

Affordable Care Act/HB 1059

NDPERS

July 2014



Today's Agenda

- Overview and Setting Expectations
- Changes in State Law for PERS
- Overview of the Federal Law
- State Of North Dakota Update
- Q&A

The Patient Protection & Affordable Care Act

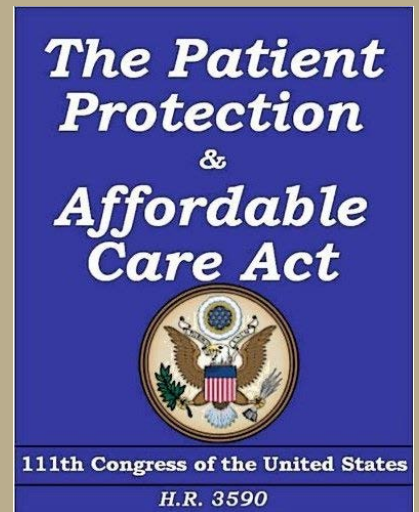


111th Congress of the United States

H.R. 3590

PERS Resource Center on Website

- PERS has put on our website
 - Today's PowerPoints
 - A copy of the regulations
 - Several links to other website information
 - A video of today's presentation





North Dakota Public Employees Retirement System

- Sparb Collins**
Executive Director
- General Information**
- Home
- NDPERS News
- About NDPERS
- Contact NDPERS
- Forms & Publications
- Member Services**
- Active Members
- Temporary/Part-Time Employees
- Retirees
- Online Services**
- PERSLink MEMBER Self Service
- PeopleSoft Portal
- Secure File Transfer
- Employer Services**
- Program Administration
- Program Enrollment
- Consultant/Provider Services**
- Deferred Comp Providers
- Request for Proposals
- Other Information**
- Links
- Search
- Insurance Notices**



Lt. Governor Drew Wrigley Presents



Daily Dose of **wellness**


A series of wellness webinars available at www.NDPERSHealthyBlue.com.



Defined Contribution Option for State Employees Hired on or after 10/01/2013



The Patient Protection & Affordable Care Act



111th Congress of the United States
H.R. 3590

***Setting Expectations
for Today***

*The Patient
Protection
&
Affordable
Care Act*



111th Congress of the United States

H.R. 3590

**START FRESH IN THINKING
ABOUT THE ACA**

**ALL QUESTIONS ARE GOOD
QUESTIONS**

**THERE ARE THINGS THAT WE
JUST DON'T KNOW YET**

**THERE MAY BE MORE THAN ONE
PERSPECTIVE ON AN ANSWER**

**DETAILS FROM THE FEDERAL
GOVERNMENT ARE STILL BEING
RELEASED**

**TODAY WE WILL BE JUST
SCRATCHING THE SURFACE**

Today's Agenda

- ~~Overview and Setting Expectations~~
- Changes in State Law for PERS
- Overview of the Federal Law
- State Of North Dakota Update
- Q&A

The Patient Protection & Affordable Care Act



111th Congress of the United States

H.R. 3590

PERS Plan Eligibility today

FTE under State Law

- In an approved and regularly funded position
- Working 20 or more hours per week
- Working 20 or more weeks per year

Temporary Employee

- Not in approved and regularly funded position
- Services may or may not be of limited duration
- Working 20 or more hours per week
- Working 20 or more weeks per year

HB 1059

Sixty-third Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 8, 2013

HOUSE BILL NO. 1059
(Government and Veterans Affairs Committee)
(At the request of the Public Employees Retirement System Board)

AN ACT to amend and reenact sections 54-52.1-03.1, 54-52.1-03.4, and 54-52.1-18 of the North Dakota Century Code, relating to withdrawal of a political subdivision from the uniform group insurance program, the definition of an eligible employee, payment of the cost of uniform group insurance premiums for temporary employees, and the health savings account option offered to political subdivisions as part of the high-deductible health plan alternative under the uniform group insurance program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-52.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

54-52.1-03.1. Certain political subdivisions authorized to join uniform group insurance program - Employer contribution.

A political subdivision may extend the benefits of the uniform group insurance program under this chapter to its permanent employees, subject to minimum requirements established by the board and a minimum period of participation of sixty months. If the political subdivision withdraws from participation in the uniform group insurance program, before completing sixty months of participation, unless federal or state laws or rules are modified or interpreted in a way that makes participation by the political subdivision in the uniform group insurance program no longer allowable or appropriate, the political subdivision shall make payment to the board in an amount equal to any expenses incurred in the uniform group insurance program that exceed income received on behalf of the political subdivision's employees as determined under rules adopted by the board. The Garrison Diversion Conservancy District, and district health units required to participate in the public employees retirement system under section 54-52-02, shall participate in the uniform group insurance program under the same terms and conditions as state agencies. A retiree who has accepted a retirement allowance from a participating political subdivision's retirement plan may elect to participate in the uniform group under this chapter without meeting minimum requirements at age sixty-five, when the employee's spouse reaches age sixty-five, upon the receipt of a benefit, when the political subdivision joins the uniform group insurance plan if the retiree was a member of the former plan, or when the spouse terminates employment. If a retiree or surviving spouse does not elect to participate at the times specified in this section, the retiree or surviving spouse must meet the minimum requirements established by the board. Each retiree or surviving spouse shall pay directly to the board the premiums in effect for the coverage then being provided. The board may require documentation that the retiree has accepted a retirement allowance from an eligible retirement plan other than the public employees retirement system.

