

**1999 SENATE GOVERNMENT AND VETERANS AFFAIRS**

**SB 2208**

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2208

Senate Government and Veterans Affairs Committee

Conference Committee

Hearing Date January 22, 1999

Tape Number	Side A	Side B	Meter #
1	X		1038-2992
Committee Clerk Signature <i>James A. Kail</i>			

Minutes: CHAIRMAN KREBSBACH opened the hearing on SB 2208 which relates to recommendations of the employee benefits program committee. SENATOR GARY NELSON, District 22, primary sponsor of the bill introduced this piece of legislation to the committee. SB 2208 addresses something that could become a real problem and in fact if we don't address the issues now, it will become a problem. What the bill does in line 12 and this is in dealing with the employee benefits committee and their responsibility and jurisdiction over any proposals that would give an automatic increase in retirement benefits. There is a short history that I have followed on it. Number one was a bill that was introduced by the judicial branch in the last session that gave an automatic escalator raise in retirement benefits each year. We amended the bill to take that portion of it out. Again in HB 1071 section 1 of the bill again gives an automatic 2% increase on January 1 of each year to members of the court who are receiving retirement benefits. I have a couple of concerns about this kind of treatment. Number 1 from the legislative

perspective we lose any kind of ability to control what this benefit is and I'm not sure really how this should be handled with our requirements that all these increases in benefits need to go through an actuary. What this bill will do is it will say that any introduction of a measure or proposal that allows for an automatic increase is under the jurisdiction of the employee benefits committee and the employee benefits committee must give it an unfavorable recommendation.

The sheet I handed out to you, on the back page there's a section under automatic cost of living adjustments. About the fourth line down it says when legislation provides for a cost of living adjustment for pension benefits the legislature may not put a cap on the level of adjustment with regard to employees whose rights are already vested if there was no cap previously imposed.

What this says and I can give you an example, and I'm not urging the chief justice to resign, if the chief justice resigned and came under this, he would come under this automatic 2% increase if we passed 1071 as it is, and subsequent to the time he started drawing his benefits, the legislature decided the actuarial soundness of that fund is not such that we can continue to pay this, we need to back that level of increase down, we can not exempt him from it as he has a right as being vested under this provision. I think that adds a complication that I had really not thought of before until I had started researching this particular bill. I just don't think that from the legislative standpoint it's good for us to allow a complete adjustment without us having some kind of involvement in the process. SENATOR KREBSBACH-The only question I would have at this time is the language that the committee must give the measure or proposal an unfavorable recommendation. If we take jurisdiction over it such as what you are calling for above, or am I interpreting this wrong, and you find it to be sufficient, why would you have to give it an unfavorable recommendation? SENATOR NELSON-My understanding is that you're not giving

the request an unfavorable recommendation, what you are saying is the automatic portion of the bill would have the unfavorable recommendation. SENATOR STENEHJEM-The unfavorable recommendation might weigh heavily on the legislature but we can pass the bill even with an unfavorable recommendation. SENATOR NELSON-That is right we can still pass the bill. I had questions about the language that is in here. Why was this drafted this way? In consulting with the director of the council, John Ohlsrud, who actually did the drafting, I said why don't we just put it in here really plainly that you can't introduce a bill like this. We can't limit or infringe on the rights of our members of the legislature at what they can and what they can not introduce and so this is what he felt was the most raisable language to try to address this problem, without infringing on the rights of legislators. Obviously, the next legislature comes in and decides they don't like this either and it could be eliminated. SENATOR THANE-I guess one things that isn't completely clear in my mind does the committee take jurisdiction before the bill becomes law? What time, because if the bill becomes law and is signed by the governor how can this committee take jurisdiction, that's what I'm wondering? SENATOR NELSON-Under our present rules any that is introduced that affects a benefit for a retirement committee automatically has to go to the committee. It's just that in this case they would be sure to be taking jurisdiction. SENATOR THANE-So actually they do like in this particular case it's just like in the other case that the committee would review that measure before it ever comes before the legislative body. Discussion continued with questions from SENATORS WARDNER, DEMERS, STENEHJEM, and KREBSBACH offering questions to SENATOR NELSON. No other individuals appeared before the committee in support of, in neutral position, or in opposition to SB 2208.

CHAIRMAN KREBSBACH closed the hearing at this time. At this time SENATOR

WARDNER made a motion for a DO PASS on SB 2208, seconded by SENATOR KILZER.

