

2025 HOUSE POLITICAL SUBDIVISIONS

HB 1177

2025 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

HB 1177
1/17/2025

A BILL for an Act to amend and reenact subsection 3 of section 54-52-01 of the North Dakota Century Code, relating to the definition of correctional officer for purposes of the public employees retirement system.

10:43 a.m. Chairman Longmuir opened the hearing.

Members Present: Chairman Longmuir, Vice-Chairman Fegley, Vice-Chairman Jonas, Representatives Bolinske, Davis, Hatlestad, Heilman, Klemin, Motschenbacher, Ostlie, Toman, Warrey

Members Absent: Representative Hager

Discussion Topics:

- Correctional officer training
- Correctional officer retirement plan options

10:43 a.m. Representative Todd Porter, North Dakota Representative for District 34, introduced the bill.

10:51 a.m. Trent Wangen, Major with the Burleigh County Sheriffs Department, testified in favor and provided testimony #29565.

10:56 a.m. Pamela Binder, Burleigh County Human Resources Director, testified in favor and provided testimony #29611.

11:06 a.m. Derrick Hohbein, Chief Operating/Financial Officer of the North Dakota Public Employees Retirement System, testified in neutral and provided testimony #29295.

11:15 Chairman Longmuir closed the hearing.

Wyatt Armstrong, Committee Clerk

TESTIMONY OF DERRICK HOHBEIN

House Bill 1177 – Allows Correctional Officers to be Enrolled in the Public Safety Plan Upon Employment

Good Morning, Mr. Chairman and members of the committee. My name is Derrick Hohbein and I am the Chief Operating/Financial Officer of the North Dakota Public Employees Retirement System, or NDPERS. I appreciate the committee taking the time to analyze House Bill 1177, which allows correctional officers to be enrolled in the Public Safety Plan upon employment regardless if the employee has completed the certification training. I am here today on behalf of the NDPERS Board to provide information in a neutral capacity so the policy makers are able to make an informed decision regarding the bill.

House Bill 1177 expands the definition of a correctional officer to include those individuals employed by a correctional facility who are enrolled in, but not yet completed, a correctional officer course. The bill will result in certain members becoming eligible for the Public Safety Plan up to 12 months earlier than they otherwise would have. Our actuary has determined the impact to the plans of this bill is expected to be immaterial to the PERS plans, thus no fiscal note is attached to this bill.

Our federal tax consultant has confirmed this bill will not disqualify our retirement plans from an IRS perspective.

House Bill 1177 was a bill introduced during the interim (Draft Bill #134), with the analysis provided to the Employee Benefits Programs Committee, which gave the bill a favorable recommendation. The consultant and legal analysis provided to the committee is included as an attachment to the end of my testimony (please note this was draft bill 134 during the interim session).

Mr. Chairman, I appreciate the committee taking the time to learn more about the impact this bill will have to our state. This concludes my testimony, and I'd be happy to answer any questions the committee may have.



June 11, 2024

Representative Austen Schauer, Chair
Legislative Employee Benefits Programs Committee
North Dakota State Government

Re: North Dakota Public Employees Retirement System Legislative Studies

Dear Representative Schauer:

In accordance with your request, we have analyzed the impact of Bill No. 25.0134.01000 on the North Dakota Public Employees Retirement System (NDPERS). Our review is actuarial in nature; we are not attorneys and cannot provide legal advice.

Systems Affected

North Dakota Public Employees Retirement System (PERS) including the Public Safety Systems.

Summary

Bill No. 25.0134.01000

Amends the North Dakota Century Code to explain the definition of a correctional officer to include individuals employed by a correctional facility as defined in section 12-44.1-01, who are enrolled in, but have not yet completed, a correctional officer course approved or certified by the North Dakota department of corrections and rehabilitation.

Actuarial Impact of Bill 0134 on NDPERS

Current practice is to enroll new hires who have not completed their correctional officer course in the Main Plan, and then transfer them to the Public Safety Plan once the course has been completed. The Bill will result in certain members becoming eligible for the Public Safety Plan up to 12 months earlier than they otherwise would have. The actuarial impact of including correctional officers that have not yet completed the approved course or certification is expected to be immaterial to the PERS plan.



Policy Issue Analysis

Benefits Policy Issues

- Adequacy of Retirement Benefits

The proposed change in eligibility for the Public Safety System members who have not yet completed their approved course or certification is expected to have a neutral impact on benefits for most members.

- Competitiveness

No Impact.

- Benefits Equity and Group Integrity

There may be a small minority of members enrolled in a Public Safety Plan as a result of this Bill that do not complete the required training or certification. Eligibility should be monitored, and a process to handle these exceptions should be established.

- Purchasing Power

No impact.

- Preservation of Benefits

The bill is not expected to materially affect the financial position of the Systems.

- Portability

No impact.

- Ancillary Benefits

No impact.

- Social Security

No impact.



Funding Policy Issues

- Actuarial Impacts

The change is expected to have a small, but likely immaterial financial impact on the Systems and the actuarial valuation results.

- Investment Impacts

- Cash Flow: The change required by the bill is not expected to materially impact the cash flows from the Systems.
- Asset Allocation: No impact.

Administration Issues

- Implementation Issues

This bill would have an impact on correctional officers that have not yet completed their approved course or certification.

- Administrative Costs

The costs associated with transferring members from the Main System to the Public Safety System once they complete their approved course or certification will no longer apply. Future hires will be enrolled in the Public Safety Plan immediately upon hire.

- 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

The Bill may require employee communications to current members who will transfer to the Public Safety Plan as a result of this Bill.



Disclosures and Additional Information

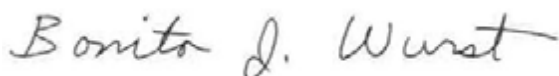
We have reviewed the bill and provided an actuarial impact analysis as well as a policy issue analysis. However, the policy issue analysis should not be considered to be comprehensive and there may be additional benefits policy or administration issues that are not discussed in this letter.

The signing actuaries are independent of the North Dakota Public Employees Retirement System.

Bonita J. Wurst and Abra D. Hill are Members of the American Academy of Actuaries (MAAA) and meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinions contained herein.

Please let us know if you have any questions or would like to discuss the results of this analysis further.

Sincerely,
Gabriel, Roeder, Smith & Company



Bonita J. Wurst, ASA, EA, MAAA, FCA
Senior Consultant



Abra D. Hill, ASA, MAAA, FCA
Consultant

cc: Ms. Rebecca Fricke, NDPERS
Joshua Murner, GRS



MEMORANDUM

TO: Derrick Hohbein, North Dakota Public Employees Retirement System

FROM: Audra Ferguson and Robert Gauss
ICE MILLER LLP

DATE: May 10, 2024

RE: Proposed Public Safety Legislation

This Memorandum is provided in confidence and subject to the attorney-client privilege. We have not provided copies to anyone other than the individual named above. To preserve the attorney-client privilege, you should disclose the contents of this Memorandum only to persons making decisions on the matters discussed herein.

Please allow this Memorandum to follow-up to your electronic mail message dated May 1, 2024. In particular, we have reviewed the following draft Bills:

- Bill No. 25.0115.01000 – Expanding the definition of “firefighter” in the Public Safety Plan to include those members employed by the State as a firefighter. A firefighter employed by the State shall be eligible for a normal retirement benefit at age 55 with 3 years of service or a combined age and service of 85.
- Bill Nos. 25.0045.01000 and 25.0041.01000– Including dispatchers, emergency medical personnel, and correctional officers employed by the State in the Public Safety Plan. Under these Bills, dispatchers, emergency medical personnel, and correctional officers employed by the State shall be eligible for a normal retirement benefit at age 55 with 3 years of service or a combined age and service of 85.
- Bill No. 25.0040.01000 – Including correctional officers employed by the State in the Public Safety Plan. Under this Bill, correctional officers employed by the State shall be eligible for a normal retirement benefit at age 55 with 3 years of service or a combined age and service of 85. [Note: Correctional officers employed by political subdivisions were already included in the Public Safety Plan.]
- Bill No. 25.0134.01000 – Defining “correctional officers” for purposes of the Public Safety Plan to include those individuals employed by a correctional facility who are enrolled in but not yet completed a correctional officer course.

This Memorandum highlights the federal law consideration and various definitions of a “public safety officer” and the impact on the plan qualification and member taxation. Specifically, this Memorandum considers the following federal law Internal Revenue Code (“Code”) sections and requirements:

- Code Section 72(t)(10)(B),
- Normal Retirement Age;
- Code Section 415(b), and
- Code Section 101(h).

