

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

EMPLOYEE BENEFITS PROGRAMS COMMITTEE

Thursday, August 6, 2009
Harvest Room, State Capitol
Bismarck, North Dakota

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

Members present: Representatives Bette B. Grande, David Drovdal, Ralph Metcalf, Francis J. Wald, Lisa Wolf; Senators Ray Holmberg, Ralph L. Kilzer, Karen K. Krebsbach, Carolyn Nelson

Others present: See [Appendix A](#)

At the request of Chairman Grande, committee counsel reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

At the request of Chairman Grande, committee counsel distributed a copy of the July 2009 issue of *Retirement Today* published by the Teachers' Fund for Retirement and a copy of the July 2009 *REPORTCard* published by the Teachers' Fund for Retirement. Copies of these newsletters are on file in the Legislative Council office.

At the request of Chairman Grande, committee counsel reviewed a memorandum entitled [Employee Benefits Programs Committee - Statutory Responsibilities and Assigned Studies - Background Memorandum](#) describing the statutory responsibilities, past procedures, and assigned studies of the Employee Benefits Programs Committee. He said the committee was established in response to difficulties experienced in past legislative sessions resulting from inadequate prior study of the actuarial impacts of proposed legislative changes in retirement programs. He reviewed the statutory authority of the committee, procedures for solicitation and review of retirement proposals, actuarial services, and additional committee responsibilities. He said the committee has the authority to establish rules for its operation, including rules relating to the submission and review of proposals and the establishment of standards for actuarial review. In prior years, he said, including the 2007-08 interim, the committee has limited the persons and entities permitted to submit to the committee legislative proposals affecting retirement programs to legislators and state agencies with the bill introduction privilege and required that the proposals be in bill draft form and submitted to the committee before April 1 of even-numbered years to allow enough time for actuarial evaluation. He said the committee has the authority to waive its self-imposed deadline for proposals received after any deadline established by the committee.

Committee counsel said the Legislative Management has also assigned two studies to the

committee. The first study, he said, is a study of the feasibility and desirability of an appropriation to the Office of Management and Budget for a state employee tuition reimbursement pool program. The second study, he said, is a study of the feasibility and desirability of establishing an administrative leave program for use by executive branch agencies to allow employees to attend legislative hearings or meetings, grievance meetings, disciplinary hearings, labor and management meetings, negotiating sessions, or other meetings or activities jointly agreed upon by the chief administrative officer of the employing agency. In addition to the statutory responsibilities and assigned studies, he said, the Legislative Management has also directed that the committee receive a number of reports throughout the interim.

It was moved by Representative Wald, seconded by Senator Nelson, and carried on a voice vote that the committee only accept legislative proposals affecting retirement programs that are submitted to the committee by legislators and state agencies with the bill introduction privilege, that the proposals be in bill draft form, and that the proposals must be submitted to the committee before April 1, 2010.

OVERVIEW OF RETIREMENT, INSURANCE, AND RETIREE HEALTH INSURANCE PROGRAMS

Mr. Steve Cochrane, Executive Director, Retirement and Investment Office, presented an overview ([Appendix B](#)) of the state's investment program and the current investment climate. He said the State Investment Board manages the pension trust fund, the two largest components of which are the Teachers' Fund for Retirement and the Public Employees Retirement System fund, and the insurance trust fund, the largest component of which is the Workforce Safety and Insurance fund. He said the preliminary market value of the pension trust fund as of June 30, 2009, is \$2.8 billion and the preliminary market value of the insurance trust fund as of June 30, 2009, is \$1.3 billion. Thus, he said, the State Investment Board has approximately \$4.2 billion under management as of June 30, 2009. He said the asset allocation of the Teachers' Fund for Retirement is slightly different from that of the Public Employees Retirement System fund. He said the Teachers' Fund for Retirement is composed of 61 percent stocks while

the Public Employees Retirement System fund is composed of 55 percent stocks, and thus, the Teachers' Fund for Retirement is slightly more volatile but would be expected to have a slightly higher return over time.

