

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

EMPLOYEE BENEFITS PROGRAMS COMMITTEE

Monday, August 25, 2008
Harvest Room, State Capitol
Bismarck, North Dakota

Representative Bette Grande, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Bette Grande, Eliot Glassheim, Jim Kasper, Matthew M. Klein, Joe Kroeber; Senators Karen K. Krebsbach, Curtis Olafson

Members absent: Senators Ralph L. Kilzer, Harvey D. Tallackson

Others present: See [Appendix A](#)

It was moved by Representative Klein, seconded by Representative Glassheim, and carried on a voice vote that the minutes of the July 29, 2008, committee meeting be approved as distributed.

At the request of Chairman Grande, committee counsel distributed a memorandum entitled [Employee Benefits Programs Committee Benefits Survey Results](#).

Chairman Grande recognized Mr. Gordy Smith, Audit Manager, State Auditor's office. Mr. Smith discussed ([Appendix B](#)) the results of the Legislative Council's survey of state entities relating to specific types of expenditures. In summary, Mr. Smith said as the policymaking branch of government, the Legislative Assembly needs to decide whether it is necessary to provide more guidance or requirements to the executive branch agencies relating to the types of expenditures referred to in the survey. He said it would be prudent to ensure that such guidance or requirements are not unduly burdensome on state agencies or result in a loss of flexibility. He noted that state entities have wide-ranging duties and responsibilities and that prohibiting a specific type of expenditure may seem appropriate for most state entities but prove to be a hardship for others.

Mr. Smith said guidance provided by the Legislative Assembly could be specific by prohibiting or discouraging certain types of expenditures, such as payments to chambers of commerce or service clubs, or the guidance could be general in nature by providing criteria that these types of expenditures must meet in order to be appropriate. He said it should be noted that any prohibition established in statute will not be able to be revised without future legislative action.

Mr. Smith said the Legislative Assembly could direct the Office of Management and Budget to adopt more specific guidance or requirements either in Office of Management and Budget policy or in administrative rule. He said addressing the issue in

this manner would ensure that modification to the guidance or requirements could be accomplished in a timely manner.

In response to a question from Representative Kasper, Mr. Smith said he and the senior auditors in the State Auditor's office reviewed the *Employee Benefits Programs Committee Benefits Survey Results* in light of the Workforce Safety and Insurance performance audit and the recent North Dakota Supreme Court opinion in *State v. Blunt*. For the most part, he said, the State Auditor's office did not identify any expenditures of the type noted in the Workforce Safety and Insurance performance audit. The only previous expenditures of the type identified in the Workforce Safety and Insurance performance audit, he said, were the purchase of gift certificates at the Veterans Home. He said this expenditure was reported to the Legislative Audit and Fiscal Review Committee. He said that committee referred the expenditure to the Attorney General's office for review. He said the Attorney General forwarded the information to the local state's attorney who determined not to file any charges. He said the State Auditor's office is not finding similar types of expenditures as reported in the Workforce Safety and Insurance performance audit. Another example he could recall, he said, was a state agency that was providing an award for the achievements of nonstate employees in a national competition. He said this practice was duly noted and stopped.

In response to a question from Representative Kasper, Mr. Smith said the decision whether to prosecute an alleged improper expenditure of state funds is made by the local state's attorney and not the State Auditor's office. He said the State Auditor's office played no role in the decision of the Burleigh County State's Attorney to file charges against Mr. Blunt.

In response to a further question from Representative Kasper, Mr. Smith said the State Auditor's office routinely reviews expenditures for meals by state agencies. Examples that come to mind, he said, are luncheons hosted by the State Historical Society and the Department of Commerce for members of the Legislative Assembly. In these instances, he said, the foundation of the State Historical Society or the North Dakota Chamber of Commerce on behalf of the Department of Commerce paid for the luncheons. He said the difference in these instances is that the expenditure was made by a

third party and not a state agency. He said no state funds were involved in these expenditures.

In response to a question from Senator Olafson concerning practices that were materially different at Workforce Safety and Insurance compared to other state agencies, Mr. Smith said the types of expenditures noted in the Workforce Safety and Insurance performance audit are not being made by other state agencies. For example, he said, the only other state agency providing gift certificates as an employee recognition award was the Veterans Home which was noted in that agency's audit. Another example, he said, is that Workforce Safety and Insurance paid for flowers for a hospitalized member of the board. Other agencies, he said, also routinely do this, but expenditures are made from an employee gift fund funded by voluntary employee contributions and no state funds are used or involved. If an agency wants to recognize an employee, he said, it should use the statutory employee performance bonus program, and if an employer wants to spend funds to retain a valued employee it may use the retention and recruitment bonus program. He said these programs are provided in state law.

In response to a further question from Senator Olafson, Mr. Smith said the State Auditor's office has not found any other instance of a state agency providing bonuses or incentives outside the mechanism provided in state law.

In response to a further question from Senator Olafson, Mr. Smith said the recent performance audit was the first performance audit conducted at Workforce Safety and Insurance. He said the performance audit usually coincides with the most recent two-year period and is not designed to cover an entire administration. He said a performance audit was not done during any previous administration.

In response to a question from Representative Kasper, Mr. Smith said Workforce Safety and Insurance has its own personnel system. He said nonclassified agencies are not subject to rules adopted by Human Resource Management Services, including Workforce Safety and Insurance. However, he said, state agencies must follow state law in operating their own personnel system.

