. 8 3. All payments of assistance as aid to dependent children pursuant to chapter 50-09.</p>	<p>Section 1 changes</p> <p><i>This change is to allow PERS to accept Domestic Relations Orders on the Deferred Comp Program. Additional changes relating to this are in section 17 of this proposed bill</i></p>
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*La Costa Rickford*  
Operator's Signature

*10/15/03*  
Date

9 SECTION 2. AMENDMENT. Subsections 3, 7, 10, and 14 of section 54-52-01 of the  
 10 North Dakota Century Code are amended and reenacted as follows:

11 3. "Eligible employee" means all permanent employees who meet all of the eligibility  
 12 requirements set by this chapter and who are eighteen years or more of age, and  
 13 includes appointive and elective officials who elect to remain members of the  
 14 retirement system; provided, that judges of the supreme and district courts eligible  
 15 under section 54-52-02.3 and appointed officials who elect to participate under  
 16 section 54-52-02.5 are eligible employees and shall participate in the public  
 17 employee retirement system under sections 54-52-02.5, 54-52-02.11, and  
 18 54-52-02.12. Eligible employee does not include nonclassified state employees  
 19 who elect to become members of the retirement plan established under chapter  
 20 54-52.6 but does include employees of the judicial branch and employees of the  
 21 board of higher education and state institutions under the jurisdiction of the board.

22 7. "Governmental unit" means the state of North Dakota, except the highway patrol  
 23 for members of the retirement plan created under chapter 39-03.1, or a  
 24 participating political subdivision thereof.

25 10. "Permanent employee" means a governmental unit employee whose services are  
 26 not limited in duration and who is filling an approved and regularly funded position  
 27 in an eligible governmental unit, and is employed twenty hours or more per week  
 28 and at least five months twenty weeks each year of employment.

29 14. "Retirement" means the acceptance of a retirement allowance under this chapter  
 30 upon either termination of employment or termination of participation in the  
 31 retirement plan and meeting the normal retirement date.

**Section 2 changes**

*This change in combination with the change in sections 4, 5 & 6 of this bill is intended to clarify the participation of elected and appointed officials in the PERS plan*

*This change is to clarify that the members of the Highway Patrol plan are part of a separate retirement plan.*

*This change is to more clearly define the minimum time requirements in order to be eligible for the PERS plan. Presently it is 5 months. This change would make it 20 weeks and is proposed to make it administratively easier to understand, calculate and explain.*

*This change would allow a member who is eligible for normal retirement benefits to draw retirement benefits if they are no longer participating in the plan but may still be employed. For example the person could have moved from an authorized FTE position with benefits to a temporary position without benefits. Under existing provisions they could not draw retirement, pursuant to this change they could.*

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Operator's Signature: *Doreta Rickford*  
 Date: *10/15/03*

<p><b>Section 3 changes</b></p> <p><i>This change is necessary as a result of the changes proposed in section 9 of this bill relating to multiple plan membership</i></p>	<p>SECTION 3. AMENDMENT. Section 54-52-02 of the North Dakota Century Code is amended and reenacted as follows:</p> <p>54-52-02. Formulation of plan - Exclusion of employees covered by plans in existence. All departments, boards, institutions, commissions, or agencies of the state of North Dakota, the Garrison division emergency district, district health units, the supreme court, and the district courts, hereinafter referred to as agency, shall participate in a retirement system which will provide for the payment of benefits to state and political subdivision employees or to their beneficiaries thereby enabling the employees to care for themselves and their dependents and which by its provisions will improve state and political subdivision employment, reduce excessive personnel turnover, and offer career employment to high-grade men and women. However, a city health department providing health services in a city-county health district formed under chapter 23-35 is not required to participate in the public employees retirement system but may participate in the public employees retirement system under section 54-52-02.1. Employees presently covered by a pension plan or retirement plan to which the state is contributing, except social security, are not eligible for duplicate coverage except as provided under sections 39-03.1-14.1 and 54-52-17.2.</p>
<p><b>Section 4 changes</b></p> <p><i>This change is to clarify participation for state officials and distinguish it from political subdivision participation in the next section.</i></p>	<p>SECTION 4. AMENDMENT. Section 54-52-02.5 of the North Dakota Century Code is amended and reenacted as follows:</p> <p>54-52-02.5. Newly elected and appointed state officials. After December 31, 1999, a person elected or appointed to a state office for the first time must, from and after the date that person qualifies and takes office, be a participating member of the public employees retirement system unless that person makes an election at any time during the first six months after the date the person takes office to participate in the retirement plan established under chapter 54-52.6. As used in this section, the phrase "for the first time" means a person appointed, who, after December 31, 1999 does not hold office as an appointed official at the time of that person's appointment.</p>
<p><b>Section 5 changes</b></p> <p><i>This is to clarify that elected county officials may join the plan and establish a time period for that election.</i></p>	<p>SECTION 5. Section 54-52-02.11 of the North Dakota Century Code is created and enacted as follows:</p> <p>54-52-02.11. Participation requirements for nonstate elected officials. Elected officials of participating counties, at their individual option, may enroll in the defined benefit plan within the first six months of their term.</p>

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10/15/03  
Date

1 **SECTION 6.** Section 54-52-02.12 of the North Dakota Century Code is created and  
2 enacted as follows:  
3 54-52-02.12. Participation requirements for nonstate appointed officials. Nonstate  
4 appointed officials of participating employers appointed on or after August 1, 1999, who meet  
5 the participation requirements of this chapter must be enrolled in the defined benefit plan  
6 effective within the first month of taking office.

7 **SECTION 7. AMENDMENT.** Subsection 3 of section 54-52-05 of the North Dakota  
8 Century Code is amended and reenacted as follows:  
9 3. Each employer, at its option, may pay all or a portion of the employee contributions  
10 required by subsection 2 and sections 54-52-06.1 and 54-52-06.2 or the employee  
11 contributions required to purchase service credit on a pretax basis pursuant to  
12 subsection 6 of section 54-52-17.4. Employees may not receive the contributed  
13 amounts directly once the employer has elected to pay the employee contributions.  
14 The amount paid must be paid by the employer in lieu of contributions by the  
15 employee. If the state determines not to pay the contributions, the amount that  
16 would have been paid must continue to be deducted from the employee's  
17 compensation. If contributions are paid by the employer, they must be treated as  
18 employer contributions in determining tax treatment under this code and the federal  
19 Internal Revenue Code. If contributions are paid by the employer, they may not be  
20 included as gross income of the employee in determining tax treatment under this  
21 code and the Internal Revenue Code until they are distributed or made available.  
22 The employer shall pay these employee contributions from the same source of  
23 funds used in paying compensation to the employee or from the levy authorized by  
24 subsection 5 of section 57-15-28.1. The employer shall pay these contributions by  
25 effecting an equal cash reduction in the gross salary of the employee or by an  
26 offset against future salary increases or by a contribution of a reduction in gross  
27 salary and offset against future salary increases. If employee contributions are  
28 paid by the employer, they must be treated for the purposes of this chapter in the  
29 same manner and to the same extent as employee contributions made prior to the  
30 date on which employee contributions were assumed by the employer. An  
31 employer exercising its option under this subsection shall report its choice to the  
32 board, in writing, by June fifteenth of each odd-numbered year.

**Section 6 changes**  
*This section is to clarify the participation for appointed officials in the political subdivisions. This change also clarifies that they will be treated in the same manner as a state official but that they will not be offered the defined contribution plan option.*

**Section 7 changes**  
*This change clarifies that a participating employer can pick up all or a portion of the employee contribution.*

*This change relates to the changes in Sections 11 & 13 authorizing employers to purchase service credit and sick leave. This provision authorizes the purchase on a pretax basis.*

*This change is to clarify that PERS will accept the decision of the employer at any time during the year.*

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*Deborah Rickford*  
Operator's Signature

10/15/03  
Date

Section 8 changes

SECTION 8. AMENDMENT. Section 54-52-17 of the North Dakota Century Code is

amended and reenacted as follows:

54-52-17. Forfeiture of plan. Participating members shall receive benefits according to this section and according to rules adopted by the board, not inconsistent with this chapter. No person is entitled to receive a prior service benefit if the person was not continuously employed by a governmental unit in North Dakota for a period of not less than two years immediately prior to eligibility for retirement.

1. Participating members shall receive credit for full-time employment or its equivalent from the date they attain eligibility until their normal retirement date, postponed retirement date, or early retirement date, as defined in this section. Part-time employment will be recognized as full-time employment on a prorated basis as the board may prescribe.

2. Retirement benefits are calculated from the participating member's final average salary, which is the average of the highest salary received by the member for any thirty-six months employed during the last one hundred twenty months of employment. Months not employed are excluded in arriving at the thirty-six months to be used for the purpose of computing an average. If the participating member has worked for less than thirty-six months at the normal retirement date, the final average salary is the average salary for the total months of employment.