Concerning fiscal year 2009 investment losses, Mr. Cochrane said the Teachers' Fund for Retirement is down approximately \$475.5 million, or 25.76 percent, and the Public Employees Retirement System fund is down approximately \$424.5 million, or 23.52 percent. He said the pension trust, combined, is down an estimated 24.37 percent. However, he said, the Workforce Safety and Insurance fund is only down 9.76 percent due to its much more conservative asset allocation policy. Also, he said, the fact that 82 percent of the total pension fund loss is unrealized is good news.

Mr. Cochrane said the State Investment Board was also impacted by the financial scandal. He said the State Investment Board has written down 40 percent of the WG Trading portion of the assets and recovered \$23 million to date from Westridge.

Ms. Fay Kopp, Deputy Executive Director, Retirement and Investment Office, presented an overview ([Appendix C](#)) of the Teachers' Fund for Retirement. She discussed the history and structure of the Teachers' Fund for Retirement and a summary of the Teachers' Fund for Retirement plan.

Ms. Kopp said the mission of the Teachers' Fund for Retirement--a trust fund--is to advocate for, develop, and administer a comprehensive retirement program for all trust fund members within the resources available. She said Tier 1 members are eligible for normal or unreduced benefits at age 85 with three years of service or the Rule of 85--age plus years of service equals 85. She said Tier 2 members are eligible for normal or unreduced benefits at age 65 with five years of service or upon reaching the Rule of 90--age plus years of service equals 90.

Ms. Kopp said for retiree reemployment, the general rule is that retirees may return to covered employment after a 30-day waiting period. She said employment is limited to a maximum number of hours in a fiscal year based on the length of the applicable contract. She said retirees continue receiving monthly retirement benefits and employer contributions are paid on the retiree's salary. She said the exceptions to the general rule are for returning to teach in critical shortage areas or if the member selects a benefit suspension and benefit recalculation option.

In response to a question from Senator Holmberg, Ms. Kopp said the list or schedule of critical shortage areas is determined by the Education Standards and Practices Board. She said the board reviews the list each year and has just determined that all areas are deemed to be critical except elementary education and physical education. In response to a further question from Senator Holmberg, Ms. Kopp said only employer contributions are paid for members who return to teach under the critical shortage areas exemption.

In response to a question from Representative Drovdal, Ms. Kopp said the Attorney General's office has informally advised the Teachers' Fund for Retirement that benefits for existing members and retirees may not be reduced and that contribution requirements for existing members may not be increased without a corresponding increase in benefits as this may violate the contract clause of the North Dakota Constitution.

Representative Drovdal requested that the Legislative Council staff contact the Attorney General and invite him or a member of his staff to address the contract clause implications of reducing benefits or increasing contributions for existing members of public employees retirement systems.

Ms. Kopp said there are 9,702 active teachers and 6,463 retired members of the Teachers' Fund for Retirement. She said the number of active members is declining due to student population declines; school closings, consolidations, and budget reductions; and teachers retiring earlier and returning to teach part time. She said the number of retired members is increasing due to people living longer and teachers retiring earlier and returning to teach part time. She said there are 231 participating employers, of which 184 are school districts.

In response to a question from Senator Nelson, Ms. Kopp estimated that there are approximately 10 school districts that do not participate in the federal Social Security program. She said she would supply additional information on this topic at a future committee meeting.

As a result of market declines in the past one to two years, Ms. Kopp said most public pension plans around the country are expected to experience higher required contribution rates to offset investment losses. She said predicting the magnitude of increased costs is difficult and depends on factors unique to the plan as well as performance of investment markets over the next several years. She said the Teachers' Fund for Retirement Board of Trustees is studying funding improvement options and anticipates proposing legislation in 2011.

In response to a question from Representative Wald, Ms. Kopp said the Teachers' Fund for Retirement Board of Trustees has not commissioned a specific study concerning the impact of establishing a defined contribution retirement plan for new members while retaining the defined benefit plan for existing members. However, she said, studies done in other states do not show a cost-savings within a reasonable period of time of establishing a new defined contribution plan for new hires. She said this is especially true for plans that have a large unfunded liability.

Representative Grande requested that the Teachers' Fund for Retirement provide a history of the 1977 funding provided to the Teachers' Fund for Retirement by the Legislative Assembly.

