

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

### EMPLOYEE BENEFITS PROGRAMS COMMITTEE

Thursday, August 29, 2013  
Harvest Room, State Capitol  
Bismarck, North Dakota

Senator Dick Dever, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Senators Dick Dever, Ralph Kilzer, Karen K. Krebsbach, David O'Connell; Representatives Randy Boehning, Roger Brabandt, Jason Dockter, Jessica Haak, Scott Louser, Kenton Onstad, Don Vigesaa

**Members absent:** Senators Spencer Berry and Connie Triplett

**Others present:** Senator Ray Holmberg and Representative Jim Schmidt, members of the Legislative Management, were also in attendance.

See [Appendix A](#) for additional persons present.

Chairman Dever welcomed the committee members and said the tentative date of the committee's next meeting will likely be late October or early November 2013. As a matter of background, he reminded the committee members this is a statutory committee that is not limited to meeting during the interim period, and it is not uncommon for the committee to meet during the legislative session to consider bills.

Chairman Dever said the Legislative Management's interim Government Finance Committee is charged with studying the feasibility and desirability of existing and possible state retirement plans, including an analysis of both a defined benefit plan and a defined contribution plan with considerations and possible consequences for transitioning to a state defined contribution plan. He said if that committee recommends any bill drafts that fall within the jurisdiction of the Employee Benefits Programs Committee, this committee will comply with its statutory directive and will have an actuarial review conducted.

At the request of Chairman Dever, Committee Counsel reviewed the [Supplementary Rules of Operation and Procedure for the North Dakota Legislative Management](#).

Committee Counsel distributed a copy of the January 2013 and July 2013 *Report Card* published by the Teachers' Fund for Retirement (TFFR), a copy of the January 2013 and July 2013 *Retirement Today* published by TFFR, and a copy of the December 2012 and May 2013 *Your Vested Interest* published by the State Investment Board (SIB). Copies of these newsletters are on file in the Legislative Council office.

At the request of Chairman Dever, 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. She said the committee has the authority to establish rules for its operation, including rules relating to the submission and review of proposals and establishment of standards for actuarial review. She said in prior years, including the 2011-12 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 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. She said the committee has the authority to waive its self-imposed deadline for proposals received after any deadline established by the committee. **It was moved by Senator Krebsbach, seconded by Senator Kilzer, and carried on a roll call vote that the committee accept only 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, 2014.** Senators Dever, Kilzer, Krebsbach, and O'Connell and Representatives Boehning, Brabandt, Dockter, Haak, Louser, Onstad, and Vigesaa voted "aye." No negative votes were cast.

Senator Krebsbach said if a bill or bill draft is submitted to the committee after the deadline, the committee can vote to determine whether to allow the bill or bill draft to be considered by the committee. Chairman Dever said he will visit with the Chairman of the Government Finance Committee to consider how and when the Employee Benefits Programs Committee may address bill drafts recommended by the Government Finance Committee.

## **OVERVIEW OF RETIREMENT, INSURANCE, AND RETIREE HEALTH INSURANCE PROGRAMS**

### **Overview**

Chairman Dever called on Mr. Sparb Collins, Executive Director, Public Employees Retirement System, to present an overview ([Appendix B](#)) of the Public Employees Retirement System (PERS).

In response to a question from Representative Vigesaa, Mr. Collins said there has not been a trend of local governments departing from participation in the PERS programs.

In response to a question from Senator Dever, Mr. Collins said when local governments opt to participate in the PERS programs, the local government employees receive the same benefits as state employees.

In response to a question from Representative Onstad, Mr. Collins said most of the counties, school districts, and larger cities in the state have elected to participate in the PERS programs.

In response to a question from Representative Onstad, Mr. Collins provided a brief overview of the history of the Job Service North Dakota retirement program. He said since the 1980s, the Job Service North Dakota retirement plan has been closed, and all new Job Service North Dakota employees have participated in the PERS retirement plan.

In response to a question from Representative Boehning, Mr. Collins said the Job Service North Dakota retirement program does not have an employer contribution because the plan is 100 percent funded. He said if at some later date the plan is not 100 percent funded, it may be necessary to once again have an employer contribution.

In response to a question from Representative Onstad, Mr. Collins said there is a cost to the fund to allow retirement under the Rule of 85. For example, he said, a Rule of 90 would have less of an impact on the fund than the Rule of 85.

In response to a question from Senator Dever, Mr. Collins agreed that yes, there are some employees who delay retirement due to the cost of health insurance. Additionally, he said, it is common for retirees to get a postretirement job with an employer that offers health insurance.