3. Retirement dates are defined as follows:

a. Normal retirement date, except for a national guard security officer or firefighter, is:

(1) The first day of the month next following the month in which the member attains the age of sixty-five years; or

(2) When the member has a combined total of years of service credit and years of age equal to eighty-five and has not received a retirement benefit under this chapter.

b. Normal retirement date for a national guard security officer or firefighter is the first day of the month next following the month in which the national guard

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Section 8 changes

1 security officer or firefighter attains the age of fifty-five years and has  
2 completed at least three consecutive years of employment as a national guard  
3 security officer or firefighter immediately preceding retirement.  
4  
5 c. Postponed retirement date is the first day of the month next following the  
6 month in which the member, on or after July 1, 1977, actually severs or has  
7 severed the member's employment after reaching the normal retirement date.  
8 d. Early retirement date, except for a national guard security officer or firefighter,  
9 is the first day of the month next following the month in which the member  
10 attains the age of fifty-five years and has completed three years of eligible  
11 employment. For a national guard security officer or firefighter, early  
12 retirement date is the first day of the month next following the month in which  
13 the national guard security officer or firefighter attains the age of fifty years  
14 and has completed at least three years of eligible employment.  
15 e. Disability retirement date is the first day of the month after a member  
16 becomes permanently and totally disabled, according to medical evidence  
17 called for under the rules of the board, and has completed at least one  
18 hundred eighty days of eligible employment. For supreme and district court  
19 judges, permanent and total disability is based solely on a judge's inability to  
20 perform judicial duties arising out of physical or mental impairment, as  
21 determined pursuant to rules adopted by the board or as provided by  
22 subdivision 2 of subsection 3 of section 27-23-03. A member is eligible to  
23 receive disability retirement benefits only if the member:  
24 (1) Became disabled during the period of eligible employment; and  
25 (2) Applies for disability retirement benefits within twelve months of the  
26 date the member terminates employment.  
27 A member is eligible to continue to receive disability benefits as long as the  
28 permanent and total disability continues and the member submits the  
29 necessary documentation and undergoes medical testing required by the  
30 board, or for as long as the member participates in a rehabilitation program  
31 required by the board, or both. If the board determines that a member no  
longer meets the eligibility definition, the board may discontinue the disability

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Section 8 changes

1 retirement benefit. The board may pay the cost of any medical testing or  
2 rehabilitation services it deems necessary and these payments are  
3 appropriated from the retirement fund for those purposes.  
4 The board shall calculate retirement benefits as follows:  
5 a. Normal retirement benefits for all retirees, except supreme and district court  
6 judges, reaching normal retirement date equal an annual amount, payable  
7 monthly, comprised of a service benefit and a prior service benefit, as defined  
8 in this chapter, which is determined as follows:  
9 (1) Service benefit equals two percent of final average salary multiplied by  
10 the number of years of service employment.  
11 (2) Prior service benefit equals two percent of final average salary  
12 multiplied by the number of years of prior service employment.  
13 b. Normal retirement benefits for all supreme and district court judges under the  
14 public employees retirement system reaching normal retirement date equal an  
15 annual amount, payable monthly, comprised of a benefit as defined in this  
16 chapter, determined as follows:  
17 (1) Benefits must be calculated from the time of appointment or election to  
18 the bench and must equal three and one-half percent of final average  
19 salary multiplied by the first ten years of judicial service, two and eighty  
20 hundredths percent of final average salary multiplied by the second ten  
21 years of judicial service, and one and one-fourth percent of final  
22 average salary multiplied by the number of years of judicial service  
23 exceeding twenty years.  
24 (2) Service benefits must include, in addition, an amount equal to the  
25 percent specified in subdivision a of final average salary multiplied by  
26 the number of years of nonjudicial employee service and employment.  
27 c. Postponed retirement benefits are calculated as for single life benefits for  
28 those members who retired on or after July 1, 1977.  
29 d. Early retirement benefits are calculated as for single life benefits accrued to  
30 the date of termination of employment, but must be actuarially reduced to  
31 account for benefit payments beginning prior to the normal retirement date.

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Operator's signature: *Augusta Rickford*  
Date: *10/15/03*

1 which is the earlier of age sixty-five or the age at which current service plus  
2 age equals eighty-five. A retiree, other than a supreme or district court judge,  
3 is eligible for early retirement benefits only after having completed three years  
4 of eligible employment. A supreme or district court judge retiree is eligible for  
5 early retirement benefits only after having completed five years of eligible  
6 employment.  
7 e. Except for supreme and district court judges, disability retirement benefits are  
8 twenty-five percent of the member's final average salary. Disability retirement  
9 benefits for supreme and district court judges are seventy percent of final  
10 average salary reduced by the member's primary social security benefits and  
11 by any workers' compensation benefits paid. The minimum monthly disability  
12 retirement benefit under this section is one hundred dollars.  
13 f. ~~A participating member who is a vested permanent employee is entitled to~~  
14 ~~purchase additional years of service credit to enable the member to qualify for~~  
15 ~~the normal retirement date defined by subdivision c of subsection 2. The~~  
16 ~~years of service purchased must be added to the years of service~~  
17 ~~employment under paragraph 1 of subdivision e for calculating the service~~  
18 ~~benefit.~~  
19 5. Upon termination of employment after completing three years of eligible  
20 employment, except for supreme and district court judges, who must complete five  
21 years of eligible employment, but before normal retirement date, a member who  
22 does not elect to receive early retirement benefits is eligible to receive deferred  
23 vested retirement benefits payable commencing on the member's normal  
24 retirement date equal to one hundred percent of the member's accrued single life  
25 benefits.  
26 6. If before retiring a member dies after completing three years of eligible  
27 employment, except for supreme and district court judges, who must have  
28 completed five years of eligible employment, the board shall pay the member's  
29 account balance to the member's designated beneficiary as provided in this  
30 subsection. If the member has designated an alternate beneficiary with the  
31 surviving spouse's written consent, the board shall pay the member's account

### Section 8 changes

*This deletes the authority for a member to purchase an unlimited amount of time from the retirement plan. In section 10 of this proposed bill members are authorized to purchase up to 5 years of service credit. The concern with unlimited purchases is that with the proposed change later in this section to authorize trustee transfers more individuals could be purchasing greater amounts. While the purchase is based upon actuarial costs the tables are based upon averages which mean that some purchases may not always be fully covered.*



1 balance to the named beneficiary. If the member has named more than one  
2 primary beneficiary, the board shall pay the member's account balance to the  
3 named primary beneficiaries in the percentages designated by the member or, if  
4 the member has not designated a percentage for the beneficiaries, in equal  
5 percentages. If one or more of the primary beneficiaries has predeceased the  
6 member, the board shall pay the predeceased beneficiary's share to the remaining  
7 primary beneficiaries. If there are no remaining primary beneficiaries, the board  
8 shall pay the member's account balance to the contingent beneficiaries in the  
9 same manner. If there are no remaining designated beneficiaries, the board shall  
10 pay the member's account balance to the member's estate. If the member has not  
11 designated an alternate beneficiary or the surviving spouse is the beneficiary, the  
12 surviving spouse of the member may select a form of payment as follows:  
13 a. If the member was a supreme or district court judge, the surviving spouse  
14 may select one of the following optional forms of payment:  
15 (1) A lump sum payment of the member's retirement account as of the date  
16 of death.  
17 (2) Payments as calculated for the deceased member as if the member  
18 was of normal retirement age at the date of death, payable until the  
19 spouse dies.  
20 b. The surviving spouse of all other members may select one of the following  
21 options:  
22 (1) A lump sum payment of the member's retirement account as of the date  
23 of death.  
24 (2) Payments for sixty months as calculated for the deceased member as if  
25 the member was of normal retirement age at the date of death.  
26 (3) Payment of a monthly retirement benefit equal to fifty percent of the  
27 deceased member's accrued single life retirement benefits until the  
28 spouse dies.  
29 (4) If the member dies on or after the member's normal retirement date, the  
30 payment of a monthly retirement benefit equal to an amount that would  
31 have been paid to the surviving spouse if the member had retired on

Section 8 changes

1 the day of the member's death and had selected a one hundred percent  
 2 joint and survivor annuity, payable until the spouse dies. A surviving  
 3 spouse who received a benefit under this subsection as of July 31,  
 4 1995, is entitled to the higher of that person's existing benefit or the  
 5 equivalent of the accrued benefit available under the one hundred  
 6 percent joint and survivor provision as if the deceased member were of  
 7 normal retirement age, with the increase payable beginning August 1,  
 8 1995.

9 If a member not coming under the provisions of subsection 6 terminates  
 10 employment because of death, permanent and total disability, or any voluntary or  
 11 involuntary reason prior to retirement, the member or the member's designated  
 12 beneficiary is entitled to the member's account balance at termination. The board  
 13 shall automatically refund a member's account balance if the member has  
 14 completed less than three years of eligible employment and was not a supreme or  
 15 district court judge. If the member was a supreme or district court judge, the board  
 16 shall automatically refund a member's account balance if the member completed  
 17 less than five years of eligible employment. A member may waive the refund if the  
 18 member submits a written statement to the board, within thirty days after  
 19 termination, requesting that the member's account balance remain in the fund.

