



THE SEGAL COMPANY  
5670 Greenwood Plaza Blvd., Suite 425 Greenwood Village, CO 80111-2499  
T 303.714.9900 F 303.714.9990 www.segalco.com

September 13, 2010

Representative Bette Grande, Chair  
Legislative Employee Benefits Committee  
State Capital  
600 East Boulevard  
Bismarck, ND 58505-0360

Re: **Technical Comments – Bill Draft No. 10053.0100**

Dear Representative Grande:

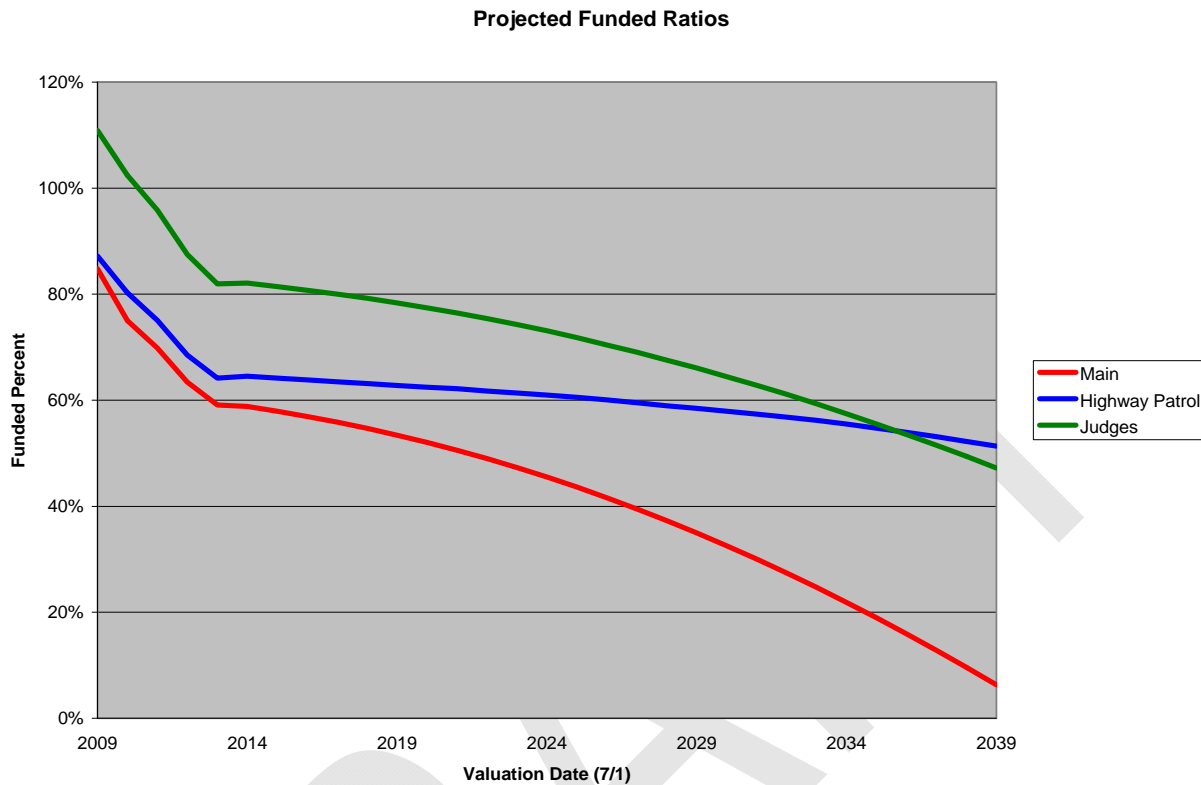
The following presents our analysis of the proposed changes found in Bill Draft No. 10053.0100:

**Systems Affected:** North Dakota Public Employees Retirement System (PERS) Hybrid Plan, Defined Contribution Plan and Highway Patrolmen's Retirement System (HPRS)

**Summary:** The proposed legislation would increase both the employer contribution rates and the member contribution rates that are mandated by statute in the HPRS, Hybrid Plan (Main and Judges only) and Defined Contribution Plan by 1% of the member's monthly salary beginning January 2012, plus an additional 1% increase in both employer and member contribution rates each calendar year thereafter through January 2015. The Bill also would increase the member contribution rates for the following two groups:

- Peace officers and correctional officers in the Hybrid Plan employed by political subdivisions, for which the member contribution rate would increase by 0.5% annually, instead of 1%, over the same time period; and
- Temporary employees in the Hybrid Plan and Defined Contribution Plan, for which the member contribution rate would increase by 2% annually, instead of 1%, over the same period.