SECTION 2. AMENDMENT. Section 54-52.1-03.4 of the North Dakota Century Code is amended and reenacted as follows:

54-52.1-03.4. Temporary employees and employees on unpaid leave of absence.

A temporary employee employed before August 1, 2007, may elect to participate in the uniform group insurance program by completing the necessary enrollment forms and qualifying under the medical underwriting requirements of the program. A temporary employee employed on or after August 1, 2007, is only eligible to participate in the uniform group insurance program if the employee is employed at least twenty hours per week and at least twenty weeks each year of employment. A temporary employee first employed after December 31, 2013, is eligible to participate in the uniform group insurance program only if the employee meets the definition of a full-time employee under

*“Section 2 of the bill would amend Section 54-52.1-03.4 of the North Dakota Century Code to modify the uniform group insurance program’s eligibility rules for temporary employees first employed **after December 31, 2013**, and to limit the amount any temporary employee can be required to contribute towards the cost of coverage. **The purpose of the proposed changes is to prevent the State of North Dakota from being subjected to the Employer Shared Responsibility penalties with respect to its temporary employees under the Affordable Care Act. The Shared Responsibility penalty for No Coverage will be \$2,000 per FTE per year. This No Coverage penalty will be imposed only if at least one FTE purchases coverage in a Health Insurance Exchange and qualifies for a Premium Tax Credit or Cost-Sharing Reduction.**”*

Testimony of Sparb Collins

PERS Plan Eligibility

FTE under State Law

- In an approved and regularly funded position
- Working 20 or more hours per week
- Working 20 or more weeks per year

Temporary Employee

- ~~• Not in approved and regularly funded position~~
- ~~• Services may or may not be of limited duration~~
- ~~• Working 20 or more hours per week~~
- ~~• Working 20 or more weeks per year~~

PERS Plan Eligibility

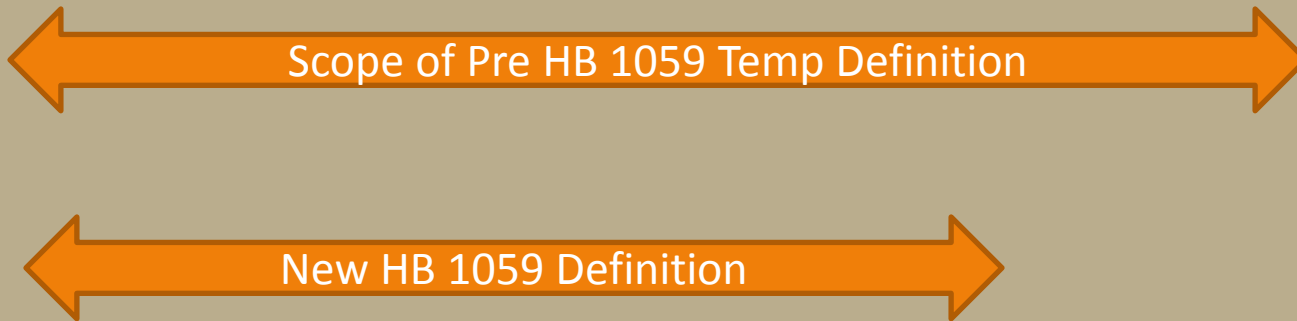
FTE under State Law

- In an approved and regularly funded position
- Working 20 or more hours per week
- Working 20 or more weeks per year

Temporary Employee

- Employees that are full time employees under the ACA but not under state law
- Working 30 or more hours per week in month (130 hrs) or 1560 hours per year
 - Not seasonal employees
 - May include variable hour employees
 - Includes any employee that you reasonable expect to work to work 30 hours per week for a month and is not seasonal

HB 1059: Definition of Temporary Employee



PERS Plan Eligibility

FTE under State Law

- In an approved and regularly funded position
- Working 20 or more hours per week
- Working 20 or more weeks per year

Temporary Employee

- Employees that are full time employees under the ACA but not under state law
- Working 30 or more hours per week (130 hrs per month) for a month or 1560 hours per year
 - Not seasonal employees
 - May include variable hour employees
 - Includes any employee that you reasonable expect to work to work 30 hours per week for a month and is not seasonal
- **Cannot charge these employees more than 9.5% of their household income for single coverage but must also provide coverage to dependents**

HB 1059 & HB 1015

“The fiscal implications in this bill relate to adjusting the definition of temporary employees and their premium payments to **comply with the shared responsibility provisions of the Affordable Care Act (ACA).**”

“...the bill would change the definition of temporary employee **to comply with the definition requirement to meet the shared responsibility requirement of the Affordable Care Act (ACA) and to avoid any penalties for noncompliance.**

Pursuant to the ACA, these employees can be charged no more than 9.5% of household income. This additional employer premium requirement is estimated in the expenditures and the additional appropriation is shown as well. The appropriation for this expenditure is in the OMB budget under Health Insurance Pool - Temporary Employees. ‘ ‘

FISCAL NOTE Requested by Legislative Council 01/28/2013

Revised
Amendment to: HB 1059

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The fiscal implications in this bill relate to adjusting the definition of temporary employees and their premium payments to comply with the shared responsibility provisions of the Affordable Care Act (ACA).