20 8. The surviving spouse of a member receiving retirement benefits must be the  
 21 member's primary beneficiary unless there is no surviving spouse or the surviving  
 22 spouse designates an alternate beneficiary in writing. If a member receiving  
 23 retirement benefits or the member's surviving spouse receiving retirement benefits  
 24 dies before the total amount of benefits paid to either or both equals the amount of  
 25 the member's account balance at retirement, the difference must be paid to the  
 26 named beneficiary of the recipient or, if there is no named beneficiary, to the  
 27 recipient's estate.

28 9. The board shall adopt rules providing for the receipt of retirement benefits in the  
 29 following optional forms:  
 30 a. Single life.

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*Sacosta Rickford*  
Operator's Signature Date 10/15/03

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Operator's Signature: *Deborah Rickford*  
Date: *10/15/03*

<p>1 b. An actuarially equivalent joint and survivor option, with fifty percent or one 2 hundred percent options. 3 c. An actuarially equivalent level social security option, which is available only to 4 members who retire prior to attaining the age at which they may begin to 5 receive unreduced social security benefits. 6 d. Life with five-year or ten-year certain options. 7 Except for supreme and district court judges, unless a member specifically 8 requests that the member receive benefits according to one of these options at the 9 time of applying for retirement, all retirement benefits must be in the form of a 10 single life benefit. For supreme and district court judges, unless a member 11 specifically requests that the member receive benefits according to one of these 12 options at the time of applying for retirement, all retirement benefits must be in the 13 form of a lifetime monthly pension with fifty percent of the benefit continuing for the 14 life of the surviving spouse, if any. 15 10. The fund may accept rollovers from other qualified eligible plans under rules 16 adopted by the board for the purchase of additional service credit, but only to the 17 extent the transfer is a rollover contribution that meets the requirement of 18 section 408 of the Internal Revenue Code. 19 11. <u>The board may accept trustee-to-trustee transfers as permitted by Internal</u> 20 <u>Revenue Code section 403(b)(13) and section 457(e)(17) from an Internal</u> 21 <u>Revenue Code section 403(b) annuity or Internal Revenue Code section 457</u> 22 <u>deferred compensation plan for the purchase of permissive service credit, as</u> 23 <u>defined in Internal Revenue Code section 415(n)(3)(A) or as repayment of a</u> 24 <u>cashout from a governmental plan under Internal Revenue Code section 415(k)(3).</u> 25 12. <u>The board may establish individual retirement accounts and individual retirement</u> 26 <u>annuities as permitted under section 408(a) of the Internal Revenue Code to allow</u> 27 <u>employees to make voluntary employee contributions. The board may adopt rules</u> 28 <u>to implement and administer the accounts and annuities under this section.</u></p>	<p><b>Section 8 changes</b></p> <p><i>This change will allow PERS to accept rollovers from 457 plans and 403 (b) plans. This was recently authorized in the EGTRRA passed by Congress</i></p> <p><i>This was also recently authorized in EGTRRA. This change will allow PERS to accept transfers from active employees to the PERS plan to purchase service.</i></p> <p><i>This change was also recently authorized by EGTRRA. This would not be implemented until further guidance is provided by the IRS.</i></p>
<p>29 <b>SECTION 9. AMENDMENT.</b> Section 54-52-17.2 of the North Dakota Century Code is 30 amended and reenacted as follows:</p>	<p><b>Section 9 changes</b></p>

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Operator's Signature: *[Signature]*  
Date: 10/15/03

1 54-52-17.2. Multiple plan membership - Eligibility for benefits - Amount of  
 2 benefits.  
 3 1. a. For the purpose of determining eligibility for benefits under this chapter, an  
 4 employee's years of service employment ~~credit~~ is the total of the years of  
 5 service employment ~~credit~~ earned in the public employees retirement system  
 6 and the years of service credit earned in any number of the following:  
 7 (1) The teachers' fund for retirement.  
 8 (2) The highway patrolmen's retirement system.  
 9 (3) The teachers' insurance and annuity association of America - college  
 10 retirement equities fund (TIAA-CREF), for service credit earned while  
 11 employed by North Dakota institutions of higher education.  
 12 Service credit may not exceed twelve months of credit per year.  
 13 b. ~~If an employee terminates eligible employment under the system, if that~~  
 14 ~~employee has not received a refund of the employee's account balance, and if~~  
 15 ~~the employee begins eligible employment in a plan described in paragraph 1,~~  
 16 ~~2, or 3 of subdivision a, that employee may elect to remain an inactive~~  
 17 ~~member of the system without refund of the employee's account balance.~~  
 18 ~~The election must be made within ninety days after beginning the eligible~~  
 19 ~~employment. The board shall terminate the inactive status of an employee~~  
 20 ~~under this subdivision if the employee gains eligible employment under this~~  
 21 ~~chapter or if the employee terminates eligible employment under a plan~~  
 22 ~~described in paragraph 1, 2, or 3 of subdivision a.~~  
 23 c. ~~An~~ Pursuant to rules adopted by the board, an employee who has service  
 24 credit in the system and in any number of the plans described in  
 25 paragraphs 1, and 2, and 3 of subdivision a is entitled to benefits under this  
 26 chapter calculated by using the certified salaries of the retirement plan of last  
 27 membership. The employee may elect to have benefits calculated using the  
 28 benefit formula in section 54-52-17 under either of the following methods:  
 29 (1) The average of the highest salary received by the member for any  
 30 thirty-six months employed during the last one hundred twenty months  
 31 of employment in the public employees retirement system. If the

**Section 9 changes**  
*This section changes and updates the multiple plan membership provision. This provision was originally enacted to provide portability to members of the states retirement plans as they went from one type of public employment to another. To accomplish this present law provides that a multiple plan member must be assigned entirely to one system or another. Two problems have arisen relating to this existing provision. The first problem is administrative and concerns the difficulty in identifying the individuals who come under this provision, the difficulty participating employers have in understanding this provision and the difficulty members have understanding the assignment process to one system or another in cases of employment under both plans. The result is that when these situations are discovered administrative transactions have had to be backed out and the resulting change has affected member's expectations. The second problem area has been with using the final average salary from the last system to calculate benefits in all systems. While this provides portability between systems and is extremely beneficial to most members, for a few individuals this can result in a dramatic and inequitable drop in benefits. Therefore the purpose of these changes is to address these two problems and thereby make it easier to administer for our participating employers and make it clearer and more equitable for all our members. First, the proposed new method would not require that a member be assigned to one system or another. Instead the member would be allowed to participate in both systems and the employer would report to both systems based upon the member's time. Second, the employee will have the option at retirement to choose between two methods of coordination that best meets their needs while still maintaining the portability provisions. The first would be to have their retirement calculated using all years of*

1 participating member has worked for less than thirty-six months at  
2 retirement, the final average salary is the average salary for the total  
3 months of employment.

4 (2) The average of the highest salary received by the member for any  
5 thirty-six consecutive months during the last one hundred twenty  
6 months of employment with any of the three eligible employers under  
7 this subdivision, with service credit not to exceed one month in any  
8 month when combined with the service credit earned in the alternate  
9 retirement system.

10 The board shall calculate benefits for an employee under this subsection by using  
11 only those years of service employment credit earned under this chapter.

12 2. a. If an employee, who is a participating member, is also employed in any  
13 position where membership in the teachers' fund for retirement is required,  
14 then for purposes of current employment the employee is a member of the  
15 retirement system in which the employee has the most years of service  
16 employment. If the employee has an equal amount of service in both the  
17 public employees retirement system and the teachers' fund for retirement, the  
18 employee is a member of the public employees retirement system. The board  
19 of trustees of the teachers' fund for retirement and the state retirement board  
20 shall jointly certify to the appropriate employers of the employee the fact of the  
21 beginning and termination of eligibility for dual membership in the respective  
22 retirement systems and the retirement system to which the employee is  
23 required to be a member under this subsection. The employers upon receipt  
24 of this certification shall pay over to that retirement system the member  
25 assessments and employer contributions at the rates currently existing for that  
26 retirement system. If the employee is required to be a member of the  
27 teachers' fund for retirement, the board, at the employee's election, shall  
28 designate the employee an inactive member of the public employees  
29 retirement system until the employee ceases the employment which requires  
30 membership in both the public employees retirement system and the  
31 teachers' fund for retirement who is eligible to participate in the public

**Section 9 changes**

service in each system and the final average salary from each applied. The second method would be to use the final average salary from the last years to calculate the benefit for all retirements. However under this last method overlapping months of service would be combined in determining the total. Eligibility would be based upon combined years of service for both methods

This change will maintain the portability aspects for state retirement plans, be clearer for the member and also for the employer.

Lastly, this section will allow existing multiple plan members to choose if they want to have their benefit calculated under the existing law or the new law.