**Actuarial Cost Analysis:** This bill would not have an actuarial impact on the liabilities of either the Hybrid Plan and Highway Patrolmen's Retirement System. Exhibits I and II show the current funding level and how the current funding levels would be positively affected by this increased contribution rate.

As of July 1, 2009, the Main plan had a funding deficit of 3.62% of covered payroll based upon a 20-year open amortization method. This means the statutory contributions are less than the actuarially required contributions by that amount. This deficit is projected to increase over the next few years as investment losses experienced in 2008 are recognized in the calculation of the Actuarial Value of Assets. Projections of future funded status have indicated that unless this gap is addressed, the Main plan will become insolvent in approximately 2040. Increasing the member contributions by 8% over the period from January 2012 to January 2015 is projected to close this funding deficit. Furthermore, projections indicate that the Main plan would no longer be expected to become insolvent in the next 30 years under the assumed 8.0% investment return scenarios.

As of July 1, 2009, the HPRS plan had a funding deficit of 2.03% of covered payroll based upon a 20-year open amortization method. This means that the amount of statutory contributions is less than the actuarially required contributions by that amount. This deficit is projected to increase over the next few years as investment losses experienced in 2008 are recognized in the calculation of the Actuarial Value of Assets. Projections of future funded status have indicated that unless this gap is addressed, the HPRS plan will not become insolvent in the next 30 years but the funding ratio will drop from 87% to 51%. Increasing the member contributions by 8% over the period from January 2012 to January 2015 is projected to close this funding deficit. Furthermore, projections indicate that the HPRS plan would have a drop in the funded ratio from 87% to 81% over the next 30 years under the assumed 8.0% investment return scenarios.

This bill would also increase the employer contributions for the judges retirement plan. The employer contributions for the law enforcement plans and national guard plans are set by the PERS Board and they have indicated that those contributions will rise as well based upon the legislative action for the other systems.

Exhibits I, II, and the following charts illustrate the results of these projections.

***Technical Comments:*** Our comments on the bill are as follows:

### **General**

The bill would significantly increase funding to the Systems in the form of additional employer and member contributions.

### **Benefits Policy Issues**

#### ➤ Adequacy of Retirement Benefits

No impact on the defined benefit plans. The additional contributions to the DC plan will provide additional retirement income.

#### ➤ Benefits Equity and Group Integrity

To the extent increased member contributions reduce the take-home pay of members, this bill may create salary inequity between peace officers/correctional officers employed by political subdivisions (0.5% annual increase) and other employees of political subdivisions (1% annual increase). Note that the Bill does not increase the contribution requirement for peace officers/correctional officers employed by the State Bureau of Criminal Investigation nor does it increase it for National Guard security officers or firefighters.

#### ➤ Competitiveness

To the extent increased member contributions reduce the take-home pay of members without a resulting increase in pension benefits, this bill may diminish the total compensation package offered by participating employers in the Systems.

➤ Purchasing Power Retention

No impact.

➤ Preservation of Benefits

Increased funding to the Systems in the form of additional employer and member contributions provides additional funds to pay down the unfunded actuarial accrued liability of the Systems at a faster rate. This in turn will free up additional funds that may be used to increase retirement and/or post-retirement benefits in future years. By setting up this additional funding mechanism it will help preserve the value of benefits from the Systems for several years.

➤ Portability

No impact.

➤ Ancillary Benefits

- ◆ No impact.
- ◆ Social Security: No impact.

**Funding Policy Issues**

➤ Actuarial Impacts

As previously noted, the bill will have an actuarial impact on the Hybrid Plan and the HPRS.

➤ Investment Impacts

- ◆ *Cash Flow*: The bill would have a substantial, positive impact on cash flow.
- ◆ *Asset Allocation*: The bill does not create new investment asset allocation issues.

**Administration Issues**

➤ Implementation Issues

While this bill would have minimal impact on administrative costs of the PERS, it would have an effect on the members and participating employers, since their required contributions would increase substantially.

➤ Administrative Costs

No impact.

➤ Needed Authority

The bill appears to provide appropriate levels of administrative and governance authority to the PERS Board to implement the changes made by the bill.

➤ Integration

No impact.

➤ Employee Communications

Employee communications will be necessary to describe the impact of increased member contributions on employee pay.