I. CODE SECTION 72(t)(10)(B)

A. Relevant Federal Law

Internal Revenue Code (“Code”) section 72(t) imposes an additional 10% premature distribution tax on certain distributions that are paid to members from qualified plans. There are several exceptions to the premature distribution tax, including an exception for a "qualified public safety employee" in a governmental defined benefit plan who receives a distribution after separation from service after attainment of the earlier of age 50 or 25 years of service under the plan.¹ According to Code section 72(t)(10)(B), a "qualified public safety employee" is limited to the following:

- any employee of a State or political subdivision of a State who provides police protection, firefighting services, emergency medical services, services as a corrections officer or a forensic security employee providing for the care, custody, and control of forensic patients for any area within the jurisdiction of such State or political subdivision;
- any Federal law enforcement officer described in section 8331(2) or 8401(17) of title 5, United States Code;
- any Federal firefighter described in section 8331(21) or 8401(14) of such title;
- any air traffic controller described in 8331(30) or 8401(35) of such title;
- any nuclear materials courier described in section 8331(27) or 8401(33) of such title;
- any member of the United States Capitol Police;
- any member of the Supreme Court Police; and
- any diplomatic security special agency of the Department of State.

B. Analysis

¹ There is a separate exception for distributions paid to general employees after separation from service after attainment of age 55.

Correctional Officers, Emergency Medical Personnel, and Firefighters. Correctional Officers, Emergency Medical Personnel, and Firefighters clearly meet the definition of “Qualified Public Safety Officers” under Code Section 72(t)(10)(B).

Dispatchers. Dispatchers do not satisfy the Code section 72(t)(10)(B) definition of a “Qualified Public Safety Officer” because they do not directly provide police protection, firefighting services, or emergency medical services. As a result, a dispatcher could be eligible for early retirement benefits under the plan, but subject to an early distribution tax penalty if the member commenced a monthly benefit prior to age 55.

With respect to Bill No. 25.0134.01000 which expands the definition of “Correctional Officer” to include individuals who are employed by a correctional facility and who are enrolled in but have not yet completed a correctional officer course, this will be a facts and circumstances determination. If the individuals are in a correctional officer role and performing as a correctional officer, then we think the members would satisfy the definition of a “Qualified Public Safety Officer.” However, if the individuals are employed with a correctional facility, but not serving as a correctional officer until the individual has completed the correctional officer course, then the individual would not qualify as a “Qualified Public Safety Officer.” As noted above, the member could receive a benefit; however, if the member commences a monthly benefit prior to age 55, then the member will be subject to an early distribution penalty.

II. NORMAL RETIREMENT AGE

A. Retirement Age Under the Plan

Pursuant to N.D.C.C. § 54-52-17, the normal retirement age for members of the **Public Safety Plan** is as follows:

- The member is at least age 55 with 3 years of service; or
- The member has a combined total years of service credit and years of age equal 85.

By contrast, **under the Main Plan**, the normal retirement age for members is as follows:

- The member is at least age 65; or
- The member has a combined total years of service credit and years of age equal 85.

N.D.C.C. § 54-52-17.

Additionally, a member of the Public Safety Plan may receive an early retirement benefit when the member attains age 50 with 3 years of service. *Id.*

B. Pending Normal Retirement Age Regulations for Governmental Plans

On January 27, 2016, the IRS and Treasury Department issued a Notice of Proposed Rulemaking regarding proposed regulations regarding normal retirement age for governmental pension plans ("Proposed Regulations"). The Proposed Regulations have been long awaited as, in 2007, the IRS issued final regulations defining normal retirement age which are applicable to private sector pension plans. The Proposed Regulations distinguish between governmental plans which allow in-service distributions and those which do not. For governmental plans that do allow in-service distributions, the NRA must meet a "reasonably representative" requirement, which can be satisfied by using any of several safe harbor NRAs set forth in the proposed regulations.

For governmental plans that do not allow in-service distributions, the proposed regulations provide that the NRA must still meet the pre-ERISA vesting rules. In this regard, use of a period of service to determine normal retirement age under a governmental plan would be permissible if the period of service used is reasonable and uniformly applicable and the other pre-ERISA rules related to normal retirement age are satisfied. One of the pre-ERISA rules allows a governmental plan to specify a normal retirement age that is lower than age 65 **if that age represents the age at which employees customarily retire in the industry**.

As part of the Proposed Regulations, several sets of safe harbors were announced. For instance, the Proposed Regulations establish a general safe harbor for a normal retirement age that is at least age 62 or the later of age 62 or another specified date (such as the fifth anniversary of plan participation); this is referred to as the general safe harbor.² The Proposed Regulations also developed the following additional safe harbors specific to governmental plans:

- age 60 with five years of service;
- age 55 with ten years of service;
- a combined age and years of service of 80 or more; and
- any age with 25 years of service (in combination with a safe harbor that includes an age).

Additionally, the Proposed Regulations established separate safe harbor rules for qualified public safety employees. For qualified public safety employees, the proposed safe harbors are:

- age 50;
- combined age and years of service of 70 or more;
- any age with 20 years of service.

² It is important to note that subsequent to the Proposed Regulations, the SECURE Act reduced the age for in-service distributions under Code Section 401(a)(36) from 62 to 59 ½. As a result, it is likely the IRS will revise the general safe harbor to age 59 ½.

Importantly for purposes of the Bills, the term qualified public safety employee is defined by reference to Code § 72(t)(10)(B).

It is important to note that, under the Proposed Regulations, a plan may have more than one normal retirement age. For instance, a plan may have one normal retirement age for one classification of employees and one or more normal retirement ages for one or more different classifications of employees. This is permissible so long as each normal retirement age satisfies the pre-ERISA requirements.

Finally, the Proposed Regulations establish that a normal retirement age which does not satisfy any of the governmental plan safe harbors could still satisfy the reasonably representative requirement based on all of the relevant facts and circumstances. The normal retirement age must be evaluated and shown to satisfy a good faith determination of the typical retirement age for the industry in which the covered work force is employed and that the normal retirement age is otherwise consistent with the pre-ERISA vesting requirements.

While the IRS has stated its intent to issue final regulations, the Proposed Regulations remain pending. Separately, it is important to note that the Proposed Regulations state they are anticipated to be effective for employees hired after the effective date of the final regulations. In the meantime, governmental plan sponsors may rely on the Proposed Regulations prior to the effective date and pending the issuance of final regulations.

C. Analysis

Correctional Officers,³ Emergency Medical Personnel, and Firefighters. The normal retirement age under the Public Safety Plan satisfies the Safe Harbor for Qualified Public Safety Employees. As noted above, Correctional Officers, Emergency Medical Personnel, and Firefighters clearly meet the definition of “Qualified Public Safety Officers” under Code section 72(t)(10)(B). Thus, the lower normal retirement age proposed under the Bills for these job classifications does not raise a concern under federal law.

Dispatcher. As noted above, a Dispatcher does not satisfy the definition of a “Qualified Public Safety Officer.” Thus, NDPERS cannot rely on the Normal Retirement Age Safe Harbor for Qualified Public Safety Officers. However, the above IRS guidance is clear that, while a governmental plan that does not provide in-service distributions has flexibility in establishing a Normal Retirement Age, the parameters are not unlimited. Specifically, the Normal Retirement Age must satisfy the pre-ERISA vesting rules.

The pre-ERISA vesting rules provided that

³ As noted above, with respect to Bill No. 25.0134.01000 which expands the definition of “Correctional Officer” to include individuals who are employed by a correctional facility and who are enrolled in but have not yet completed a correctional officer course, this will be a facts and circumstances determination. If the individual is serving as a correctional officer with a job classification of a Correctional Officer, then the individual satisfies the definition of a “Qualified Public Safety Officer” under Code section 72(t)(10)(B).

[A]lthough normal retirement age under a pension or annuity plan is ordinarily age 65, a plan may specify a lower age at which the employee has the right to retire without the consent of the employer and to receive retirement benefits based on the amount of the employee's service at the full rate set forth in the plan if this lower age would be an age at which employees customarily retire in the particular company or industry, and if the provision permitting receipt of unreduced benefits at this age is not a device to accelerate funding.

Preamble to the Proposed Regulations Regarding Normal Retirement Age (Jan. 27, 2016). Thus, NDPERS will need to establish that age 55 with 3 years of service represents an age at which Dispatchers customarily retire. Note: The combined age and years of service of 85 satisfies the General Employee Normal Retirement Age Safe Harbor.