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Operator's Signature: *Deborah Rickford*  
Date: 10/15/03

<p>1 employees retirement system is also employed in any position where  2 membership in an alternate retirement system is required, then, for purposes  3 of current participation, the employee is a member of such portable  4 retirement system. The employee shall pay contributions to such retirement system  5 the member assessment and employer contributions at the rates currently  6 existing for that retirement system.</p> <p>7 b. If an employee described in subsection a was employed prior to August 1,  8 2003, and has dual membership rights, the employee may elect to begin  9 participation in the alternate plan pursuant to the plan provisions on August 1,  10 2003, or may continue participation according to the plan provisions in effect  11 on July 31, 2003. An employee's election under this subsection is irrevocable  12 unless referred to the public employee retirement system administrative  13 offices by the D.O.M. on October 31, 2003. If an election is not received by the  14 public employee retirement system, the participation and benefit calculation  15 requirements in effect on July 31, 2003, apply to that employee.</p> <p>16 2. Under rules adopted by the board, an individual whose service credit was awarded  17 when that individual received a refund of assessments of termination of  18 employment under this chapter may, while that individual participates in a plan  19 described in paragraph 1, 2, or 3 of subsection a of subsection 1, repurchase that  20 service credit that was awarded.</p>	<p>Section 10 changes  This change is in combination with the change in Section 8  and specifies that a permanent and participating member  can purchase up to 5 years.</p>
<p>21 SECTION 10. A new subsection to section 54-52-17.4 of the North Dakota Century  22 Code is created and enacted as follows:  23 In addition to service credit identified in this section, a vested member may  24 purchase up to five years of service credit unrelated to any other eligible service.</p>	<p>Section 11 changes</p> <p>SECTION 11. AMENDMENT. Section 54-52-17.4 of the North Dakota Century Code is  26 amended and re-enacted as follows:  27 54-52-17.4. (Contingent effective date and expiration date - See note) Purchase of  28 additional credit.  29 1. A member may elect to purchase credit for years of service and prior service for  30 which the member is not presently receiving credit. A member is entitled to  31 purchase additional credit under this section for the following service or prior</p>

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Operator's Signature LaCosta Rickford Date 10/15/03

Section 11 changes

For this section PERS is proposing an amendment to overstrike the words beginning on line 5 "that does not" and overstrike all of line 6. This amendment is to accommodate situations like a school which may have more than one retirement plan and to allow purchases in such situations. This amendment is requested since we inadvertently deleted this change in the review.

This provision is no longer necessary based upon the change in item "b" above.

1 service, except this service is not eligible for credit if the years claimed also qualify  
2 for retirement benefits from another retirement system:

- 3 a. Active employment in the armed forces of the United States, except as
- 4 provided in subsection 5, for up to four years of credit.
- 5 b. Employment as a permanent employee by a governmental unit that does not
- 6 participate in the public employees retirement system under this chapter
- 7 either within or outside the state of North Dakota.
- 8 c. Employment as a permanent employee by a political subdivision participating
- 9 in the public employees retirement system which did not pay the cost of past
- 10 service benefits under section 54-52-02.1.
- 11 d. Service the participating member did not elect to repurchase upon
- 12 reemployment under section 54-52-02.6.
- 13 e. Service of an eligible employee, who exercised the privilege to withdraw from
- 14 the predecessor plan to the public employees retirement system under
- 15 subsection 10 of section 54-52-17 as created by section 13 of chapter 498 of
- 16 the 1977 Session Laws.
- 17 f. Employment as a permanent employee of a governmental unit not located in
- 18 North Dakota.
- 19 g. Employment as a permanent employee by the federal government.
- 20 2. A participating member may elect to purchase credit for the following absences for
- 21 which the participating member is not receiving service credit:
  - 22 a. Employer-approved leave of absence; or
  - 23 b. Months away from work while participating as a seasonal employee.
- 24 3. Supreme and district court judges under the public employees retirement system
- 25 may elect to purchase credit for the following years of service:
  - 26 a. Except as provided in subsection 5, for up to four years of credit for active
  - 27 employment in the armed forces of the United States.
  - 28 b. As a county judge in a county or counties that did not participate in the public
  - 29 employees retirement system under this chapter.
  - 30 c. Participation in the public employees retirement system as a county judge
  - 31 may be converted to credit in the judges retirement system.

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La Costa Rickford  
Operator's Signature

10/15/03  
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Operator's Signature: *Roberta Rickford*  
Date: *10/15/03*

1 4. The member may purchase credit under this section, or the member's employer  
2 may purchase for the member, by paying to the board an amount equal to the  
3 actuarial cost to the fund of providing the credit. If the member purchases credit  
4 pursuant to subdivision d of subsection 1, the member must pay to the board an  
5 amount equal to the greater of the actuarial cost to the fund of providing the credit,  
6 or the amount the member received upon taking a refund of the member's account  
7 balance, plus interest at the actuarial rate of return from the time the member was  
8 issued the refund. If the member is not repurchasing all of the credit originally  
9 refunded, the member must pay a pro rata amount of the refunded amount  
10 determined by dividing the refunded amount by the number of months of credit  
11 refunded, multiplying that amount times the number of months of credit the  
12 member seeks to repurchase, and adding interest at the actuarial rate of return.  
13 The member or the member's employer shall also pay to the retiree health benefits  
14 fund established under section 54-52.1-03.2 an amount equal to the actuarial cost  
15 to that fund for the additional credit. This contribution must be recorded as a  
16 member contribution pursuant to section 54-52.1-03.2. The board shall adopt rules  
17 governing the purchase of additional credit under this section.  
18 5. A participating member, or a member not presently under covered employment,  
19 may request credit for qualified military service pursuant to the Uniformed Services  
20 Employment and Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat.  
21 3150; 38 U.S.C. 4301-4307]. The member shall submit a qualified application with  
22 proof of eligible military service to the board in order to receive credit for military  
23 service. For credit on and after July 1, 1966, the member must pay four percent  
24 times the member's most recent monthly salary the member would have received  
25 but for the period of service or, if that amount is not reasonably certain, the  
26 member's average rate of compensation during the twelve-month period  
27 immediately preceding the member's period of service or, if shorter, the period of  
28 employment immediately preceding that period, times the number of months of  
29 credit being purchased, plus interest at a rate determined by the board. If the  
30 member makes the above payment, the governmental unit, or, in the case of a  
31 member not under covered employment, the last employing governmental unit,

**Section 11 changes**

*This change would also allow a members employer to purchase time for the member*

*These changes are necessary as a result of an opinion PERS received from the Attorney General relating to the Uniformed Services Employment and Reemployment Rights Act of 1994. That opinion stated that certain provisions in our code were in conflict with the law. Based upon that opinion these changes are being proposed.*



1 shall pay four and twelve-hundredths percent times the salary the member would  
2 have received but for the period of service or, if that amount is not reasonably  
3 certain, the member's average rate of compensation during the twelve-month  
4 period immediately preceding the member's period of service or, if shorter, the  
5 period of employment immediately preceding that period, times the number of  
6 months of credit being purchased. In addition, the governmental unit, or in the  
7 case of a member not under covered employment the last employing governmental  
8 unit, shall pay to the retiree health benefits fund established under section  
9 54-52.1-03.2 one percent times the member's present monthly salary times the  
10 member's months of credit being purchased. For credit before July 1, 1966, no  
11 contribution is required.

12 (Contingent effective date and expiration date - See note) Purchase of additional

13 credit.

- 14 1. A member may elect to purchase credit for years of service and prior service for  
15 which the member is not presently receiving credit. A member is entitled to  
16 purchase additional credit under this section for the following service or prior  
17 service, except this service is not eligible for credit if the years claimed also qualify  
18 for retirement benefits from another retirement system:
- 19 a. Active employment in the armed forces of the United States, except as  
20 provided in subsection 5, for up to four years of credit.
  - 21 b. Employment as a permanent employee by a governmental unit that does not  
22 participate in the public employees retirement system under this chapter  
23 either within or outside the state of North Dakota.
  - 24 c. Employment as a permanent employee by a political subdivision participating  
25 in the public employees retirement system which did not pay the cost of past  
26 service benefits under section 54-52-02.1.
  - 27 d. Service the participating member did not elect to repurchase upon  
28 reemployment under section 54-52-02.6.
  - 29 e. Service of an eligible employee, who exercised the privilege to withdraw from  
30 the predecessor plan to the public employees retirement system under

**Section 11 changes**

We are requesting the following amendment here to comply with the opinion. Upon further review we found we should have made additional changes to this section.

Page 17, line 9, overstrike "member's present monthly" and insert the following immediately after "salary":  
"the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period."

*The same changes as above are proposed here because this section will become effective when the IRS renders an opinion concerning pretax purchases as approved by the last legislative session.*

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Date *10/15/03*

Section 11 changes

1 subsection 10 of section 54-52-17 as created by section 13 of chapter 499 of  
2 the 1977 Session Laws.

3 f. Employment as a permanent employee of a governmental unit located in  
4 North Dakota.

5 g. Employment as a permanent employee by the federal government.