➤ Miscellaneous and Drafting Issues

It is our understanding that the State of North Dakota currently pays member contributions via pick-up arrangement pursuant to Internal Revenue Code section 414(h), so that members' salary is not reduced for the payment of required member contributions. This is known as a noncontributory approach for payment of member contributions to a defined benefit plan, which results in member contributions being made to the Systems on a pre-tax basis. In this way, member contributions are designated as employer contributions under federal income tax rules, and therefore are not subject to FICA taxes. Other participating employers in the Systems are permitted to elect to make member contributions using the same noncontributory approach, or may make member contributions by reducing members' salary (known as a contributory approach). Member contributions made from salary reductions are subject to FICA taxes. While the State's noncontributory approach may have been an acceptable method for paying member contributions not subject to FICA taxes at the time it was implemented, more recent IRS guidance on employer pick up of member contributions appears to make it more difficult for employers to pay member contributions in a manner than is not subject to FICA taxes.

The IRS addressed the treatment of pick up contributions for FICA tax purposes in CCA 200714018. In this guidance, the IRS explained that pick up contributions would not be subject to FICA only if paid by the employer as a "salary supplement" in a manner that does not reduce current salary or offset future salary increases. Since this bill would increase the member contribution rate, participating employers would need to determine whether they can pay for the increased member contributions from their own funds as a salary supplement or would reduce members' current or future salary, while also paying an increased employer contribution rate. Any participating employer that decides to reduce members' salary to pay for the increased level of member contributions must begin paying and reporting FICA taxes on the salary reduction amount. Such decision may create a two-tiered member contribution methodology whereby the current rate of member contributions is not subject to FICA taxes, but the increased member contribution amount (e.g., 2% of pay) is subject to FICA taxes. This two-tiered methodology would add to the administrative burden of participating employers and the PERS.

The projections were made using generally accepted actuarial practices and are based on demographic data as of July 1, 2009 and asset returns through July 1, 2010 and use assumptions adopted by the Board for the July 1, 2010 valuation. Calculations were completed under the supervision of Kurt Schneider, ASA, MAAA, Enrolled Actuary.

Projections, by their nature, are not a guarantee of future results. The modeling projections are intended to serve as estimates of future financial outcomes that are based on the information available to us at the time the modeling is undertaken and completed, and the agreed-upon assumptions and methodologies described herein. Emerging results may differ significantly if the actual experience proves to be different from these assumptions or if alternative methodologies are used. Actual experience may differ due to such variables as demographic experience, the economy, stock market performance and the regulatory environment.

Please call if you have any questions or comments.

Sincerely,

A handwritten signature in blue ink, appearing to read 'BRAMIREZ', is positioned above the printed name.

Brad Ramirez, FSA, MAAA, FCA, EA  
Consulting Actuary

/cz

Attachments

5099473V1/01640.004

**Exhibit I**  
**Current Contribution Levels**  
**Projection of funding ratios by plan**  
**Based on 7/1/2009 Valuation and estimated return for**  
**2009/2010 and assumptions used in the 2010 valuation**