III. CODE SECTION 415(b) DEFINITION OF "QUALIFIED PARTICIPANTS"

A. Relevant Federal Law

Code section 415(b) provides that the annual benefit in the form of a single life annuity for a plan participant who is between the ages of 62 and 65 may not exceed \$160,000, as adjusted for inflation in \$5,000 increments (for 2024, the limit is \$275,000). However, there is no age-based actuarial reduction required for benefits beginning prior to age 62 for "qualified participants." Here, the Code defines "qualified participants" as those who (1) are participants of a defined benefit of a State or political subdivision of a State; and (2) have completed at least 15 years of service as a full-time employee of any police department or fire department which is organized and operated by the State or political subdivision to provide police protection, firefighting services, or emergency medical services, or as a member of the U.S. Armed Forces.

Importantly, the scope of the 415(b) public safety exception varies from the definition of public safety employees in Code section 72(t)(10)(B). Under Code section 415(b), the application of the rule depends on whether the employer is a police department or fire department of the state or political subdivision, rather than on the job classification of the individual participant. As a result, the definition of "qualified participant" under Code section 415(b) is more inclusive in terms of the types of employees that are covered than many public safety provisions, but less inclusive in terms of the types of employers that are covered.

Generally, the 415(b) exception is very beneficial to public safety officers and to other employees of police and fire departments, including non-public safety personnel. However, this definition does not cover all public safety employees. The examples in the Final 415 Regulations make it clear that an employee of a police division of an agency may be a qualified participant, but that an ambulance driver who works for an emergency medical services agency rather than for a police or fire department cannot. While the name of the agency is not important, it is necessary that the employer (or at least the appropriate division of employer) function as a police or fire department. For example, correctional officers will not be treated as employees of a police department for purposes of Code 415(b), as decided in PLR 201347028.

B. Analysis

NDPERS should be aware that only those Public Safety Plan participants that satisfy the definition of “qualified participants” will be eligible for the unreduced Code section 415(b) limit. This will include the Firefighter members, but it will not include Correctional Officers or Medical Services Personnel. In addition, Dispatchers will be considered “qualified participants” only if they are employees of a police or fire department. As a result, NDPERS would have to make sure its systems are programmed to recognize that not all employees in the Public Safety Plan would be eligible for the unreduced Code Section 415(b) limit.

IV. CODE SECTION 101(h) – DEFINITION OF PUBLIC SAFETY OFFICER

A. Relevant Federal Law

Code section 101(h) provides a federal income tax exclusion for certain amounts paid as a survivor annuity on account of the death of a "public safety officer" killed in the line-of-duty. The exclusion applies:

- if the survivor annuity is provided by a qualified 401(a) plan to the spouse, former spouse, or a child of the officer; and
- to the extent the annuity is attributable to the officer's service as a public safety officer.

In accordance with 42 U.S.C. 3796b(9) (the Omnibus Crime Control and Safe Streets Act of 1968), a "public safety officer" includes (i) an individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, a firefighter, a chaplain, or as a member of a rescue squad or an ambulance crew; or (ii) with some limitation, an employee of a State, local or tribal emergency management or civil defense agency who is performing official duties in cooperation with the Federal Emergency Management Agency.

B. Analysis

NDPERS should be aware that only those Public Safety Plan survivors of participants that satisfy the definition of “public safety officers” will be eligible for the tax-free annuity under Code section 101(h). This will include the Firefighter members and Medical Services Personnel, but it will not include Correctional Officers. In addition, unless Dispatchers are considered law enforcement officers, firefighters, part of a rescue squad or part of an ambulance crew, they would only be included in this definition of a public safety officer for purposes of Code section 101(h) if they fall into the second category of working in cooperation with the Federal Emergency Management Agency.

V. SUMMARY OF BILL ANALYSIS

<u>Bill No.</u>	<u>Code § 72(t)</u>	<u>NRA</u>	<u>Code § 415(b) Reduction</u>	<u>Code § 101(h)</u>
25.0115.01000 Adding Firefighters employed by the State	<ul style="list-style-type: none"> • Satisfies the definition of a “qualified public safety officer” • No 10% early distribution penalty for monthly benefits commenced after age 50 and separation from service” 	<ul style="list-style-type: none"> • Satisfies the definition of a “qualified public safety officer” • Satisfies the NRA Safe Harbor for Qualified Public Safety Officer” 	<ul style="list-style-type: none"> • Satisfies the definition of “qualified participants” and eligible for the unreduced Code section 415(b) limit. 	<ul style="list-style-type: none"> • Satisfies the definition of “public safety officers” and the survivor will be eligible for the tax-free annuity under Code Section 101(h).
25.0134.01000 Amending definition of a “correctional officer” to include an individual employed by a correctional facility who is enrolled in but not yet completed a correctional	<ul style="list-style-type: none"> • If the individuals are in a correctional officer role and performing as a correctional officer, then we think the members would satisfy the 	<ul style="list-style-type: none"> • Same 	<ul style="list-style-type: none"> • Do not satisfy the definition of “qualified participant” and will not be eligible for the unreduced Code section 415(b) limit. 	<ul style="list-style-type: none"> • Do not satisfy the definition “public safety officer” and the survivor will not be eligible for the tax-free annuity under Code Section 101(h).

officer course.	definition of a “Qualified Public Safety Officer.” However, if the individuals are employed with a correctional facility but not serving as a correctional officer until the individual has completed the correctional officer course, then the individual would not qualify as a “Qualified Public Safety Officer.”			
25.0045.01000 and 25.0041.01000 Amends the Public Safety Plan to include Dispatchers, Medical	<u>Correctional Officers and Medical Service Personnel</u> • Satisfies the definition	<u>Correctional Officers and Medical Service Personnel</u> • Satisfies the definition of a	<u>Correctional Officers and Medical Services Personnel</u> • Do not satisfy the definition	<u>Correctional Officers</u> • Do not satisfy the definition “public safety officer” and the survivor will not be eligible for the tax-free annuity

Service Personnel and State Correctional Officers.	<p>of a “qualified public safety officer”</p> <ul style="list-style-type: none"> No 10% early distribution penalty for monthly benefits commenced after age 50 and separation from service <p><u>Dispatchers</u></p> <ul style="list-style-type: none"> Does not satisfy the definition of a “qualified public safety officer” Will be subject to a 10% early distribution penalty for monthly benefits commenced before age 55 	<p>“qualified public safety officer”</p> <ul style="list-style-type: none"> Satisfies the NRA Safe Harbor for Qualified Public Safety Officer” <p><u>Dispatchers</u></p> <ul style="list-style-type: none"> Do not satisfy the definition of a “qualified public safety officer” Will need to demonstrate that the NRA represents the age at which employees customarily retire in the industry. 	<p>of “qualified participant” and will not be eligible for the unreduced Code section 415(b) limit.</p> <p><u>Dispatchers</u></p> <ul style="list-style-type: none"> Will be considered “qualified participants” only if they are employees of a police or fire department. 	<p>under Code Section 101(h).</p> <p><u>Medical Services Personnel</u></p> <ul style="list-style-type: none"> Satisfies the definition of “public safety officers” and the survivor will be eligible for the tax-free annuity under Code Section 101(h). <p><u>Dispatchers</u></p> <ul style="list-style-type: none"> Do not satisfy the definition “public safety officer” and the survivor will not be eligible for the tax-free annuity under Code Section 101(h), unless they are considered law enforcement officers, firefighters, part of a rescue squad or part of an ambulance crew.
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25.0040.01000				
Amends the Public Safety Plan to State Correctional Officers.	<ul style="list-style-type: none"> Satisfies the definition of a “qualified public safety officer” No 10% early distribution penalty for monthly benefits commenced after age 50 and separation from service 	<ul style="list-style-type: none"> Satisfies the definition of a “qualified public safety officer” Satisfies the NRA Safe Harbor for Qualified Public Safety Officer 	<ul style="list-style-type: none"> Do not satisfy the definition of “qualified participant” and will not be eligible for the unreduced Code section 415(b) limit. 	<ul style="list-style-type: none"> Do not satisfy the definition “public safety officer” and the survivor will not be eligible for the tax-free annuity under Code Section 101(h).

Testimony Prepared for the
House Political Subdivisions Committee

January 15th, 2025

By: Trent Wangen, Major

RE: Supportive Testimony for House Bill 1177- The definition of correctional officer for purposes of the public employees retirement system.