6 2. A participating member may elect to purchase credit for the following absences for  
7 which the participating member is not receiving service credit:

8 a. Employer-approved leave of absence; or

9 b. Months away from work while participating as a seasonal employee.

10 3. Supreme and district court judges under the public employees retirement system  
11 may elect to purchase credit for the following years of service:

12 a. Except as provided in subsection 5, for up to four years of credit for active  
13 employment in the armed forces of the United States.

14 b. As a county judge in a county or counties that did not participate in the public  
15 employees retirement system under this chapter.

16 c. Participation in the public employees retirement system as a county judge  
17 may be converted to credit in the judges retirement system.

18 4. The member may purchase credit under this section, on the member's employer  
19 may purchase for the member, by paying to the board an amount equal to the  
20 actuarial cost to the fund of providing the credit. If the member purchases credit  
21 pursuant to subsection d of subsection 1, the member must pay to the board an  
22 amount equal to the greater of the actuarial cost to the fund of providing the credit,  
23 or the amount the member received upon taking a refund of the member's account  
24 balance, plus interest at the actuarial rate of return from the time the member was  
25 issued the refund. If the member is not repurchasing all of the credit originally  
26 refunded, the member must pay a pro rata amount of the refunded amount  
27 determined by dividing the refunded amount by the number of months of credit  
28 refunded, multiplying that amount times the number of months of credit the  
29 member seeks to repurchase, and adding interest at the actuarial rate of return.  
30 The member or the member's employer shall also pay to the retiree health benefits  
31 fund established under section 54-52-1-03.2 an amount equal to the actuarial cost

Section 11 changes

1 to that fund for the additional credit. This contribution must be recorded as a  
 2 member contribution pursuant to section 54-52.1-03.2. The board shall adopt rules  
 3 governing the purchase of additional credit under this section.  
 4  
 5 A participating member, or a member not presently under covered employment,  
 6 may request credit for qualified military service pursuant to the Uniformed Services  
 7 Employment and Reemployment Rights Act of 1994 [Pub. L. 103-353; 106 Stat.  
 8 3150; 38 U.S.C. 4301-4307]. The member shall submit a qualified application with  
 9 proof of eligible military service to the board in order to receive credit for military  
 10 service. For credit on and after July 1, 1966, the member must pay four percent  
 11 times the member's most recent monthly salary the member would have received  
 12 but for the period of service or, if that amount is not reasonably certain, the  
 13 member's average rate of compensation during the twelve-month period  
 14 immediately preceding the member's period of service or, if shorter, the period of  
 15 employment immediately preceding that period, times the number of months of  
 16 credit being purchased, plus interest at a rate determined by the board. If the  
 17 member makes the above payment, the governmental unit, or, in the case of a  
 18 member not under covered employment, the last employing governmental unit,  
 19 shall pay four and twelve-hundredths percent times the salary the member would  
 20 have received but for the period of service or, if that amount is not reasonably  
 21 certain, the member's average rate of compensation during the twelve-month  
 22 period immediately preceding the member's period of service or, if shorter, the  
 23 period of employment immediately preceding that period, times the number of  
 24 months of credit being purchased. In addition, the governmental unit, or in the case  
 25 of a member not under covered employment the last employing governmental unit,  
 26 shall pay to the retiree health benefits fund established under section 54-52.1-03.2  
 27 one percent times the member's present monthly salary times the member's  
 28 months of credit being purchased. For credit before July 1, 1966, no contribution is  
 29 required.

30 6. Pursuant to rules by the board, the board may allow a member to purchase service  
 31 credit with either pretax or aftertax moneys, at the board's discretion. If the  
 32 member elects to purchase service credit using pretax moneys, the requirements  
 33 and restrictions in subsection 3 of section 54-52-05 apply to the purchase  
 34 arrangement.

This change is proposed as a result of the review by the IRS of this section.

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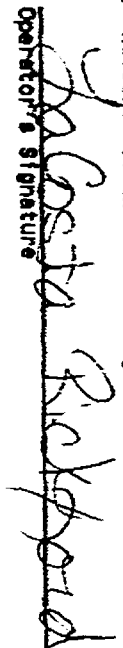
Operator's Signature La Costa Rickford

Date 10/15/03

<p>3 SECTION 12. A new section to chapter 54-52 of the North Dakota Century Code is  4 created and enacted as follows:  5 <u>Internal Revenue Code compliance. The board shall administer the plan in</u>  6 <u>compliance with section 415, section 401(a)(9), section 401(a)(17), and section 401(a)(31) of</u>  7 <u>the Internal Revenue Code as it applies for governmental plans.</u></p>	<p><b>Section 12 changes</b>  <i>This section updates and includes the federal compliance provisions necessary to have a qualified plan.</i></p>
<p>8 SECTION 13. A new section to chapter 54-52 of the North Dakota Century Code is  9 created and enacted as follows:  10 <u>Employer service purchases. A participating employer may purchase additional</u>  11 <u>service credit on behalf of a member under the following conditions:</u>  12 1. <u>The member may not be given the option to choose between an employer service</u>  13 <u>purchase and an equivalent amount paid in cash.</u>  14 2. <u>The member must meet one of the following conditions at the time the purchase is</u>  15 <u>made:</u>  16 a. <u>The member's age plus service credit must be equal to or greater than</u>  17 <u>seventy-five; or</u>  18 b. <u>The member's age must be at least fifty-five and the member must have at</u>  19 <u>least three years of service credit.</u>  20 3. <u>The board must determine the purchase price on an actuarially equivalent basis.</u>  21 4. <u>The purchase must be completed before the member's retirement.</u>  22 5. <u>The employer may purchase a maximum of five years of service credit on behalf of</u>  23 <u>the member.</u>  24 6. <u>The employer must pay the purchase price for the service credit purchased under</u>  25 <u>this section in a lump sum.</u></p>	<p><b>Section 13 changes</b>  <i>This section sets the parameters for the employer in purchasing service for employees.</i></p>
<p>26 SECTION 14. Two new subsections to section 54-52-26 of the North Dakota Century  27 Code are created and enacted as follows:  28 <u>Beneficiaries designated by a participating member or a former participating</u>  29 <u>member to receive benefits after the member's death, but only after the member's</u>  30 <u>death. Information relating to beneficiaries may be disclosed to other beneficiaries</u>  31 <u>of the same member.</u>  1 <u>The general public, but only after the board has been unable to locate the member</u>  2 <u>for a period in excess of two years, and limited to the member's name and the fact</u>  3 <u>that the board has been unable to locate the member.</u></p>	<p><b>Section 14 changes</b>  <i>PERS is requesting an additional amendment here which is "Any person or entity if the disclosure is necessary, as determined in the board's sole discretion, for treatment, operational or payment purposes, including the completion of necessary documents." This is to clarify administrative exchanges of information and for HIPPA. The other changes are to allow PERS to share confidential information with the member's beneficiaries in settling the member estate and to help PERS find lost members.</i></p>

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4 SECTION 15. AMENDMENT. Section 54-52-27 of the North Dakota Century Code is  
 5 amended and reenacted as follows:  
 6 54-52-27. ~~Conversion Purchase of sick leave credit.~~ At termination of eligible  
 7 employment a member is entitled to credit in the retirement system for each month of unused  
 8 sick leave, as certified by the member's employer, if the member or the member's employer  
 9 pays an amount equal to the member's final average salary, times the number of months of sick  
 10 leave converted, times the percent of employer and employee contributions to the retirement  
 11 program of the member, plus one percent for the retiree health benefits program. Hours of sick  
 12 leave equal to a fraction of a month are deemed to be a full month for purposes of conversion to  
 13 service credit. A member may convert all of the member's certified sick leave or a part of the  
 14 member's certified sick leave. All conversion payments must be made within sixty days of  
 15 termination of employment and before the member receives a retirement annuity unless the  
 16 member has submitted an approved payment plan to the board.