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of the bill would change the definition of temporary employee to comply with the definition requirement to meet the shared responsibility requirement of the Affordable Care Act (ACA) and to avoid any penalties for non-compliance. Pursuant to the ACA, these employees can be charged no more than 9.5% of household income. This additional employer premium requirement is estimated in the expenditures and the additional appropriation is shown as well. The appropriation for this expenditure is in the OMB budget under Health Insurance Pool - Temporary Employees.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

This expenditure is in the executive budget. The intent language is in HB1015 Section 7.

**New Federal
Guidance Announced
on July 2, 2013**

Treasury
Department's
July 2, 2013
announcement
that it would not
enforce IRC §§
4980H, 6055,
and 6056 in
2014,

*“As noted, IRS Notice
2013-45 confirms that
no employer shared
responsibility penalties
pursuant to IRC § 4980H
will be assessed for
2014.”*

What Were
the options?

54-52.1-08.2.
**Uniform group
insurance program
- Compliance with
federal
requirements -
Group purchasing
arrangements.**

If the board determines that any section or the phraseology of any section of this chapter does not comply with applicable federal statutes or rules, the board shall adopt appropriate terminology with respect to that section to comply with the federal statutes or rules, subject to the approval of the legislative management's employee benefits programs committee.
The board may assume responsibility for group purchasing arrangements as provided by federal law. Any plan modifications made by the board under this section are effective until the effective date of any measure enacted by the legislative assembly providing the necessary amendments to this chapter to ensure compliance with the federal statutes or rules.

PER'S Board Mtg – July 25, 2013



Wayne Steneijm
ATTORNEY GENERAL

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL
STATE CAPITOL
600 E BOULEVARD AVE DEPT 125
BISMARCK, ND 58505-0940
(701) 328-2210 FAX (701) 328-2226
www.ag.nd.gov

August 21, 2013

Mr. Sparb Collins
North Dakota Public Employees Retirement System
PO Box 1657
Bismarck, ND 58502-1657

RE: Use of N.D.C.C. § 54-52.1-08.2

Dear Mr. Collins:

At the July 25, 2013, meeting of the North Dakota Public Employees Retirement System ("NDPERS") Board you advised the Board that the President had delayed implementation of the employer shared responsibility penalties under the Affordable Care Act ("ACA") for one year and the effect that this delay would have on the NDPERS ACA implementation schedule and on the new state law provisions passed this last session. You specifically commented on the two amendments made to N.D.C.C. § 54-52.1-03.4 by Section 2 of House Bill 1059 regarding the definition of and contribution cap for temporary employees.

The first amendment altered the eligibility requirements of temporary employees first employed after December 31, 2013, to limit participation in the uniform group insurance program to those temporary employees meeting the definition of a "full-time employee" as defined in IRC § 4980H(c)(4); the second amendment provided a contribution cap towards self-only coverage in the uniform group insurance program for temporary employees who meet the definition of an "applicable taxpayer" as defined in IRC § 36B(c)(1)(A). The legislative history of HB 1059 indicates these amendments were submitted, considered and passed to ensure that the State would not be subject to penalties under the ACA. You had further indicated that as a result of these recent events the State and participating political subdivisions would be required to expend funds on behalf of temporary employees under state law even though failure to do so would not be penalized under the ACA.

At that time you asked me whether N.D.C.C. § 54-52.1-08.2 could be used by the NDPERS Board to recommend a one year delay in the implementation of section 2 of HB 1059 to the employee benefits programs committee. Please accept this letter as a summary of the legal analysis I provided to the NDPERS Board.

“Therefore, when comparing the result to the State and participating political subdivisions depending on the ability of the NDPERS Board to use N.D.C.C. 54-52.1-08.2 to achieve a delay in implementation of the amendment to N.D.C.C. 54-52.1-03.4, the presumptions that a just and reasonable result is intended, a result feasible of execution is intended, and the public interest is favored could be argued to favor use of N.D.C.C. 54-52.1-08.2 by the NDPERS Board in this instance”

PER'S Board Mtg – July 25, 2013

- In recognition of the purpose for this section of HB 1059 and the legal advise the board:

...MOVED TO HAVE THE DATE IN SECTION 2 OF HOUSE BILL 1059 MOVED BACK ONE YEAR PURSUANT TO THE ACTION OF THE FEDERAL GOVERNMENT IN DELAYING EMPLOYER PENALITES FOR THE AFFORDABLE CARE ACT.

New Effective date

- Jan 2015