My name is Trent Wangen and I currently serve as a Major with the Burleigh County Sheriff's Department. My primary duty is to serve as the Assistant Jail Administrator of the Burleigh Morton Detention Center, a 555 bed facility located in Bismarck.

I am testifying in support of HB1177, the definition of correctional officer for purpose of the public employees retirement system.

Currently correctional officers hired by Burleigh County must be enrolled in the NDPERS Defined Contribution Plan until completion of the required training/certification. After completion of training/certification the correctional officers are then enrolled into the Public Safety Retirement Plan. Normally this training/certification process takes Burleigh County approximately 30 days. North Dakota Correctional Facility Standards require correctional officers to complete the required training within their first year of employment.

Peace Officers and Firefighters are eligible to enroll in the Public Safety Retirement Plan upon being hired and prior to being licensed, certified or trained.

When Burleigh County hires deputy sheriffs and correctional officers at the same time both groups attend approximately 2 weeks of training together. There are several similarities of job duties between correctional officers and deputy sheriffs. While attending the exact same training as classmates correctional officers are currently not eligible to enroll in the Public Safety Retirement Plan until completion of the required training while the deputy sheriffs are eligible upon being hired.

The proposed amendment would save time for both Burleigh County and NDPERS by eliminating the need to enroll correctional officers into the Defined Contribution Plan to only enroll the correctional officer into the Public Safety Plan at a later time.

I feel correctional officers deserve the same retirement benefits upon hire as other public safety officers receive.

Thank you for your time and consideration and please feel free to contact me with any questions you may have.

Sincerely,

Trent Wangen, Major

Burleigh County Sheriff's Department

BURLEIGH COUNTY

HUMAN RESOURCES DEPARTMENT

PAMELA J BINDER, SPHR, SHRM-SCP
HR DIRECTOR

HUMAN RESOURCE ASSISTANTS:
MEGAN MARTIN
DESIREE HILBORN
LINDSAY BROWER

January 16, 2025

Political Subdivisions Chairman and Committee

RE: House Bill #1177 – Allows Correctional Officers to be Enrolled in the Public Safety Plan Upon Employment

Dear Chairman Longmuir and Committee Members,

I am submitting my testimony in favor of House Bill #1177. As the current Human Resource Director for Burleigh County, I see the need to change (amend) this definition N.D.A.C. 71-02-01.10.

I feel that I need to explain my background in order to give credibility to my testimony. I have worked for twenty-seven (27) years in various positions within the Human Resources career field. The majority of those 27 years were spent working with employee benefit plans in some form or another. I have years of experience with both Defined Contribution Plans such as 401(a), 401(k), and 457 plans and Defined Benefit (Pension) plans. My retirement plans benefits experience comes from both the private and the government sectors.

As the definition of “Corrections Officer” reads currently within the NDPERS Public Safety Plan, that Corrections Officers do not qualify for enrollment into the NDPERS Public Safety Plan until after they complete their Correctional Officer Basic Training certificate.

Although the employee has up to twelve (12) months to complete this Correctional Officer Basic Training, The Burleigh County Sheriff’s Department has a standardized training curriculum that has the Correctional Officer Basic Training course as one of the first training sessions that a newly hired Correction (Detention) Officer completes. This Correctional Officer Basic Training certificate is usually obtained within two (2) months from the Correctional (Detention) Officer’s hire date. However, on rare occasions a new employee may not be able to attend the Correctional Officer Basic Training course in its entirety due to possible military leave, illness or injury. When this happens, the Correctional (Detention) Officer is put through the training as soon as the training schedule will allow. Usually no later than six months. If a Detention Officer does not pass the Correctional Officer Basic Training course or any other part of the training curriculum, their employment with Burleigh County is terminated.

Under normal circumstances the new Correctional (Detention) Officer would have their Correctional Officer Basic Training certificate within two months from their hire date. The

BURLEIGH COUNTY

HUMAN RESOURCES DEPARTMENT

PAMELA J BINDER, SPHR, SHRM-SCP
HR DIRECTOR

HUMAN RESOURCE ASSISTANTS:
MEGAN MARTIN
DESIREE HILBORN
LINDSAY BROWER

current definition of Corrections Officer will not allow Burleigh County to enroll our new employee into the NDPERS Public Safety Plan until they receive that certificate. However, by state law, we as the employer; must enroll the newly hired employee into the NDPERS Defined Contribution Plan within their first 30 days of employment. Burleigh County is one of the few political subdivisions that operate on a biweekly payroll basis. As a result, the thirty days can be truncated down to as short of a time frame as one week due to the biweekly payroll processing.

For example, Detention Officer Doe is enrolled in the NDPERS Defined Contribution Plan for the first two months after their hire date. Detention Officer Doe has two months' worth of employee & employer contributions that are deposited into their Defined Contribution account through Empower (NDPERS Defined Contribution Provider). Detention Officer Doe has to go online and choose their investments prior to contributions being deposited into their Defined Contribution Account.

Detention Officer Doe receives their Correctional Officer Basic Training certificate and is eligible for the NDPERS Public Safety plan at the beginning of their third month of employment. NDPERS has to suspend Detention Officer Doe's Defined Contribution Account and enroll Detention Officer Doe into the NDPERS Public Safety Plan (Defined Benefit Plan).

Now Detention Officer Doe has two different types of retirement plans associated with their Burleigh County employment. Detention Officer Doe is still employed with an NDPERS participating provider (Burleigh County) and therefore is not able to take a distribution for the two months of contributions that were deposited into the Defined Contribution (Empower) account. My understanding is this account just sits out there and as Detention Officer Doe had to choose investment funds for these contributions there are fees that will come out of Detention Officer Doe's account through Empower. Investment funds have Expense Ratio fees (12b1). This is a percentage the fund manager charges to manage the fund. If Detention Officer Doe chose the target retirement date type of fund, which does the rebalancing for the participant automatically, the expense ratio is higher. The average expense ratio fee is anywhere between .78% and 2.25%. This percentage is taken from the account balance either monthly, quarterly, or annually depending on how the fund operates. There are also market gains and losses that come out or get added to the account balance. Most of the time the provider charges a monthly administrative (recordkeeping) fee to operate the employee's account. This recordkeeping fee is either paid by the Plan Sponsor or the employee. The Defined Contribution Account will more than likely decrease in the account balance rather than increase because it will not have any more contributions being deposited into it, yet expenses will be deducted from the account.

BURLEIGH COUNTY

HUMAN RESOURCES DEPARTMENT

PAMELA J BINDER, SPHR, SHRM-SCP
HR DIRECTOR

HUMAN RESOURCE ASSISTANTS:
MEGAN MARTIN
DESIREE HILBORN
LINDSAY BROWER

If NDPERS decides to pay the Administrative (recordkeeping) fee that Empower charges, then the Defined Contribution account will end up costing the State of North Dakota and Burleigh County more and it will not be a cost neutral event.

The other factor is how do you provide training and knowledge to a new employee on the Defined Contribution Plan and then two months later tell them they now go into the NDPERS Public Safety Plan. When we had the NDPERS Main Defined Benefit Plan and the NDPERS Public Safety Defined Benefit Plan, educating the employee was easier as these two plans were the same type of plan. We could present the employee with an apples-to-apples comparison. Now with the Defined Contribution Plan and the NDPERS Public Safety Defined Benefit Plan being two different plan types, the education for the employee is more of a comparison of Apples to Oranges. This will confuse the employee as the average employee is not an expert on retirement plans or investing.

I would like to thank you for allowing me to present my testimony in favor of House Bill #1177.

Sincerely,



Pamela J. Binder, SPHR, SHRM-SCP
HR Director Burleigh County

2025 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

HB 1177
1/23/2025

A BILL for an Act to amend and reenact subsection 3 of section 54-52-01 of the North Dakota Century Code, relating to the definition of correctional officer for purposes of the public employees retirement system.

9:23 a.m. Chairman Longmuir opened the hearing.

Members Present: Chairman Longmuir, Vice-Chairman Fegley, Vice-Chairman Jonas, Representatives Bolinske, Davis, Hager, Hatlestad, Heilman, Klemin, Motschenbacher, Ostlie, Toman, Warrey

Discussion Topics:

- Employee retirement systems in similar jobs
- Committee action

9:24 a.m. Representative Warrey moved a Do Pass.

9:24 a.m. Representative Jonas seconded the motion.