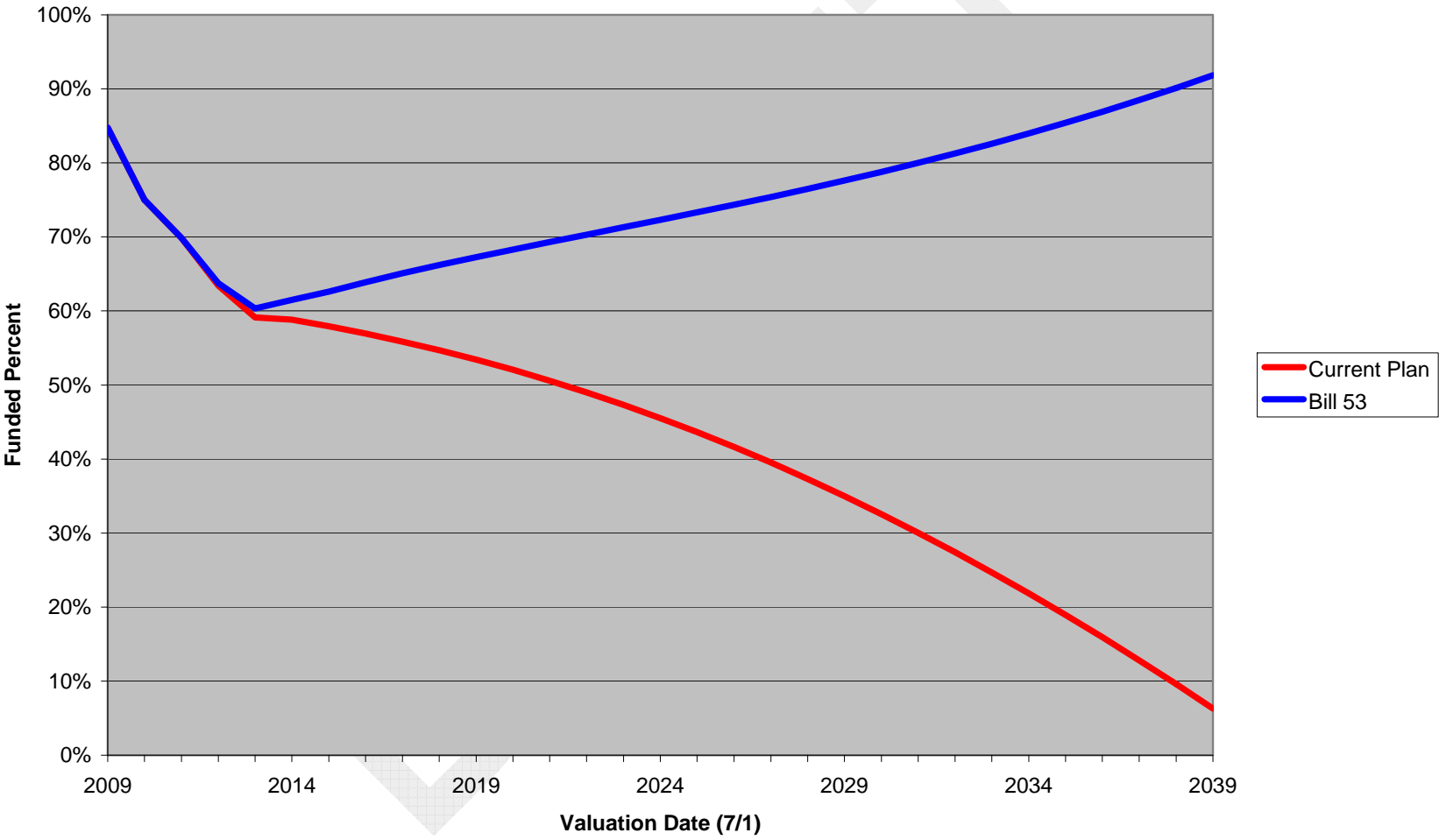
	<u><b>Main</b></u>	<u><b>Highway Patrol</b></u>	<u><b>Judges</b></u>
07/01/2009	85%	87%	111%
07/01/2010	75%	80%	102%
07/01/2011	70%	75%	96%
07/01/2012	63%	69%	88%
07/01/2013	59%	64%	82%
07/01/2014	59%	65%	82%
07/01/2015	58%	64%	81%
07/01/2016	57%	64%	81%
07/01/2017	56%	63%	80%
07/01/2018	55%	63%	79%
07/01/2019	53%	63%	78%
07/01/2020	52%	62%	77%
07/01/2021	51%	62%	76%
07/01/2022	49%	62%	75%
07/01/2023	47%	61%	74%
07/01/2024	46%	61%	73%
07/01/2025	44%	61%	72%
07/01/2026	42%	60%	70%
07/01/2027	40%	60%	69%
07/01/2028	37%	59%	68%
07/01/2029	35%	58%	66%
07/01/2030	33%	58%	64%
07/01/2031	30%	57%	63%
07/01/2032	27%	57%	61%
07/01/2033	25%	56%	59%
07/01/2034	22%	56%	57%
07/01/2035	19%	55%	55%
07/01/2036	16%	54%	54%
07/01/2037	13%	53%	52%
07/01/2038	10%	52%	49%
07/01/2039	6%	51%	47%

**Exhibit II**  
**Bill 53 – 1% additional member & employer contributions**  
**Projection of funding ratios by plan**  
**Based on 7/1/2009 Valuation and estimated return for**  
**2009/2010 and assumptions used in the 2010 valuation**