Chairman Grande recognized Representative Glassheim. In response to Mr. Smith's presentation, Representative Glassheim said the committee may wish to consider legislation decriminalizing expenditures of the type noted in the Workforce Safety and Insurance performance audit.

In response to a question from Representative Kasper concerning any recommendations the State Auditor's office might have, Mr. Smith said if the Legislative Assembly determines that a certain type of expenditure should not be made, the Legislative Assembly should enact a statute prohibiting the expenditure or direct the appropriate agency to adopt a rule prohibiting the expenditure. However, he said, the State Auditor's office feels that reporting expenditures may be better than a strict statute that is

not flexible enough to enable agencies to accomplish their statutory mission.

In response to a question from Representative Kasper, Mr. Smith said the State Auditor's office will provide information on the types of expenditures the committee may wish to address in a bill draft.

At the request of Chairman Grande, committee counsel reviewed two bill drafts [[90242.0100](#) and [90243.0100](#)] relating to state employee service awards, employer-paid tuition, and employer-paid professional organization membership and service club dues.

Chairman Grande recognized Senator Olafson. Senator Olafson said the language providing that an expenditure made in accordance with the statute is deemed to be compensation for services provided to the state and is made for a public purpose and may not be construed as a gift for purposes of Section 18 of Article X of the Constitution of North Dakota should be included in both bill drafts.

Chairman Grande recognized Mr. Ken Purdy, Manager, Classification and Compensation, Human Resource Management Services, Office of Management and Budget. Mr. Purdy discussed ([Appendix C](#)) the consistency and jurisdiction of statutes, administrative rules, and policies among various agencies and institutions in state government. He noted that in past legislative sessions, the Legislative Assembly has made the express policy decision that some agency operations have different needs and requirements and that those differences led to allowing those entities to administer their own human resource operating policies outside the state human resource system. Adopting completely uniform policies in this area, he said, may conflict with this prior legislative action. Concerning employee service awards, he said, bringing detail into statute to include the incremental dollar values would make it much more difficult to periodically update this program.

In response to a question from Representative Grande, Mr. Purdy said the training and tuition reimbursement rules recently adopted by Human Resource Management Services do not require payback if the employee leaves state employment soon after receiving a degree. He said human resource management professionals expressed strong opposition to requiring a payback provision although some agencies do require an employee who leaves employment within a certain period of time after receiving the tuition reimbursement to repay the tuition.

In response to a question from Senator Krebsbach, Mr. Purdy said the permissive bill draft is preferable to the bill draft containing a specific schedule of state employee service awards.

At the request of Chairman Grande, committee counsel reviewed a bill draft [[90244.0100](#)] relating to the state employee performance bonus program.

Chairman Grande recognized Mr. Purdy. Mr. Purdy discussed ([Appendix D](#)) the performance

bonus bill draft. He concurred that the maximum bonus should be increased from \$1,000 per biennium to \$1,000 per fiscal year. He said changing the limit from biennial to annual is a good step, but it might also be appropriate to consider a dollar increase in the limit. Concerning the authority of Human Resource Management Services to approve exceptions to the 25 percent of staff limit, he said, rather than requiring Human Resource Management Services to evaluate exceptions, an alternative might be to allow Human Resource Management Services or the independent appointing authority to make such exceptions and report the exceptions to a Legislative Council interim committee.

In response to a question from Representative Klein, Mr. Purdy said bonuses are not included in employee base pay.

Chairman Grande recognized Representative Glasheim. Representative Glasheim said a \$1,000 bonus is not a sufficient incentive to keep an employee from leaving for a higher-paying job. If the \$1,000 is a performance bonus, he said, then the 25 percent limitation is too high and it should be limited to 15 percent for truly exceptional performance.

At the request of Chairman Grande, committee counsel reviewed a bill draft [\[90245.0100\]](#) relating to state recruitment and retention bonus programs. He said the bill draft includes a definition of the term "hard-to-fill occupation" for the state recruitment and retention bonus program.

Chairman Grande recognized Mr. Purdy. Mr. Purdy said the proposed language does mirror the rationale agencies have been using to consider their recruiting and retention bonuses under North Dakota Century Code Section 54-06-31.

Chairman Grande recognized Representative Kasper. Representative Kasper said the bill drafts relating to state employee service awards,

employer-paid tuition, and employer-paid professional organization membership and service club dues should contain a decriminalization provision for expenditures that are made in accordance with the bills' provisions.

Chairman Grande recognized Representative Glasheim. Representative Glasheim said the tuition provision should contain a "clawback" provision whereby, if an employee leaves state employment within two years of receiving a tuition reimbursement, the state employee must repay the amount received in state funds.

Representative Glasheim said the committee may also wish to consider a bill draft appropriating \$1 million to the Office of Management and Budget for tuition reimbursement programs for small agencies that are unable to find funds in their salaries and wages line item to pay for tuition reimbursement programs.

Representative Kasper said any expenditure made in accordance with a policy established by rule should be deemed to be a legitimate expenditure and should be decriminalized. He said if an agency does not have a written policy or the expenditure is outside the rule or policy then it may be subject to criminal prosecution.

Chairman Grande requested that the revised bill drafts be sent to the members of the committee in advance of the next meeting, tentatively scheduled for Tuesday, October 21, 2008.

No further business appearing, Chairman Grande adjourned the meeting at 11:45 a.m.

Jeffrey N. Nelson
Committee Counsel

ATTACH:4