Representatives	Vote
Representative Donald W. Longmuir	Y
Representative Clayton Fegley	Y
Representative Jim Jonas	Y
Representative Macy Bolinske	Y
Representative Jayme Davis	Y
Representative LaurieBeth Hager	Y
Representative Patrick R. Hatlestad	Y
Representative Matthew Heilman	Y
Representative Lawrence R. Klemin	Y
Representative Mike Motschenbacher	Y
Representative Mitch Ostlie	Y
Representative Nathan Toman	Y
Representative Jonathan Warrey	Y

9:27 a.m. Motion passed 13-0-0.

9:27 a.m. Representative Warrey will carry the bill.

9:29 a.m. Chairman Longmuir closed the hearing.

Wyatt Armstrong, Committee Clerk

REPORT OF STANDING COMMITTEE
HB 1177 ([25.0134.01000](#))

Political Subdivisions Committee (Rep. Longmuir, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1177 was placed on the Eleventh order on the calendar.

2025 SENATE STATE AND LOCAL GOVERNMENT

HB 1177

2025 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee Room JW216, State Capitol

HB 1177
3/6/2025

Relating to the definition of correctional officer for purposes of the public employees retirement system.

10:30 a.m. Chair Roers called the hearing to order.

Members Present: Chairman Roers; Vice Chair Castaneda; Senators, Braunberger, Lee and Walen.

Members Absent: Senator Barta

Discussion Topics:

- Technical correction to definition

10:30 a.m. Representative Porter, District #34, introduced the bill.

10:35 a.m. Trent Wangen, Major Burleigh County Sheriff's Department, testified in favor and submitted testimony #38916.

10:38 a.m. Donnell Preskey, ND Association of Counties Public Relations Specialist, testified in favor.

10:40 a.m. Derrick Hohbein, Chief Operating/Financial Officer NDPERS, testified neutral and submitted testimony #38418.

10:43 a.m. Senator Walen moved Do Pass.

10:43 a.m. Senator Lee seconded the motion.

Senators	Vote
Senator Kristin Roers	Y
Senator Jose L. Castaneda	Y
Senator Jeff Barta	AB
Senator Ryan Braunberger	Y
Senator Judy Lee	Y
Senator Chuck Walen	Y

Motion Passed 5-0-1

Senator Walen will carry the bill.

Additional written testimony:

Senate State and Local Government Committee

HB 1177

3/06/2025

Page 2

Pamela Binder, Human Resource Director Burleigh County, submitted testimony in favor #39028.

10:44 a.m. Chair Roers closed the hearing.

Susan Helbling, Committee Clerk

REPORT OF STANDING COMMITTEE
HB 1177 ([25.0134.01000](#))

State and Local Government Committee (Sen. Roers, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT OR EXCUSED AND NOT VOTING). HB 1177 was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.

TESTIMONY OF DERRICK HOHBEIN

House Bill 1177 – Allows Correctional Officers to be Enrolled in the Public Safety Plan Upon Employment

Good Morning, Madam Chair and members of the committee. My name is Derrick Hohbein and I am the Chief Operating/Financial Officer of the North Dakota Public Employees Retirement System, or NDPERS. I appreciate the committee taking the time to analyze House Bill 1177, which allows correctional officers to be enrolled in the Public Safety Plan upon employment regardless if the employee has completed the certification training. I am here today on behalf of the NDPERS Board to provide information in a neutral capacity so the policy makers are able to make an informed decision regarding the bill.

House Bill 1177 expands the definition of a correctional officer to include those individuals employed by a correctional facility who are enrolled in, but not yet completed, a correctional officer course. The bill will result in certain members becoming eligible for the Public Safety Plan up to 12 months earlier than they otherwise would have. Our actuary has determined the impact to the plans of this bill is expected to be immaterial to the PERS plans, thus no fiscal note is attached to this bill.

Our federal tax consultant has confirmed this bill will not disqualify our retirement plans from an IRS perspective.

House Bill 1177 was a bill introduced during the interim (Draft Bill #134), with the analysis provided to the Employee Benefits Programs Committee, which gave the bill a favorable recommendation. The consultant and legal analysis provided to the committee is included as an attachment to the end of my testimony (please note this was draft bill 134 during the interim session).

Madam Chair, I appreciate the committee taking the time to learn more about the impact this bill will have to our state. This concludes my testimony, and I'd be happy to answer any questions the committee may have.



June 11, 2024

Representative Austen Schauer, Chair
Legislative Employee Benefits Programs Committee
North Dakota State Government

Re: North Dakota Public Employees Retirement System Legislative Studies

Dear Representative Schauer:

In accordance with your request, we have analyzed the impact of Bill No. 25.0134.01000 on the North Dakota Public Employees Retirement System (NDPERS). Our review is actuarial in nature; we are not attorneys and cannot provide legal advice.

Systems Affected

North Dakota Public Employees Retirement System (PERS) including the Public Safety Systems.

Summary

Bill No. 25.0134.01000

Amends the North Dakota Century Code to explain the definition of a correctional officer to include individuals employed by a correctional facility as defined in section 12-44.1-01, who are enrolled in, but have not yet completed, a correctional officer course approved or certified by the North Dakota department of corrections and rehabilitation.

Actuarial Impact of Bill 0134 on NDPERS

Current practice is to enroll new hires who have not completed their correctional officer course in the Main Plan, and then transfer them to the Public Safety Plan once the course has been completed. The Bill will result in certain members becoming eligible for the Public Safety Plan up to 12 months earlier than they otherwise would have. The actuarial impact of including correctional officers that have not yet completed the approved course or certification is expected to be immaterial to the PERS plan.



Policy Issue Analysis

Benefits Policy Issues

- Adequacy of Retirement Benefits

The proposed change in eligibility for the Public Safety System members who have not yet completed their approved course or certification is expected to have a neutral impact on benefits for most members.

- Competitiveness

No Impact.

- Benefits Equity and Group Integrity

There may be a small minority of members enrolled in a Public Safety Plan as a result of this Bill that do not complete the required training or certification. Eligibility should be monitored, and a process to handle these exceptions should be established.

- Purchasing Power

No impact.

- Preservation of Benefits

The bill is not expected to materially affect the financial position of the Systems.

- Portability

No impact.

- Ancillary Benefits

No impact.

- Social Security

No impact.



Funding Policy Issues

- Actuarial Impacts

The change is expected to have a small, but likely immaterial financial impact on the Systems and the actuarial valuation results.

- Investment Impacts

- Cash Flow: The change required by the bill is not expected to materially impact the cash flows from the Systems.
- Asset Allocation: No impact.

Administration Issues

- Implementation Issues

This bill would have an impact on correctional officers that have not yet completed their approved course or certification.

- Administrative Costs

The costs associated with transferring members from the Main System to the Public Safety System once they complete their approved course or certification will no longer apply. Future hires will be enrolled in the Public Safety Plan immediately upon hire.

- 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

The Bill may require employee communications to current members who will transfer to the Public Safety Plan as a result of this Bill.



Disclosures and Additional Information

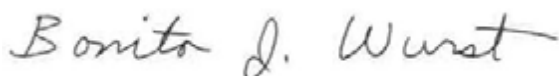
We have reviewed the bill and provided an actuarial impact analysis as well as a policy issue analysis. However, the policy issue analysis should not be considered to be comprehensive and there may be additional benefits policy or administration issues that are not discussed in this letter.

The signing actuaries are independent of the North Dakota Public Employees Retirement System.

Bonita J. Wurst and Abra D. Hill are Members of the American Academy of Actuaries (MAAA) and meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinions contained herein.

Please let us know if you have any questions or would like to discuss the results of this analysis further.

Sincerely,
Gabriel, Roeder, Smith & Company



Bonita J. Wurst, ASA, EA, MAAA, FCA
Senior Consultant



Abra D. Hill, ASA, MAAA, FCA
Consultant

cc: Ms. Rebecca Fricke, NDPERS
Joshua Murner, GRS



MEMORANDUM

TO: Derrick Hohbein, North Dakota Public Employees Retirement System

FROM: Audra Ferguson and Robert Gauss
ICE MILLER LLP

DATE: May 10, 2024

RE: Proposed Public Safety Legislation

This Memorandum is provided in confidence and subject to the attorney-client privilege. We have not provided copies to anyone other than the individual named above. To preserve the attorney-client privilege, you should disclose the contents of this Memorandum only to persons making decisions on the matters discussed herein.