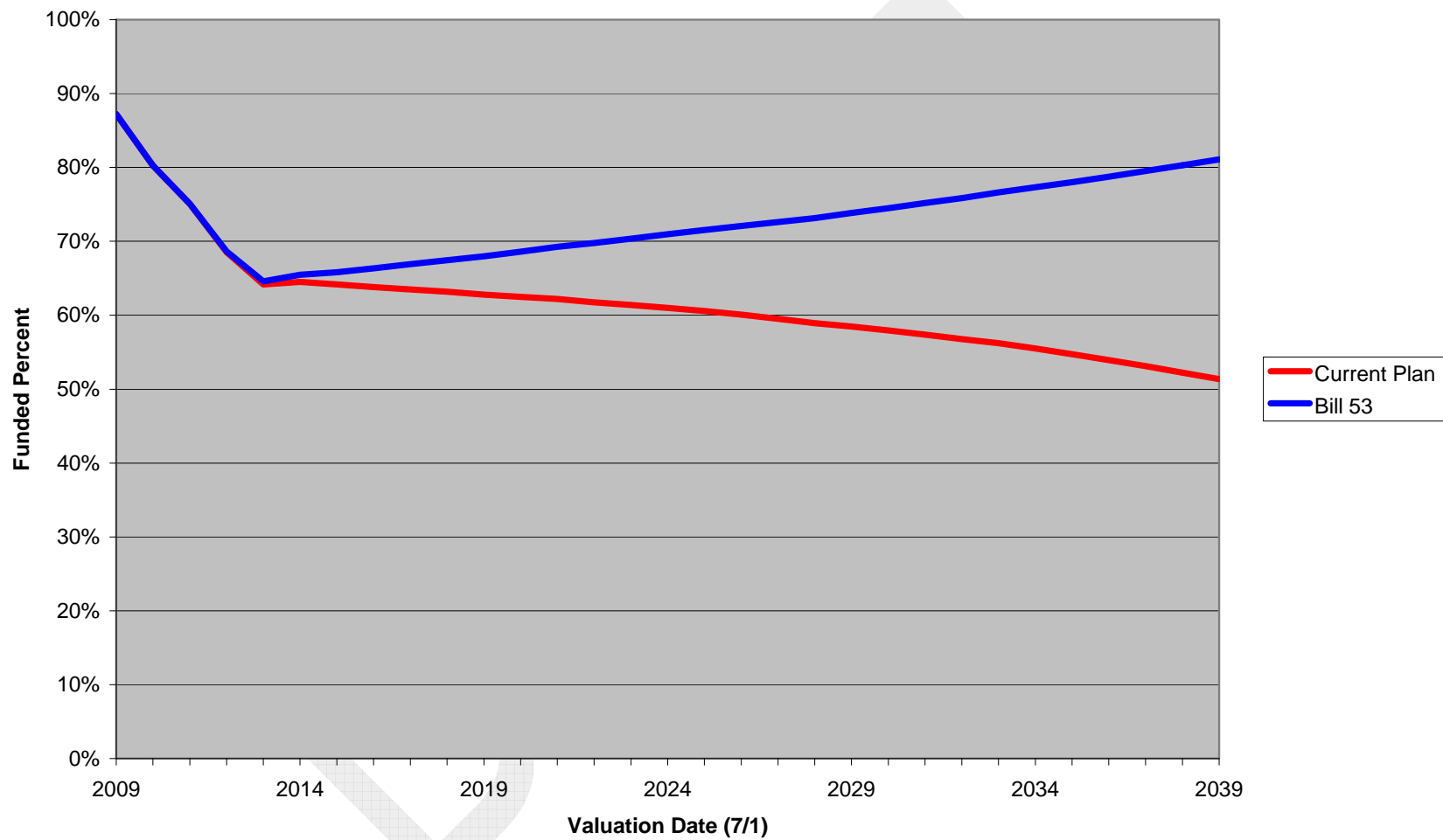
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07/01/2010	75%	80%	102%
07/01/2011	70%	75%	96%
07/01/2012	64%	69%	88%
07/01/2013	60%	65%	83%
07/01/2014	62%	65%	84%
07/01/2015	63%	66%	84%
07/01/2016	64%	66%	85%
07/01/2017	65%	67%	86%
07/01/2018	66%	67%	86%
07/01/2019	67%	68%	87%
07/01/2020	68%	69%	88%
07/01/2021	69%	69%	88%
07/01/2022	70%	70%	89%
07/01/2023	71%	70%	90%
07/01/2024	72%	71%	90%
07/01/2025	73%	72%	91%
07/01/2026	74%	72%	92%
07/01/2027	75%	73%	93%
07/01/2028	76%	73%	93%
07/01/2029	78%	74%	94%
07/01/2030	79%	74%	95%
07/01/2031	80%	75%	96%
07/01/2032	81%	76%	96%
07/01/2033	83%	77%	97%
07/01/2034	84%	77%	98%
07/01/2035	85%	78%	99%
07/01/2036	87%	79%	100%
07/01/2037	88%	80%	101%
07/01/2038	90%	80%	102%
07/01/2039	92%	81%	103%



**PERS (Main System)  
Comparison of Funded Ratio**



# Highway Patrol Comparison of Funded Ratio



**Judges  
Comparison of Funded Ratio**