In response to a question from Senator Krebsbach, Mr. Collins said the PERS hybrid plan does not have a cost of living adjustment (COLA), whereas Social Security retirement does have a COLA.

### **House Bill No. 1059**

Chairman Dever called on Mr. Collins to present the PERS Board's proposed modification to North Dakota Century Code Section 54-52.1-03.4, as amended by 2013 House Bill No. 1059, as authorized under Section 54-52.1-08.2, which allows modifications to Chapter 54-52.1 to comply with federal law. He gave a computer presentation ([Appendix C](#)).

In response to a question from Senator Dever, Mr. Collins said House Bill No. 1059 was introduced because North Dakota's definitions of full-time and temporary employees differ from those definitions under the federal Affordable Care Act (ACA). He said the bill was intended to make the terms consistent with the federal terms in order to avoid financial penalties for failing to provide health insurance to some employees traditionally considered temporary employees.

Mr. Collins said the PERS consultant indicated the one-year delay in the federal government implementing these financial penalties will give the federal government an opportunity to change the proposed rules, including the proposed rules regarding defining who is a temporary employee and who is a full-time employee under the ACA.

Mr. Collins said if North Dakota goes forward with Section 54-52.1-03.4 as amended by House Bill No. 1059, North Dakota will be an "early implementer" and may be faced with revising how and to whom this health insurance is provided come January 1, 2015, when the delayed federal provisions finally do go into effect.

In response to a question from Representative Louser, Mr. Collins said because it was not anticipated the federal government would delay implementation of these coverage provisions, House Bill No. 1059, as introduced and as enrolled, used the express date January 1, 2014, for beginning health insurance coverage for these identified employees, instead of generally making reference to the date the federal law is implemented.

In response to a question from Senator Kilzer, Mr. Collins said the motion passed by the PERS Board was to delay implementation of expansion one year. He said if the federal government continues to delay implementation of the federal provisions, it may be necessary to revisit this law in the future. He said it is likely Section 54-52.1-03.4 will be revisited during the 2015 legislative session.

In response to a question from Representative Onstad, Mr. Collins said at this point the federal government has made it clear it intends to delay implementation for one year. He said if Section 54-52.1-03.4 is not going to be amended, PERS will need to begin moving forward to implement the law.

In response to a question from Representative Boehning, Mr. Collins said the fiscal note for Section 2 of House Bill No. 1059 was \$2 million for the 18-month period. He said if the implementation is delayed one year, he would expect a two-thirds decrease in the fiscal impact. He said in addition to the fiscal impact on the state, implementation of this state law impacts local governments that participate in the PERS uniform group insurance program.

Chairman Dever said Section 54-52.1-08.2 was enacted in 1995, and this appears to be the first time the Employees Benefits Programs Committee has been asked to exercise its authority under this section.

**It was moved by Senator Krebsbach and seconded by Senator O'Connell that the PERS Board be authorized to amend House Bill No. 1059, to amend Section 2 and delay the effective date of Section 2, to provide for a January 1, 2015, effective date, or the date the related federal rules become final, whichever occurs first, and if the federal rules become final before January 1, 2015, the PERS Board is to so notify the Legislative Council.**

Senator Krebsbach said it is possible with this committee motion, the PERS Board will have to meet again to consider whether to revise its motion.

Mr. Collins said under this committee motion, it is still possible North Dakota may be an "early implementer."

Committee Counsel said the motion recognizes the possibility the federal rules will be changed during the one-year federal delay in implementation of the employer-shared responsibility provisions of the ACA.

Senators Dever, Kilzer, Krebsbach, and O'Connell and Representatives Boehning, Brabandt, Dockter, Haak, Louser, Onstad, and Vigesaa voted "aye." No negative votes were cast.

### **State Investment Programs**

Chairman Dever called on Mr. Darren Schulz, Interim Chief Investment Officer, Retirement and Investment Office, to provide an overview of the state's investment program and the current investment climate. Mr. Schulz gave a computer presentation ([Appendix D](#)).

In response to a question from Representative Vigesaa, Mr. Schulz explained what classifies an asset as a "developed international equity investment." He said the state's investments have been migrating towards global equity.

In response to a question from Senator Kilzer, Mr. Schulz stated the material in his computer presentation that addresses "Asset Class & Total Fund Investment Performance" should be for the fiscal year that ended June 30, 2013. He said the reference to 2012 is a typographical error.

In response to a question from Representative Onstad, Mr. Schulz said the allocation of the state's investments meets state law requirements, and all funds overseen by the SIB comply with the prudent investor rule. He said the SIB is aware of where the funds are being invested and of the amount of the annual consulting

fee. He said there is a new contract in the works for the SIB's relationship with the consultant--Callan Associates--which has provided the consulting services since the late 1980s. He said this new contract will provide for an increase in the amount of the consulting fee in return for receiving additional consulting services that were not part of the previous contract.