**Section 15 changes**

*The change in this section would allow the employer to purchase sick leave. Presently only the employee can purchase sick leave.*

17 SECTION 16. AMENDMENT. Subsection 1 of section 54-52.1-03.3 of the North  
 18 Dakota Century Code is amended and reenacted as follows:  
 19 1. The following persons are entitled to receive credit for hospital and medical  
 20 benefits coverage under subsection 2:  
 21 a. A member or surviving spouse of the highway patrolmen's retirement system  
 22 ~~receiving retirement benefits, or the surviving spouse of a member of the~~  
 23 ~~highway patrolmen's retirement system who was eligible to receive or was~~  
 24 ~~receiving retirement benefits, under section 30-09.1-14 is eligible for the credit~~  
 25 ~~beginning on the date retirement benefits are effective unless the premium is~~  
 26 ~~billed to the employer.~~  
 27 b. A member or surviving spouse of the public employees retirement system  
 28 ~~receiving retirement benefits, or the surviving spouse of a member of the~~  
 29 ~~public employees retirement system who was eligible to receive or was~~  
 30 ~~receiving retirement benefits, under section 54-52-17 is eligible for the credit~~

**Section 16 changes**

*This change relates to the retiree health credit program and the starting date for benefits. Under present statute the credit starts upon the date a member begins to receive benefits. The date of receipt is different then the date of eligibility. In particular this can be months apart for disability retirements. Retirement benefits are paid to the date of eligibility. The purpose of this change is to match the two dates for benefit purposes.*

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1 beginning on the date retirement benefits are effective unless the premium is  
 2 billed to the employer.  
 3 c. A member or surviving spouse of the retirement program established by job  
 4 service North Dakota under section 52-11-01 receiving retirement benefits, or  
 5 the surviving spouse of a member of that retirement program who was eligible  
 6 to receive or was receiving retirement benefits, under the plan provisions of  
 7 that retirement program is eligible for the credit beginning on the date  
 8 retirement benefits are effective unless the premium is billed to the employer.  
 9 d. A retired judge or surviving spouse receiving retirement benefits under the  
 10 retirement program established under chapter 27-17, or the surviving spouse  
 11 of a retired judge who was eligible to receive or was receiving retirement  
 12 benefits, under section 27-17-04 is eligible for the credit beginning on the date  
 13 retirement benefits are effective unless the premium is billed to the employer.  
 14 e. A former participating member of the defined contribution retirement plan  
 15 receiving retirement benefits, or the surviving spouse of a former participating  
 16 member of that retirement plan who was eligible to receive or was receiving  
 17 benefits, under section 54-52.6-13, is eligible as determined by the board  
 18 pursuant to its rules.

Section 16 changes

*This change provides that the surviving spouse of a member of the defined contribution plan who is receiving benefits from the PERS DC plan will be eligible to receive the retiree health credit in the same manner as a surviving spouse of the PERS hybrid plan.*

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Operator's Signature: *Deborah Rickford* Date: *10/15/03*

19 SECTION 17. Section 54-52.2-03.3 of the North Dakota Century Code is created and  
20 enacted as follows:  
21 54-52.2-03.3. Benefit payments to alternate payee under qualified domestic  
22 relations order.  
23 1. The board or a vendor contracted for by the board shall apportion a participating  
24 member's account in the deferred compensation plan under this chapter in  
25 accordance with the applicable requirements of any qualified domestic relations  
26 order. The board shall review a domestic relations order submitted to the board to  
27 determine if the domestic relations order is qualified under this section and  
28 pursuant to the plan document established by the board for determining the  
29 qualified status of domestic relations orders and administering distributions under  
30 the qualified orders.  
1 2. A "qualified domestic relations order" for purposes of this section means any  
2 judgment, decree, or order, including approval of a property settlement agreement,  
3 which relates to the provision of child support, spousal support, or marital property  
4 rights to a spouse, former spouse, child, or other dependent of a participating  
5 member, is made pursuant to a North Dakota domestic relations law, and which  
6 creates or recognizes the existence of an alternate payee's right to, or assigns to  
7 an alternate payee the right to, receive all or a part of the benefits payable to the  
8 participating member. A qualified domestic relations order may not require the  
9 board to provide any type or form of benefit, or any option, not otherwise provided  
10 under this chapter, or to provide increased benefits. A qualified domestic relations  
11 order must specify:  
12 a. The name and the last-known mailing address of the participating member  
13 and the name and mailing address of each alternate payee covered by the  
14 order;  
15 b. The amount or percentage of the participating member's benefits to be paid  
16 by the plan to each alternate payee;  
17 c. That the alternate payee must take a lump sum payment of the benefits  
18 allocated to the alternate payee within one hundred twenty days of the later of  
19 the board's acceptance of the qualified domestic relations order or the entry of  
20 the order by the court; and  
21 d. Each plan to which the order applies.

### Section 17 changes

*This change authorizes and establishes the procedures for PERS to accept Domestic Relations Orders for the deferred comp program. These procedures are patterned on the method that is authorized for the Defined Contribution plan in 54-52.6-12.*

22 SECTION 18. A new section to chapter 54-52.6 of the North Dakota Century Code is  
23 created and enacted as follows:

24 Additional employer contributions. Additional lump sum contributions by an  
25 employer to a participating member's defined contribution retirement plan account may be  
26 made if the participating member has twenty-five years of service, has not retired, and has not  
27 received a retirement benefit under this chapter. Contributions may be made in an amount  
28 actuarially equivalent to the amounts determined pursuant to chapter 54-52 as follows:  
29 1. For the conversion of sick leave pursuant to section 54-52-27;  
30 2. The equivalent of up to five years of service credit unrelated to any other eligible  
31 service as provided in subsection 5 of section 13 of this Act.

### Section 18 changes

Similar to the above section relating to the PERS Hybrid Retirement Plan this change will allow additional employer contributions to the defined contribution plan by the employer.

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1 SECTION 19. A new section to chapter 54-52.6 of the North Dakota Century Code is  
2 created and enacted as follows:  
3 Contributions for military service. A participating member, or a member not  
4 presently under covered employment, may request credit and contributions for qualified military  
5 service pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994  
6 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307]. The member shall submit a qualified  
7 application with proof of eligible military service to the board in order to receive credit for military  
8 service. For credit on and after July 1, 1966, the member must pay four percent times the  
9 salary the member would have received but for the period of service or, if that amount is not  
10 reasonably certain, the member's average rate of compensation during the twelve-month period  
11 immediately preceding the member's period of service or, if shorter, the period of employment  
12 immediately preceding such period, times the number of months for which the member is  
13 making contributions. If the member makes the above payment, the governmental unit, or, in  
14 the case of a member not under covered employment, the last employing governmental unit,  
15 shall pay four and twelve-hundredths percent times the salary the member would have received  
16 but for the period of service or, if that amount is not reasonably certain, the member's average  
17 rate of compensation during the twelve-month period immediately preceding the member's  
18 period of service or, if shorter, the period of employment immediately preceding such period,  
19 times the number of months for which the member made contributions. In addition, the  
20 governmental unit, or in the case of a member not under covered employment the last  
21 employing governmental unit, shall pay to the retiree health benefits fund established under  
22 section 54-52.1-03.2 one percent times the member's present monthly salary times the  
23 member's months for which the member made contributions. For credit before July 1, 1966, no  
24 contribution is required.

25 SECTION 23. AMENDMENT. Section 54-52.2-06 of the North Dakota Century Code is  
26 amended and reenacted as follows:  
27 54-52.2-06. Deferred compensation program - Benefits - Taxation - Exemption  
28 from judicial process - Assignment. The deferred compensation program established by this  
29 chapter shall exist and serve in addition to retirement, pension, or benefit systems established  
30 by the state, county, city, town, or other political subdivision, and no deferral of income under  
31 the deferred compensation program shall effect a reduction of any retirement, pension, or other

**Section 19 changes**

*This change is also made pursuant to the Attorney General's opinion concerning the federal USERRA law. This change relates to the defined contribution retirement plan whereas the previous change related to the PERS hybrid retirement plan.*

*As with the change in the main plan we are requesting the same change here for the DC plan Page 24, line 22, remove "member's present monthly" and insert the following immediately after "salary": "the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period."*

**Section 20 changes**

*This change relates to the deferred comp program and would allow PERS to accept qualified domestic relations orders. Pursuant to a change in the federal law this provision is now possible to administer. This change would also be consistent with our other retirement plans.*

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<p>1 benefit provided by law. However, any sum deferred under the deferred compensation program 2 is not subject to taxation until distribution is actually made to the employee. Any unpaid 3 benefits under the deferred compensation program established by this chapter are not subject 4 to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other 5 process of law whatsoever, except as provided by section 54-52.2-03.2. Neither the employee, 6 the employee's beneficiary, nor any designee of the employee or the employee's beneficiary 7 has the right to commute, sell, assign, transfer, or otherwise convey the right to receive 8 payments under this chapter.</p>	<p><i>We are requesting an amendment here to correct an incorrect reference instead of 54-52.2-03.2 it should be 54-52.2-03.3</i></p>
<p>9 <b>SECTION 21. AMENDMENT.</b> Subsection 4 of section 54-52.8-13 of the North Dakota 10 Century Code is amended and reenacted as follows: 11 4. If the former participating member's vested account balance is less than five 12 thousand dollars, the board shall automatically refund the member's vested 13 account balance upon termination of employment. The member may waive the 14 refund if the member submits a written statement to the board, within thirty <del>one</del> 15 <del>hundred twenty</del> days after termination, requesting that the member's vested 16 account balance remain in the plan.</p>	<p><b>Section 21 changes</b> <i>This change relates to the DC plan. This section expands the 30 day period to 120 days for distributing small amounts. This will give the member more time to make this election and allow PERS more time to communicate with the member so they can make a knowledgeable decision.</i></p>
<p>17 <b>SECTION 22: REPEAL.</b> Section 54-52-17.8 of the North Dakota Century Code is 18 repealed.</p>	<p><i>This section is repealed since the change in section 12 replaces it</i></p>

**TESTIMONY  
OF  
SPARB COLLINS  
ON ENGROSSED SENATE BILL 2058**

Mr. Chairman, members of the committee, good morning. My name is Sparb Collins and I am with the Public Employees Retirement System (PERS). I appear before you in support of SB 2058 which relates to the PERS Main Retirement System, the Deferred Comp Program, the Retiree Health Plan and the Defined Contribution Plan. This bill was reviewed during the interim by the Legislative Employee Benefits Committee and given a favorable recommendation. The bill was also determined to have no actuarial impact. Since the bill provides for numerous changes in our statutes, I have attached a section by section analysis of the bill and changes. To facilitate your review, I will summarize the changes by program in my testimony. If you would like to discuss any particular section in more detail we can use the attached analysis.

