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September 19, 2012

Via E-mail

Senator Dick Dever, Chairman
Employee Benefits Program Committee
c/o Jeffrey N. Nelson
North Dakota Legislative Council
State Capitol
600 East Boulevard
Bismarck, ND 58505-0360

Re: **Technical Comments on Draft Bill 99 (Administrative Changes)**

Dear Senator Dever:

As requested, we reviewed draft Bill 99 (Bill No. 13.0099.02000), which proposes a number of technical and administrative changes to the North Dakota Teachers' Fund for Retirement (TFFR). The following presents our analysis of such proposed changes found in draft Bill 99.

Summary: The proposed legislation would make the following notable changes:

- Clarifies that the definition of "actuarial equivalent" is based on actuarial assumptions and methods adopted by the retirement board (Section 1).

- Adds a definition of "normal retirement age" to the plan by reference to statutory sections describing eligibility rules for unreduced retirement benefits (Section 1), and clarifies that members have a vested right to retirement benefits upon attaining normal retirement age (Section 4).

- Updates federal compliance provisions of the plan regarding Internal Revenue Code sections 401(a)(17), 401(a)(9) and 415(b) and (d) in various sections of the North Dakota Century Code (NDCC), chapter 15-39.1 (Sections 1, 2 and 3).

- Clarifies that tier one members become vested after earning three years of service and tier two members become vested after earning five years of service, without regard to whether assessments were paid to the TFFR (Section 4).

- Adds a savings clause to the plan provisions whereby the retirement board, with approval of the employee benefits programs committee, may adopt appropriate terminology as necessary for the plan to comply with applicable federal statutes and rules (Section 5).

Actuarial Cost Analysis: This bill would have an immaterial actuarial cost impact on the TFFR.

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

General Comments

The bill generally clarifies existing statutory provisions to more accurately reflect actual operations of the TFFR or to make various provisions of the plan more consistent with each other. The provisions of this bill do not appear to directly or significantly impact the benefits payable from the TFFR.

Compliance Issues

The bill amends various sections of the North Dakota Century Code, chapter 15-39.1 to change references under Internal Revenue Code section 401(a)(9), section 401(a)(17) (as well as Code references related to the definition of compensation under section 401(a)(17)), and section 415(b) and (d) from the Code language in effect on August 1, 2011 to the language in effect on August 1, 2013. No material changes have been made to these Internal Revenue Code sections since August 1, 2011, other than the statutory indexing of dollar amounts set forth in Code sections 401(a)(17) and 415(b).

Pursuant to our recommendation to TFFR, it may be advisable to amend specific language in NDCC §15-39.1-10.6, relating to cost-of-living increases made by Internal Revenue Code section 415(d) to the maximum dollar limit under Code section 415(b), so as to clarify that such increases in the dollar limit shall apply to former employees. For example, the third sentence of NDCC §15-39.1-10.6 could be amended to read as follows:

> *"If a member's benefit is limited by these provisions at the time of retirement* ***or termination of employment,*** *or in any subsequent year, the benefit paid in any following calendar year may be increased to reflect all cumulative increases in the maximum dollar limit provided under section 415(d) of the Internal Revenue Code for years after the year* ***employment terminated and/or*** *payments commenced, but not to more than would have been payable in the absence of the limits under section 415 of the Internal Revenue Code."*

This bill clarifies that members vest in their retirement benefits under the plan upon attaining normal retirement age. It is our understanding that the IRS requested that TFFR amend their plan rules to provide for vesting at normal retirement age in order to obtain a favorable determination letter on the plan's qualified status.

Section 4 of the bill clarifies that tier one and tier two members will become vested without regard to whether assessments were paid to TFFR for purposes of complying with plan qualification requirements under Internal Revenue Code section 401(a).

Administrative Issues

The savings clause language in Section 5 of the bill enables the retirement board to respond to changes in applicable federal statutes and rules quickly and efficiently in a manner that helps the plan maintain compliance with applicable federal requirements for tax-qualified pension plans.

The information contained in this letter is provided within our role as the plan's actuary and benefits consultant and is not intended to provide tax or legal advice. We recommend that you address all issues described herein with your legal counsel.

Please contact us if you have any questions or comments.

Sincerely yours,

Kim Nicholl, FSA, EA, FCA
Senior Vice President and Consulting Actuary

Melanie Walker, JD
Vice President

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cc: Ms. Fay Kopp, Interim Executive Director, ND Retirement and Investment Office
Mr. Matthew Strom

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