In response to a question from Representative Vigesaa, Mr. Schulz said the data on the SIB's investment returns is not included in his report, but he expects the next funding status should improve with increased contributions and the rolling off of the 2008-09 fiscal year.

In response to a question from Representative Louser, Mr. Schulz said the most recent projections for the long-term target return for the legacy fund are approximately 6.5 percent.

In response to a question from Senator Dever, Mr. Schulz said with the volatility of the last five years, it is difficult to know how the market will change as the central banks step back. He said the investment community is still not on a path of real economic growth, as this is a difficult environment.

### **Teachers' Fund for Retirement Overview**

Chairman Dever called on Ms. Fay Kopp, Chief Retirement Officer, Teachers' Fund for Retirement, to present an overview of TFFR. Ms. Kopp gave a computer presentation ([Appendix E](#)).

In response to a question from Senator Dever, Ms. Kopp said the average years of service at retirement for TFFR members are approximately 30 years.

In response to a question from Representative Onstad, Ms. Kopp said TFFR has been 100 percent funded one time--2001. She said the Legislative Assembly may determine it is appropriate to gradually decrease the contribution rates as 100 percent funding nears instead of implementing a dramatic decrease in contributions.

In response to a question from Representative Onstad, Representative Louser, and Senator Kilzer, Ms. Kopp said there are a variety of ways employers may structure contributions. Ms. Shelly Schumacher, Teachers' Fund for Retirement, said TFFR will provide additional information to the committee members regarding how different contribution structures may impact the employers and employees.

In response to a question from Representative Onstad, Ms. Kopp said TFFR does not collect data on or otherwise track information regarding whether employers provide benefits, such as subsidized housing or rental assistance.

In response to a question from Representative Vigesaa, Ms. Kopp said as it related to retiree reemployment, TFFR determines whether a teacher practices in a critical shortage area based on information provided by the Education Standards and Practices Board.

In response to a question from Senator Holmberg, Ms. Kopp said 2001 was the last time a COLA was paid under TFFR.

In response to a question from Senator Kilzer, Ms. Kopp said the TFFR funded ratio projections are basically on track with earlier projections.

In response to a question from Representative Onstad, Ms. Kopp said the TFFR net investment performance data is calculated after investment fees are removed. She said all the data she provided to the committee is on a net basis.

In response to a question from Representative Louser, Ms. Kopp said she is not certain how the changes resulting from the new Governmental Accounting Standards Board (GASB) standards will be reflected in balance sheets for local school districts. She said she hopes she will be able to get additional guidance on this matter.

In response to a question from Representative Onstad, Ms. Kopp said as it relates to the new GASB standards, ultimately it will be an issue of unfunded liability.

## HUMAN RESOURCE MANAGEMENT SERVICES

### Bonuses Report

Chairman Dever called on Mr. Ken Purdy, Classification and Compensation Manager, Human Resource Management Services, Office of Management and Budget, to present a report on recruitment and retention bonuses for the period July 1, 2012, to June 30, 2013. Mr. Purdy provided written testimony and material ([Appendix F](#)).

In response to a question from Senator Dever, Mr. Purdy said Human Resource Management Services is not charged with approving the bonuses but is charged with collecting data on the bonuses.

In response to a question from Senator Kilzer, Mr. Purdy said the portion of the report that addresses bonuses awarded by the Industrial Commission under the description "other-not classified" typically relates to petroleum engineers and geologists.

In response to a question from Representative Vigesaa, Mr. Purdy said if the committee has questions regarding why the state agencies are awarding retention bonuses, the particular state agency would be in the best position to address those questions.

### Service Awards, Training and Education Costs, and Membership Dues

Chairman Dever called on Ms. Laurie Sterioti Hammeren, Director, Human Resource Management Services, for the presentation of biennial reports required under Sections 54-06-32, 54-06-33, and 54-06-34 summarizing reports of state agencies providing service awards to employees in the classified service, providing employer-paid costs of training or educational courses to employees in the classified services, and paying employee membership dues for professional organizations and membership dues for service clubs. Ms. Sterioti Hammeren provided written material ([Appendix G](#)).

In response to a question from Senator Krebsbach, Ms. Sterioti Hammeren stated the handout has an error in the data relating to the number of full-time equivalent positions authorized for the Racing Commission. She said she will correct that data and provide an updated report ([Appendix H](#)).

No further business appearing, Chairman Dever adjourned the meeting at 2:10 p.m.

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Jennifer S. N. Clark  
Committee Counsel

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