Please allow this Memorandum to follow-up to your electronic mail message dated May 1, 2024. In particular, we have reviewed the following draft Bills:

- Bill No. 25.0115.01000 – Expanding the definition of “firefighter” in the Public Safety Plan to include those members employed by the State as a firefighter. A firefighter employed by the State shall be eligible for a normal retirement benefit at age 55 with 3 years of service or a combined age and service of 85.
- Bill Nos. 25.0045.01000 and 25.0041.01000– Including dispatchers, emergency medical personnel, and correctional officers employed by the State in the Public Safety Plan. Under these Bills, dispatchers, emergency medical personnel, and correctional officers employed by the State shall be eligible for a normal retirement benefit at age 55 with 3 years of service or a combined age and service of 85.
- Bill No. 25.0040.01000 – Including correctional officers employed by the State in the Public Safety Plan. Under this Bill, correctional officers employed by the State shall be eligible for a normal retirement benefit at age 55 with 3 years of service or a combined age and service of 85. [Note: Correctional officers employed by political subdivisions were already included in the Public Safety Plan.]
- Bill No. 25.0134.01000 – Defining “correctional officers” for purposes of the Public Safety Plan to include those individuals employed by a correctional facility who are enrolled in but not yet completed a correctional officer course.

This Memorandum highlights the federal law consideration and various definitions of a “public safety officer” and the impact on the plan qualification and member taxation. Specifically, this Memorandum considers the following federal law Internal Revenue Code (“Code”) sections and requirements:

- Code Section 72(t)(10)(B),
- Normal Retirement Age;
- Code Section 415(b), and
- Code Section 101(h).

I. CODE SECTION 72(t)(10)(B)

A. Relevant Federal Law

Internal Revenue Code (“Code”) section 72(t) imposes an additional 10% premature distribution tax on certain distributions that are paid to members from qualified plans. There are several exceptions to the premature distribution tax, including an exception for a "qualified public safety employee" in a governmental defined benefit plan who receives a distribution after separation from service after attainment of the earlier of age 50 or 25 years of service under the plan.¹ According to Code section 72(t)(10)(B), a "qualified public safety employee" is limited to the following:

- any employee of a State or political subdivision of a State who provides police protection, firefighting services, emergency medical services, services as a corrections officer or a forensic security employee providing for the care, custody, and control of forensic patients for any area within the jurisdiction of such State or political subdivision;
- any Federal law enforcement officer described in section 8331(2) or 8401(17) of title 5, United States Code;
- any Federal firefighter described in section 8331(21) or 8401(14) of such title;
- any air traffic controller described in 8331(30) or 8401(35) of such title;
- any nuclear materials courier described in section 8331(27) or 8401(33) of such title;
- any member of the United States Capitol Police;
- any member of the Supreme Court Police; and
- any diplomatic security special agency of the Department of State.

B. Analysis

¹ There is a separate exception for distributions paid to general employees after separation from service after attainment of age 55.

Correctional Officers, Emergency Medical Personnel, and Firefighters. Correctional Officers, Emergency Medical Personnel, and Firefighters clearly meet the definition of “Qualified Public Safety Officers” under Code Section 72(t)(10)(B).

Dispatchers. Dispatchers do not satisfy the Code section 72(t)(10)(B) definition of a “Qualified Public Safety Officer” because they do not directly provide police protection, firefighting services, or emergency medical services. As a result, a dispatcher could be eligible for early retirement benefits under the plan, but subject to an early distribution tax penalty if the member commenced a monthly benefit prior to age 55.

With respect to Bill No. 25.0134.01000 which expands the definition of “Correctional Officer” to include individuals who are employed by a correctional facility and who are enrolled in but have not yet completed a correctional officer course, this will be a facts and circumstances determination. If the individuals are in a correctional officer role and performing as a correctional officer, then we think the members would satisfy the definition of a “Qualified Public Safety Officer.” However, if the individuals are employed with a correctional facility, but not serving as a correctional officer until the individual has completed the correctional officer course, then the individual would not qualify as a “Qualified Public Safety Officer.” As noted above, the member could receive a benefit; however, if the member commences a monthly benefit prior to age 55, then the member will be subject to an early distribution penalty.

II. NORMAL RETIREMENT AGE

A. Retirement Age Under the Plan

Pursuant to N.D.C.C. § 54-52-17, the normal retirement age for members of the **Public Safety Plan** is as follows:

- The member is at least age 55 with 3 years of service; or
- The member has a combined total years of service credit and years of age equal 85.

By contrast, **under the Main Plan**, the normal retirement age for members is as follows:

- The member is at least age 65; or
- The member has a combined total years of service credit and years of age equal 85.

N.D.C.C. § 54-52-17.

Additionally, a member of the Public Safety Plan may receive an early retirement benefit when the member attains age 50 with 3 years of service. *Id.*

B. Pending Normal Retirement Age Regulations for Governmental Plans

On January 27, 2016, the IRS and Treasury Department issued a Notice of Proposed Rulemaking regarding proposed regulations regarding normal retirement age for governmental pension plans ("Proposed Regulations"). The Proposed Regulations have been long awaited as, in 2007, the IRS issued final regulations defining normal retirement age which are applicable to private sector pension plans. The Proposed Regulations distinguish between governmental plans which allow in-service distributions and those which do not. For governmental plans that do allow in-service distributions, the NRA must meet a "reasonably representative" requirement, which can be satisfied by using any of several safe harbor NRAs set forth in the proposed regulations.

For governmental plans that do not allow in-service distributions, the proposed regulations provide that the NRA must still meet the pre-ERISA vesting rules. In this regard, use of a period of service to determine normal retirement age under a governmental plan would be permissible if the period of service used is reasonable and uniformly applicable and the other pre-ERISA rules related to normal retirement age are satisfied. One of the pre-ERISA rules allows a governmental plan to specify a normal retirement age that is lower than age 65 **if that age represents the age at which employees customarily retire in the industry**.

As part of the Proposed Regulations, several sets of safe harbors were announced. For instance, the Proposed Regulations establish a general safe harbor for a normal retirement age that is at least age 62 or the later of age 62 or another specified date (such as the fifth anniversary of plan participation); this is referred to as the general safe harbor.² The Proposed Regulations also developed the following additional safe harbors specific to governmental plans:

- age 60 with five years of service;
- age 55 with ten years of service;
- a combined age and years of service of 80 or more; and
- any age with 25 years of service (in combination with a safe harbor that includes an age).

Additionally, the Proposed Regulations established separate safe harbor rules for qualified public safety employees. For qualified public safety employees, the proposed safe harbors are:

- age 50;
- combined age and years of service of 70 or more;
- any age with 20 years of service.

² It is important to note that subsequent to the Proposed Regulations, the SECURE Act reduced the age for in-service distributions under Code Section 401(a)(36) from 62 to 59 ½. As a result, it is likely the IRS will revise the general safe harbor to age 59 ½.

Importantly for purposes of the Bills, the term qualified public safety employee is defined by reference to Code § 72(t)(10)(B).

It is important to note that, under the Proposed Regulations, a plan may have more than one normal retirement age. For instance, a plan may have one normal retirement age for one classification of employees and one or more normal retirement ages for one or more different classifications of employees. This is permissible so long as each normal retirement age satisfies the pre-ERISA requirements.

Finally, the Proposed Regulations establish that a normal retirement age which does not satisfy any of the governmental plan safe harbors could still satisfy the reasonably representative requirement based on all of the relevant facts and circumstances. The normal retirement age must be evaluated and shown to satisfy a good faith determination of the typical retirement age for the industry in which the covered work force is employed and that the normal retirement age is otherwise consistent with the pre-ERISA vesting requirements.

While the IRS has stated its intent to issue final regulations, the Proposed Regulations remain pending. Separately, it is important to note that the Proposed Regulations state they are anticipated to be effective for employees hired after the effective date of the final regulations. In the meantime, governmental plan sponsors may rely on the Proposed Regulations prior to the effective date and pending the issuance of final regulations.

C. Analysis

Correctional Officers,³ Emergency Medical Personnel, and Firefighters. The normal retirement age under the Public Safety Plan satisfies the Safe Harbor for Qualified Public Safety Employees. As noted above, Correctional Officers, Emergency Medical Personnel, and Firefighters clearly meet the definition of “Qualified Public Safety Officers” under Code section 72(t)(10)(B). Thus, the lower normal retirement age proposed under the Bills for these job classifications does not raise a concern under federal law.

Dispatcher. As noted above, a Dispatcher does not satisfy the definition of a “Qualified Public Safety Officer.” Thus, NDPERS cannot rely on the Normal Retirement Age Safe Harbor for Qualified Public Safety Officers. However, the above IRS guidance is clear that, while a governmental plan that does not provide in-service distributions has flexibility in establishing a Normal Retirement Age, the parameters are not unlimited. Specifically, the Normal Retirement Age must satisfy the pre-ERISA vesting rules.