**DEFERRED COMP PROGRAM**

Sections 1, 17 and 20 relate to the Deferred Comp Program. The primary changes proposed in this bill relating to the Deferred Comp Program are to authorize PERS to accept domestic relations orders (DRO's). Recent changes at the federal level now facilitate this procedure for this program. We presently do DRO's in the main, HP, Judges, National Guard Plans and defined contribution plans.

Page 1 of 6

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## MAIN SYSTEM

Sections 2 through 15 and 22 relate to the Main Retirement System. Section 2 is changes in some of the definitions. These changes relate to standardizing the definition of an eligible employee so it is the same for retirement and group insurance by clarifying the minimum time of employment for eligibility during a specific year from 5 months to 20 weeks, and defining that HP retirement plan members are not part of this system. The change in Section 3 relates to multiple plan membership requirements that are addressed in more detail in Section 9.

Sections 4, 5, and 6 relate to defining in statute the procedures for elected and appointed official's participation at the state and political subdivision levels. These clarifications will establish in statute the administrative procedures the agency presently follows.

Section 7 clarifies the process for pretaxing employer contributions. This change is also done in concert with changes in Sections 11 and 13 of the bill that authorize the employer to purchase service on behalf of its employees.

Section 8 of the bill implements several changes that were recently authorized at the federal level. Specifically, it authorizes employees to rollover funds from 457 and 403(b) plans, do trustee to trustee transfers of funds from the 457 plan, and authorizes PERS to establish IRA's.

Section 9 changes the multiple plan membership procedures and is one of the primary initiatives in this bill. Multiple plan membership is how we coordinate our benefits with other state systems such as TFFR, HP and TIAA/CREF. This provision was originally enacted to provide portability to members of the state's retirement plans as employees went from one type of public employment to another. To accomplish this, present law provides that a multiple plan member must be assigned entirely to one system or another. We must use the final average salary from the last system of participation to calculate the benefit. Two problems have arisen relating to this existing provision. The first problem is administrative and concerns the difficulty in identifying the individuals who come under this provision, the difficulty participating employers have in understanding this provision, and the difficulty members have understanding the assignment process to one system or another in cases of service credit under both plans. The result is that when these situations are discovered, administrative transactions have had to be altered and in some cases the resulting change has adversely affected the member's expectation. The second problem area has been with using the final average salary from the last system to calculate benefits in all systems. While this provides portability between systems and is extremely beneficial to most members, for a few individuals this can result in a dramatic and inequitable drop in benefits. Therefore, the purpose of these changes is to address these two problems, and thereby, make it easier to administer for our participating employers and make it clearer and more equitable for all our members. First, the proposed new method would not require that a member be assigned entirely to one system or another. Instead the member would be allowed to participate in both systems and the employer would report contributions to both systems based upon the

Page 3 of 6

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member's employment. . Second, the employee will have the option at retirement to choose between two calculation methods and could select the one that best meets their needs while still maintaining the multiple membership provisions. The first method would be to have their retirement benefit calculated using all years of service and the final average salary in the PERS system. The second method would be to use the final average salary from the last 120 months of employment to calculate the benefit for all retirement plans. However, under this last method, overlapping months of service would be combined in determining the final average salary. Eligibility would be based upon combined years of service for both methods. This change will maintain the multiple membership aspects for state retirement plans, be clearer for the member, and also for the employer. Lastly, this section will allow existing multiple plan members to choose if they want to have their benefit calculated under the existing law or the new law.

*To allow law return veterans*  
Sections 10 and 11 relate to purchases and USERRA. In Section 10 the amount of time an employee can purchase is limited to 5 years. In Section 11 we clarify the time that is eligible to be purchases and also provide that employers are authorized to purchase time for employees. Section 11 also incorporates in statute provisions relating to returning veterans based upon USERRA. The changes proposed are based upon the advice we received in a recent Attorney General's Opinion.

Section 12 summarizes provisions we need to include in our plan to maintain our qualified status in compliance with the IRS. Please note the

repeal in Section 22 of the bill is the old IRS compliance provision that is being updated with this section.

Section 13 sets forth the conditions that must be met by an employer before they can purchase time for an employee.

Section 14 proposes some changes in our confidentiality provisions. First, we are requesting the authority to share information with a member's beneficiaries in settling an estate. Second, we are asking for the ability to seek information from the general public on locating lost members. Lastly we are offering language that is HIPAA <sup>Health Insurance Law</sup> compliant for our disability program in case it is covered and clarifies administrative exchanges of information for administrative purposes.

Section 15 grants the employer the authority to purchase sick leave credit for their employees upon termination

### **RETIREE HEALTH PROGRAM**

Section 16 relates to the retiree health program. This change coordinates the effective date for members to receive the retiree health credit with the effective date of retirement payment.

### **DEFINED CONTRIBUTION PLAN**

Sections 18, 19, and 21 relate to the defined contribution plan. Section 18 authorizes an employer to make additional contributions to the plan for an employee. This provision is added since it is intended to be the same type

of benefit that is being requested in the Main System. Section 19 is to add the USERRA requirements to the plan. Section 21 extends the timeframe for refunds of account balances under \$5,000 from 30 days to 120 days.

Mr. Chairman, members of the committee, PERS would appreciate your support of the SB 2058. This completes my testimony

Page 6 of 6

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# TESTIMONY ON ENGROSSED SB 2058

<p>17 SECTION 1. AMENDMENT. Section 28-22-19 of the North Dakota Century Code is 18 amended and reenacted as follows: 19 28-22-19. Exemptions from legal process - Public pensions, assistance, and 20 awards. The following amounts are exempt from liability for debts of the person to or on 21 account of whom the amounts are paid, and are not subject to seizure upon execution or other 22 process: 23 1. All pensions or annuities or retirement, disability, death, or other benefits paid or 24 payable by, or amounts received as a return of contributions and interest from, a 1 retirement system established pursuant to state law by the state except as 2 provided by sections 15-39.1-12.2, 39-03.1-14.2, and 54-52-17.6, and 3 54-52-2.03.3, a state agency, a political subdivision of the state, or a firefighter's 4 relief association for retirement, annuity, pension, disability benefit, or death benefit 5 purposes. 6 2. All awards made pursuant to chapter 54-23.4 as compensation for victims of 7 crimes. 8 3. All payments of assistance as aid to dependent children pursuant to chapter 50-09.</p>	<p>Section 1 changes</p> <p>This change is to allow PERS to accept Domestic Relations Orders on the Deferred Comp Program. Additional changes relating to this are in section 17 of this proposed bill</p>
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*Handwritten notes:*  
 1. All except...  
 2. All awards...  
 3. All payments...  
 4. All payments...  
 5. All payments...  
 6. All payments...  
 7. All payments...  
 8. All payments...

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- 1 service, except this service is not eligible for credit if the years claimed also qualify  
 2 for retirement benefits from another retirement system:
- 3 a. Active employment in the armed forces of the United States, except as  
 4 provided in subsection 5, for up to four years of credit.
  - 5 b. Employment as a permanent employee by a ~~governmental unit that does not~~  
 6 ~~participate in the public employees retirement system under this chapter~~  
 7 ~~employer either within or outside the state of North Dakota.~~
  - 8 c. Employment as a permanent employee by a political subdivision participating  
 9 in the public employees retirement system which did not pay the cost of past  
 10 service benefits under section 54-52-02.1.
  - 11 d. Service the participating member did not elect to repurchase upon  
 12 reemployment under section 54-52-02.6.
  - 13 e. Service of an eligible employee, who exercised the privilege to withdraw from  
 14 the predecessor plan to the public employees retirement system under  
 15 subsection 10 of section 54-52-17 as created by section 13 of chapter 499 of  
 16 the 1977 Session Laws.
  - 17 f. ~~Employment as a permanent employee of a governmental unit not located in~~  
 18 ~~North Dakota.~~
  - 19 ~~g.~~ Employment as a permanent employee by the federal government.
- 20 2. A participating member may elect to purchase credit for the following absences for  
 21 which the participating member is not receiving service credit:
- 22 a. Employer-approved leave of absence; or
  - 23 b. Months away from work while participating as a seasonal employee.
- 24 3. Supreme and district court judges under the public employees retirement system  
 25 may elect to purchase credit for the following years of service:
- 26 a. Except as provided in subsection 5, for up to four years of credit for active  
 27 employment in the armed forces of the United States.
  - 28 b. As a county judge in a county or counties that did not participate in the public  
 29 employees retirement system under this chapter.
  - 30 c. Participation in the public employees retirement system as a county judge  
 31 may be converted to credit in the judges retirement system.