Mr. Sparb Collins, Executive Director, Public Employees Retirement System, presented an

overview ([Appendix D](#)) of the Public Employees Retirement System. He reviewed the structure of the Public Employees Retirement System Board; structure of the Public Employees Retirement System office; retirement programs, including the Public Employees Retirement System main system, Highway Patrolmen's retirement system, judges' retirement system, National Guard security police and firefighters' retirement system, law enforcement retirement systems, prior service retiree system, higher education system, defined contribution plan, Job Service North Dakota retirement plan, and the Old-Age and Survivor Insurance System; retiree health insurance program; health insurance program; life insurance program; employee assistance program; deferred compensation program; dental, vision, and long-term care insurance programs; and the Flexcomp program.

Mr. Collins said the Public Employees Retirement System administers five defined benefit plans, two defined contribution plans, and the retiree health credit program and provides administrative services for the prior judges' plan and the Job Service North Dakota retiree health credit.

In response to a question from Representative Wald, Mr. Collins said those employees of Workforce Safety and Insurance who elected to participate in the defined contribution retirement plan will remain in the defined contribution plan even if their position becomes classified under the Workforce Safety and Insurance reorganization.

Mr. Collins said the employer contribution for the public employees retirement main plan is 4.12 percent and the employee contribution is 4 percent for a total retirement contribution of 8.12 percent. He noted that the 8.12 percent contribution rate is one of the lowest in the country. Also, he said, for many employees, the employer picks up the employee contribution and pays the entire amount. He said this employer pickup was in lieu of a salary increase. He said there are 19,042 active members of the Public Employees Retirement System main system, 6,103 retired members, and 682 beneficiaries.

TUITION REIMBURSEMENT POOL PROGRAM STUDY

Chairman Grande called on Ms. Laurie Sterioti Hammeren, Director, Human Resource Management Services, Office of Management and Budget. She distributed a schedule ([Appendix E](#)) of agencies with fewer than 30 employees. She said the study was a result of concerns raised relating to smaller agencies that may not have sufficient funds or flexibility to provide tuition reimbursement programs for their employees.

ADMINISTRATIVE LEAVE PROGRAM STUDY

Chairman Grande recognized Ms. Sterioti Hammeren. She said the administrative leave program study was a result of 2009 House Bill

No. 1562. She said this bill, as introduced, would have required the Office of Management and Budget to provide up to 800 hours per year for administrative leave for use by executive branch agencies to allow employees who are members of a public employees' organization to attend legislative hearings or meetings, grievance meetings, disciplinary hearings, labor and management meetings, negotiating sessions, or other meetings or activities jointly agreed upon by the chief administrative officer of the employing agency. She noted that the Governor's office has approved administrative leave for officers of the North Dakota Public Employee Association to attend that organization's annual meeting. She said Human Resource Management Services is neutral concerning the study.

In response to a question from Representative Grande, Ms. Sterioti Hammeren said the North Dakota Public Employee Association officials are only authorized time away from work and the state does not cover their dues or other expenses.

Chairman Grande recognized Mr. Stuart Savelkoul, Executive Director, North Dakota Public Employee Association. He said employers in the private sector may authorize their employees to testify before the Legislative Assembly or attend meetings that are beneficial to the organization or the employee. He said there is no similar mechanism for public employees.

In response to a question from Representative Wald, Mr. Ken Purdy, Classification and Compensation Manager, Human Resource Management Services, Office of Management and Budget, said the classification process at Workforce Safety and Insurance is progressing and going very well. However, he said, as with any classification there are several individuals who are unhappy with their new classification. He said the remedy for the employees is to appeal the classification to the State Personnel Board. He said the unhappiness may be that as a result of the classification the employee may be at or near the top compensation for that class.

In response to a further question from Representative Wald, Ms. Sterioti Hammeren noted the Workforce Safety and Insurance classification did not result in any employee being subject to a salary reduction. Also, she said, salaries were not frozen in that employees are eligible for the minimum salary increase provided by the Legislative Assembly.

No further business appearing, Chairman Grande adjourned the meeting at 2:15 p.m.

Jeffrey N. Nelson
Committee Counsel

ATTACH:5