The pre-ERISA vesting rules provided that

³ As noted above, with respect to Bill No. 25.0134.01000 which expands the definition of “Correctional Officer” to include individuals who are employed by a correctional facility and who are enrolled in but have not yet completed a correctional officer course, this will be a facts and circumstances determination. If the individual is serving as a correctional officer with a job classification of a Correctional Officer, then the individual satisfies the definition of a “Qualified Public Safety Officer” under Code section 72(t)(10)(B).

[A]lthough normal retirement age under a pension or annuity plan is ordinarily age 65, a plan may specify a lower age at which the employee has the right to retire without the consent of the employer and to receive retirement benefits based on the amount of the employee's service at the full rate set forth in the plan if this lower age would be an age at which employees customarily retire in the particular company or industry, and if the provision permitting receipt of unreduced benefits at this age is not a device to accelerate funding.

Preamble to the Proposed Regulations Regarding Normal Retirement Age (Jan. 27, 2016). Thus, NDPERS will need to establish that age 55 with 3 years of service represents an age at which Dispatchers customarily retire. Note: The combined age and years of service of 85 satisfies the General Employee Normal Retirement Age Safe Harbor.

III. CODE SECTION 415(b) DEFINITION OF "QUALIFIED PARTICIPANTS"

A. Relevant Federal Law

Code section 415(b) provides that the annual benefit in the form of a single life annuity for a plan participant who is between the ages of 62 and 65 may not exceed \$160,000, as adjusted for inflation in \$5,000 increments (for 2024, the limit is \$275,000). However, there is no age-based actuarial reduction required for benefits beginning prior to age 62 for "qualified participants." Here, the Code defines "qualified participants" as those who (1) are participants of a defined benefit of a State or political subdivision of a State; and (2) have completed at least 15 years of service as a full-time employee of any police department or fire department which is organized and operated by the State or political subdivision to provide police protection, firefighting services, or emergency medical services, or as a member of the U.S. Armed Forces.

Importantly, the scope of the 415(b) public safety exception varies from the definition of public safety employees in Code section 72(t)(10)(B). Under Code section 415(b), the application of the rule depends on whether the employer is a police department or fire department of the state or political subdivision, rather than on the job classification of the individual participant. As a result, the definition of "qualified participant" under Code section 415(b) is more inclusive in terms of the types of employees that are covered than many public safety provisions, but less inclusive in terms of the types of employers that are covered.

Generally, the 415(b) exception is very beneficial to public safety officers and to other employees of police and fire departments, including non-public safety personnel. However, this definition does not cover all public safety employees. The examples in the Final 415 Regulations make it clear that an employee of a police division of an agency may be a qualified participant, but that an ambulance driver who works for an emergency medical services agency rather than for a police or fire department cannot. While the name of the agency is not important, it is necessary that the employer (or at least the appropriate division of employer) function as a police or fire department. For example, correctional officers will not be treated as employees of a police department for purposes of Code 415(b), as decided in PLR 201347028.

B. Analysis

NDPERS should be aware that only those Public Safety Plan participants that satisfy the definition of “qualified participants” will be eligible for the unreduced Code section 415(b) limit. This will include the Firefighter members, but it will not include Correctional Officers or Medical Services Personnel. In addition, Dispatchers will be considered “qualified participants” only if they are employees of a police or fire department. As a result, NDPERS would have to make sure its systems are programmed to recognize that not all employees in the Public Safety Plan would be eligible for the unreduced Code Section 415(b) limit.

IV. CODE SECTION 101(h) – DEFINITION OF PUBLIC SAFETY OFFICER

A. Relevant Federal Law

Code section 101(h) provides a federal income tax exclusion for certain amounts paid as a survivor annuity on account of the death of a "public safety officer" killed in the line-of-duty. The exclusion applies:

- if the survivor annuity is provided by a qualified 401(a) plan to the spouse, former spouse, or a child of the officer; and
- to the extent the annuity is attributable to the officer's service as a public safety officer.

In accordance with 42 U.S.C. 3796b(9) (the Omnibus Crime Control and Safe Streets Act of 1968), a "public safety officer" includes (i) an individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, a firefighter, a chaplain, or as a member of a rescue squad or an ambulance crew; or (ii) with some limitation, an employee of a State, local or tribal emergency management or civil defense agency who is performing official duties in cooperation with the Federal Emergency Management Agency.

B. Analysis

NDPERS should be aware that only those Public Safety Plan survivors of participants that satisfy the definition of “public safety officers” will be eligible for the tax-free annuity under Code section 101(h). This will include the Firefighter members and Medical Services Personnel, but it will not include Correctional Officers. In addition, unless Dispatchers are considered law enforcement officers, firefighters, part of a rescue squad or part of an ambulance crew, they would only be included in this definition of a public safety officer for purposes of Code section 101(h) if they fall into the second category of working in cooperation with the Federal Emergency Management Agency.

V. SUMMARY OF BILL ANALYSIS

<u>Bill No.</u>	<u>Code § 72(t)</u>	<u>NRA</u>	<u>Code § 415(b) Reduction</u>	<u>Code § 101(h)</u>
25.0115.01000 Adding Firefighters employed by the State	<ul style="list-style-type: none"> • Satisfies the definition of a “qualified public safety officer” • No 10% early distribution penalty for monthly benefits commenced after age 50 and separation from service” 	<ul style="list-style-type: none"> • Satisfies the definition of a “qualified public safety officer” • Satisfies the NRA Safe Harbor for Qualified Public Safety Officer” 	<ul style="list-style-type: none"> • Satisfies the definition of “qualified participants” and eligible for the unreduced Code section 415(b) limit. 	<ul style="list-style-type: none"> • Satisfies the definition of “public safety officers” and the survivor will be eligible for the tax-free annuity under Code Section 101(h).
25.0134.01000 Amending definition of a “correctional officer” to include an individual employed by a correctional facility who is enrolled in but not yet completed a correctional	<ul style="list-style-type: none"> • If the individuals are in a correctional officer role and performing as a correctional officer, then we think the members would satisfy the 	<ul style="list-style-type: none"> • Same 	<ul style="list-style-type: none"> • Do not satisfy the definition of “qualified participant” and will not be eligible for the unreduced Code section 415(b) limit. 	<ul style="list-style-type: none"> • Do not satisfy the definition “public safety officer” and the survivor will not be eligible for the tax-free annuity under Code Section 101(h).

officer course.	definition of a “Qualified Public Safety Officer.” However, if the individuals are employed with a correctional facility but not serving as a correctional officer until the individual has completed the correctional officer course, then the individual would not qualify as a “Qualified Public Safety Officer.”			
25.0045.01000 and 25.0041.01000 Amends the Public Safety Plan to include Dispatchers, Medical	<u>Correctional Officers and Medical Service Personnel</u> <ul style="list-style-type: none"> Satisfies the definition 	<u>Correctional Officers and Medical Service Personnel</u> <ul style="list-style-type: none"> Satisfies the definition of a 	<u>Correctional Officers and Medical Services Personnel</u> <ul style="list-style-type: none"> Do not satisfy the definition 	<u>Correctional Officers</u> <ul style="list-style-type: none"> Do not satisfy the definition “public safety officer” and the survivor will not be eligible for the tax-free annuity

Service Personnel and State Correctional Officers.	<p>of a “qualified public safety officer”</p> <ul style="list-style-type: none"> No 10% early distribution penalty for monthly benefits commenced after age 50 and separation from service <p><u>Dispatchers</u></p> <ul style="list-style-type: none"> Does not satisfy the definition of a “qualified public safety officer” Will be subject to a 10% early distribution penalty for monthly benefits commenced before age 55 	<p>“qualified public safety officer”</p> <ul style="list-style-type: none"> Satisfies the NRA Safe Harbor for Qualified Public Safety Officer” <p><u>Dispatchers</u></p> <ul style="list-style-type: none"> Do not satisfy the definition of a “qualified public safety officer” Will need to demonstrate that the NRA represents the age at which employees customarily retire in the industry. 	<p>of “qualified participant” and will not be eligible for the unreduced Code section 415(b) limit.</p> <p><u>Dispatchers</u></p> <ul style="list-style-type: none"> Will be considered “qualified participants” only if they are employees of a police or fire department. 	<p>under Code Section 101(h).</p> <p><u>Medical Services Personnel</u></p> <ul style="list-style-type: none"> Satisfies the definition of “public safety officers” and the survivor will be eligible for the tax-free annuity under Code Section 101(h). <p><u>Dispatchers</u></p> <ul style="list-style-type: none"> Do not satisfy the definition “public safety officer” and the survivor will not be eligible for the tax-free annuity under Code Section 101(h), unless they are considered law enforcement officers, firefighters, part of a rescue squad or part of an ambulance crew.
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25.0040.01000				
Amends the Public Safety Plan to State Correctional Officers.	<ul style="list-style-type: none"> Satisfies the definition of a “qualified public safety officer” No 10% early distribution penalty for monthly benefits commenced after age 50 and separation from service 	<ul style="list-style-type: none"> Satisfies the definition of a “qualified public safety officer” Satisfies the NRA Safe Harbor for Qualified Public Safety Officer 	<ul style="list-style-type: none"> Do not satisfy the definition of “qualified participant” and will not be eligible for the unreduced Code section 415(b) limit. 	<ul style="list-style-type: none"> Do not satisfy the definition “public safety officer” and the survivor will not be eligible for the tax-free annuity under Code Section 101(h).