**Section 11 changes**

*Clarifies that all public employment is eligible for purchase.*

*This provision is no longer necessary based upon the change in item "b" above.*

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1 ~~shall pay four and twelve-hundredths percent times the salary the member would~~  
2 ~~have received but for the period of service or, if that amount is not reasonably~~  
3 ~~certain, the member's average rate of compensation during the twelve-month~~  
4 ~~period immediately preceding the member's period of service or, if shorter, the~~  
5 ~~period of employment immediately preceding that period, times the number of~~  
6 ~~months of credit being purchased.~~ In addition, the governmental unit, or in the  
7 case of a member not under covered employment the last employing  
8 governmental unit, shall pay to the retiree health benefits fund established under  
9 section 54-52.1-03.2 one percent times the ~~member's present monthly salary the~~  
10 ~~member would have received but for the period of service or, if that amount is not~~  
11 ~~reasonably certain, the member's average rate of compensation during the~~  
12 ~~twelve-month period immediately preceding the member's period of service or, if~~  
13 ~~shorter, the period of employment immediately preceding that period, times the~~  
14 member's months of credit being purchased. For credit before July 1, 1966, no  
15 contribution is required.  
16 (Contingent effective date and expiration date - See note) Purchase of additional  
17 credit.  
18 1. A member may elect to purchase credit for years of service and prior service for  
19 which the member is not presently receiving credit. A member is entitled to  
20 purchase additional credit under this section for the following service or prior  
21 service, except this service is not eligible for credit if the years claimed also qualify  
22 for retirement benefits from another retirement system:  
23 a. Active employment in the armed forces of the United States, except as  
24 provided in subsection 5, for up to four years of credit.  
25 b. Employment as a permanent employee by a ~~governmental unit that does not~~  
26 ~~participate in the public employees retirement system under this chapter~~  
27 ~~employer either within or outside the state of North Dakota.~~  
28 c. Employment as a permanent employee by a political subdivision participating  
29 in the public employees retirement system which did not pay the cost of past  
30 service benefits under section 54-52-02.1.

**Section 11 changes**

*The same changes as above are proposed here because this section will become effective when the IRS renders an opinion concerning pretax purchases as approved by the last legislative session.*

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<p>1 6. <u>The employer must pay the purchase price for the service credit purchased under</u> 2 <u>this section in a lump sum.</u></p>	
<p>3 SECTION 14. Three new subsections to section 54-52-26 of the North Dakota Century 4 Code are created and enacted as follows: 5 <u>Beneficiaries designated by a participating member or a former participating</u> 6 <u>member to receive benefits after the member's death, but only after the member's</u> 7 <u>death. Information relating to beneficiaries may be disclosed to other beneficiaries</u> 8 <u>of the same member.</u> 9 <u>The general public, but only after the board has been unable to locate the member</u> 10 <u>for a period in excess of two years, and limited to the member's name and the fact</u> 11 <u>that the board has been unable to locate the member.</u> 12 <u>Any person if the board determines disclosure is necessary for treatment,</u> 13 <u>operational, or payment purposes, including the completion of necessary</u> 14 <u>documents.</u></p>	<p><b>Section 14 changes</b> <i>These changes are to the PERS confidentiality statute and allow:</i> 1) <i>PERS discuss the settlement of a members account with all the beneficiaries</i> 2) <i>Allow PERS to find lost members by seeking information from the general public</i> 3) <i>Provide wording that is consistent for HIPAA if it applies to our disability retirement procedures and helps to clarify administrative interactions for enrollment and payment.</i></p>

<p>1 <u>the board's acceptance of the qualified domestic relations order or the entry of</u>  2 <u>the order by the court; and</u>  3 <u>d. Each plan to which the order applies.</u></p>	
<p>4 <b>SECTION 18.</b> A new section to chapter 54-52.6 of the North Dakota Century Code is  5 created and enacted as follows:  6 <b><u>Additional employer contributions.</u></b> Additional lump sum contributions by an  7 employer to a participating member's defined contribution retirement plan account may be  8 made if the participating member has twenty-five years of service, has not retired, and has not  9 received a retirement benefit under this chapter. Contributions may be made in an amount  10 actuarially equivalent to the amounts determined pursuant to chapter 54-52 as follows:  11 1. <u>For the conversion of sick leave pursuant to section 54-52-27;</u>  12 2. <u>The equivalent of up to five years of service credit unrelated to any other eligible</u>  13 <u>service as provided in subsection 5 of section 13 of this Act.</u></p>	<p><b>Section 18 changes</b>   <i>Similar to the above section relating to the PERS Hybrid Retirement Plan this change will allow additional employer contributions to the defined contribution plan by the employer.</i></p>
<p>14 <b>SECTION 19.</b> A new section to chapter 54-52.6 of the North Dakota Century Code is  15 created and enacted as follows:  16 <b><u>Contributions for military service.</u></b> A participating member or a member not  17 presently under covered employment, may request credit and contributions for qualified military  18 service pursuant to the Uniformed Services Employment and Reemployment Rights Act of  19 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307]. The member shall submit a  20 qualified application with proof of eligible military service to the board in order to receive credit  21 for military service. For credit on and after July 1, 1966, the member must pay four percent  22 times the salary the member would have received but for the period of service or, if that amount  23 is not reasonably certain, the member's average rate of compensation during the twelve-month  24 period immediately preceding the member's period of service or, if shorter, the period of  25 employment immediately preceding such period, times the number of months for which the  26 member is making contributions. If the member makes the above payment, the governmental  27 unit, or, in the case of a member not under covered employment, the last employing  28 governmental unit, shall pay four and twelve-hundredths percent times the salary the member  29 would have received but for the period of service or, if that amount is not reasonably certain,  30 the member's average rate of compensation during the twelve-month period immediately  31 preceding the member's period of service or, if shorter, the period of employment immediately</p>	<p><b>Section 19 changes</b>   <i>This change is also made pursuant to the Attorney Generals opinion concerning the federal USERRA law. This change relates to the defined contribution retirement plan whereas the previous change related to the PERS hybrid retirement plan.</i></p>

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<p>1 <del>preceding such period, times the number of months for which the member made contributions.</del>  2 <del>In addition, the governmental unit, or in the case of a member not under covered employment</del>  3 <del>the last employing governmental unit, shall pay to the retiree health benefits fund established</del>  4 <del>under section 54-52.1-03.2 one percent times the salary the member would have received but</del>  5 <del>for the period of service or, if that amount is not reasonably certain, the member's average rate</del>  6 <del>of compensation during the twelve-month period immediately preceding the member's period of</del>  7 <del>service or, if shorter, the period of employment immediately preceding that period, times the</del>  8 <del>member's months for which the member made contributions. For credit before July 1, 1966, no</del>  9 <del>contribution is required.</del></p>	
<p>10 <b>SECTION 20. AMENDMENT.</b> Section 54-52.2-06 of the North Dakota Century Code is  11 amended and reenacted as follows:  12 <b>54-52.2-06. Deferred compensation program - Benefits - Taxation - Exemption</b>  13 <b>from judicial process - Assignment.</b> The deferred compensation program established by this  14 chapter shall exist and serve in addition to retirement, pension, or benefit systems established  15 by the state, county, city, town, or other political subdivision, and no deferral of income under  16 the deferred compensation program shall effect a reduction of any retirement, pension, or other  17 benefit provided by law. However, any sum deferred under the deferred compensation  18 program is not subject to taxation until distribution is actually made to the employee. Any  19 unpaid benefits under the deferred compensation program established by this chapter are not  20 subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws,  21 or other process of law whatsoever, <u>except as provided by section 54-52.2-03.3.</u> Neither the  22 employee, the employee's beneficiary, nor any designee of the employee or the employee's  23 beneficiary has the right to commute, sell, assign, transfer, or otherwise convey the right to  24 receive payments under this chapter.</p>	<p><b>Section 20 changes</b>  <i>This change relates to the deferred comp program and would allow PERS to accept qualified domestic relations orders. Pursuant to a change in the federal law this provision is now possible to administer. This change would also be consistent with our other retirement plans.</i></p>
<p>25 <b>SECTION 21. AMENDMENT.</b> Subsection 4 of section 54-52.6-13 of the North Dakota  26 Century Code is amended and reenacted as follows:  27 <b>4.</b> If the former participating member's vested account balance is less than five  28 thousand dollars, the board shall automatically refund the member's vested  29 account balance upon termination of employment. The member may waive the  30 refund if the member submits a written statement to the board, within <u>thirty one</u></p>	<p><b>Section 21 changes</b>  <i>This change relates to the DC plan. This section expands the 30 day period to 120 days for distributing small amounts. This will give the member more time to make this election and allow PERS more time to communicate with the member so they can make a knowledgeable decision.</i></p>

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