BURLEIGH COUNTY SHERIFF'S DEPARTMENT

KELLY LEBEN
SHERIFF

Testimony Prepared for the

Senate State and Local Government Committee

March 6th, 2025

By: Trent Wangen, Major

RE: Supportive Testimony for House Bill 1177- The definition of correctional officer for purposes of the public employees retirement system.

Senate State and Local Government Chair Roers and Committee Members,

My name is Trent Wangen and I currently serve as a Major with the Burleigh County Sheriff's Department. My primary duty is to serve as the Assistant Jail Administrator of the Burleigh Morton Detention Center, a 555 bed facility located in Bismarck.

I am testifying in support of HB1177, the definition of correctional officer for purpose of the public employees retirement system.

Currently correctional officers hired by Burleigh County must be enrolled in the NDPERS Defined Contribution Plan until completion of the required training/certification. After completion of training/certification the correctional officers are then enrolled into the Public Safety Retirement Plan. Normally this training/certification process takes Burleigh County approximately 30 days. North Dakota Correctional Facility Standards require correctional officers to complete the required training within their first year of employment.

Peace Officers and Firefighters are eligible to enroll in the Public Safety Retirement Plan upon being hired and prior to being licensed, certified or trained.

When Burleigh County hires deputy sheriffs and correctional officers at the same time both groups attend approximately 2 weeks of training together. There are several similarities of job duties between correctional officers and deputy sheriffs. While attending the exact same training as classmates correctional officers are currently not eligible to enroll in the Public Safety Retirement Plan until completion of the required training while the deputy sheriffs are eligible upon being hired.

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BURLEIGH COUNTY SHERIFF'S DEPARTMENT

KELLY LEBEN
SHERIFF

The proposed amendment would save time for both Burleigh County and NDPERS by eliminating the need to enroll correctional officers into the Defined Contribution Plan to only enroll the correctional officer into the Public Safety Plan at a later time.

I feel correctional officers deserve the same retirement benefits upon hire as other public safety officers receive and ask for a do pass on HB1177.

I will stand for questions.

Sincerely,

Trent Wangen, Major

Burleigh County Sheriff's Department

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BURLEIGH COUNTY

HUMAN RESOURCES DEPARTMENT

PAMELA J BINDER, SPHR, SHRM-SCP
HR DIRECTOR

HUMAN RESOURCE ASSISTANTS:
MEGAN MARTIN
DESIREE HILBORN
LINDSAY BROWER

March 5, 2025

RE: House Bill #1177 – Allows Correctional Officers to be Enrolled in the Public Safety Plan Upon Employment

Dear Committee Members,

I am submitting my testimony in favor of House Bill #1177. As the current Human Resource Director for Burleigh County, I see the need to change (amend) this definition N.D.A.C. 71-02-01.10.

As the definition of “Corrections Officer” reads currently within the NDPERS Public Safety Plan, that Corrections Officers do not qualify for enrollment into the NDPERS Public Safety Plan until after they complete their Correctional Officer Basic Training certificate.

Although the employee has up to twelve (12) months to complete this Correctional Officer Basic Training, The Burleigh County Sheriff’s Department has a standardized training curriculum that has the Correctional Officer Basic Training course as one of the first training sessions that a newly hired Correction (Detention) Officer completes. This Correctional Officer Basic Training certificate is usually obtained within two (2) months from the Correctional (Detention) Officer’s hire date. However, on rare occasions a new employee may not be able to attend the Correctional Officer Basic Training course in its entirety due to possible military leave, illness or injury. When this happens, the Correctional (Detention) Officer is put through the training as soon as the training schedule will allow. Usually no later than six months. If a Detention Officer does not pass the Correctional Officer Basic Training course or any other part of the training curriculum, their employment with Burleigh County is terminated.

Under normal circumstances the new Correctional (Detention) Officer would have their Correctional Officer Basic Training certificate within two months from their hire date. The current definition of Corrections Officer will not allow Burleigh County to enroll our new employee into the NDPERS Public Safety Plan until they receive that certificate. However, by state law, we as the employer; must enroll the newly hired employee into the NDPERS Defined Contribution Plan within their first 30 days of employment. Burleigh County is one of the few political subdivisions that operate on a biweekly payroll basis. As a result, the thirty days can be truncated down to as short of a time frame as one week due to the biweekly payroll processing.

BURLEIGH COUNTY

HUMAN RESOURCES DEPARTMENT

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HR DIRECTOR

HUMAN RESOURCE ASSISTANTS:
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For example, Detention Officer Doe is enrolled in the NDPERS Defined Contribution Plan for the first two months after their hire date. Detention Officer Doe has two months' worth of employee & employer contributions that are deposited into their Defined Contribution account through Empower (NDPERS Defined Contribution Provider).

Detention Officer Doe receives his Correctional Officer Basic Training certificate and is eligible for the NDPERS Public Safety plan at the beginning of their third month of employment. NDPERS has to suspend Detention Officer Doe's Defined Contribution Account and enroll Detention Officer Doe into the NDPERS Public Safety Plan (Defined Benefit Plan).

Now Detention Officer Doe has two different types of retirement plans associated with their Burleigh County employment. Detention Officer Doe is still employed with an NDPERS participating provider (Burleigh County) and therefore is not able to take a distribution for the two months of contributions that were deposited into the Defined Contribution (Empower) account. My understanding is this account just sits out there as Detention Officer Doe is still actively employed with Burleigh County and is now placed into the NDPERS Public Safety Plan which is a defined benefit plan. Detention Officer Doe is not allowed to make a choice of whether he wants to stay in the Defined Contribution Plan or transfer to the Public Safety Plan. Detention Officer Doe is enrolled into the Public Safety Plan and on the first of the next month after he completes the Correctional Officer Basic certificate, he starts gaining service credit in the Public Safety Plan. As Detention Officer Doe was in the Defined Contribution Plan for two months the following issues happened:

- Detention Officer Doe has lost two months of service credit in the Public Safety Plan. There is no way to transfer that service credit into the Public Safety Plan from the Defined Contribution Plan as the plans are two different types with two different benefit levels.
- Detention Officer Doe will have an account sitting at Empower through NDPERS that he can do nothing about until he is no longer employed by Burleigh County or any other NDPERS participating entity.
- If there are 100-250 (low estimate) Detention Officer Doe's with these small accounts that just have to sit out on the Empower website, that will create an administration burden which creates more work to keep accurate records for these small accounts. The record keeping process is the same no matter what the size of the account. Because of this it could potentially lead to administrative costs for these small accounts in the future (my estimation based on my background with defined contribution plans).

BURLEIGH COUNTY

HUMAN RESOURCES DEPARTMENT

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The other factor is how do you provide training and knowledge to a new employee on the Defined Contribution Plan and then two months later tell them they now go into the NDPERS Public Safety Plan. When we had the NDPERS Main Defined Benefit Plan and the NDPERS Public Safety Defined Benefit Plan, educating the employee was easier as these two plans were the same type of plan. We could present the employee with an apples-to-apples comparison. Now with the Defined Contribution Plan and the NDPERS Public Safety Defined Benefit Plan being two different plan types, the education for the employee is more of a comparison of Apples to Oranges. This will confuse the employee as the average employee is not an expert on retirement plans or investing.

I would like to thank you for allowing me to present my testimony in favor of House Bill #1177.

Sincerely,

Pamela J. Binder, SPHR, SHRM-SCP
HR Director Burleigh County