Prior to a ROLL CALL VOTE, SENATOR DEMERS expressed a concern about telling a committee what action to take and you expressed that very well and I heard the response, but I still have that concern. I really want to see those bills go to the committee, I think that this is addressing a very real problem and that the legislature needs to look at the automatic increases but, I guess as it is written, it's hard for me to support the bill. If we were to take off the must give an unfavorable recommendation then I could support it. Then I don't know how other members of the committee feel. SENATOR KREBSBACH-That did cause some consternation for myself as you know. I would have been more comfortable with giving it no recommendation, but at the same time if you read on, it says that and include in the report that the proposal would allow changes without our involvement. I think they're trying to say, if you are going to change it so permanently we better not be recommending something of that nature because if they should come in with something and it passes., this is null and void. Am I thinking correctly Senator Stenehjem? SENATOR STENEHJEM-I think you absolutely are. The legislature can pass the bill not withstanding the recommendation of the committee. I think that the legislature could pass the bill even if it had never gone to the employment benefits committee. Its only a rule, and if the legislature can enact a law, it can ignore its rules. SENATOR KILZER-May I ask who is on the employee benefits committee, is it a majority of one type of people or what? CHAIRMAN KREBSBACH-No there are so many members from the house, it's stated by statute. It's one of the standing committees that serves all the year round. It's legislators, so many from the house and so many from the senate. Senator Wardner has served on it, I have served on it, Senator DeMers have you ever served on employee

benefits? SENATOR DEMERS- No I have not. SENATOR DEMERS-I'm going to suggest an amendment to make this more acceptable. CHAIRMAN KREBSBACH-If we wanted to give this some more thought we could hold it until next week if you want to withdraw the motion and give us some time to visit on this and to think about it. SENATOR WARDNER-Madam Chairman, I would withdraw my motion. SENATOR KILZER withdrew his second. The committee will work on this at a later time.

***Committee Discussion-February 11, 1999-Tape 1, Side B, Meter #'s 3946-5200***

***Senator Wardner handed out some proposed amendments to the bill. The committee reviewed these proposed amendments. He indicated that he still has a problem with mandating to an interim committee how they must rule on a proposed piece of legislation. Comments were offered by Senators Stenehjem and DeMers. Chairman Krebsbach made an assessment of her own thoughts on the bill. Senator DeMers explained to the committee how she believed the proposed amendments should read. Following this discussion a motion to adopt amendments as outlined by Senator DeMers with input from Senator Kilzer was made by SENATOR DEMERS, seconded by SENATOR WARDNER, Roll Call Vote indicated 7 YEAS, 0 NAYS, and 0 ABSENT OR NOT VOTING. A motion for a DO PASS AS AMENDED was made by SENATOR WARDNER, seconded by SENATOR DEMERS. ROLL CALL VOTE indicated 7 YEAS, 0 NAYS, 0 ABSENT OR NOT VOTING.***

Proposed Amendments to  
SB2208

Page 1, line 15, remove "give the measure or proposal an unfavorable"  
Page 1, line 16, remove "recommendation and"

obsolete

PROPOSED AMENDMENTS TO SENATE BILL NO. 2208

Page 1, line 15, replace "must" with "may not" and replace "an unfavorable" with "a favorable"

Page 1, line 16, after "and" insert "must"

Re-number accordingly

A handwritten signature or set of initials, possibly 'NO', written in black ink. It consists of a large, stylized 'N' with a vertical line through it, and a '0' to its right.



Date: 2-11-99  
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2208

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Amendments

Motion Made By Demers Seconded By Wardner

Senators	Yes	No	Senators	Yes	No
SENATOR KREBSBACH	X				
SENATOR WARDNER	X				
SENATOR KILZER	X				
SENATOR STENEHJEM	X				
SENATOR THANE	X				
SENATOR DEMERS	X				
SENATOR MUTZENBERGER	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 2-11-99  
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2208

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

Subcommittee on \_\_\_\_\_

or

Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass As Amended

Motion Made By Wardner Seconded By Demers

Senators	Yes	No	Senators	Yes	No
SENATOR KREBSBACH	X				
SENATOR WARDNER	X				
SENATOR KILZER	X				
SENATOR STENEHJEM	X				
SENATOR THANE	X				
SENATOR DEMERS	X				
SENATOR MUTZENBERGER	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Wardner

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2208: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2208 was placed  
on the Sixth order on the calendar.

Page 1, line 14, replace the underscored comma with ". The"

Page 1, line 15, remove "and the" and remove "give the measure or proposal an unfavorable"

Page 1, line 16, remove "recommendation and " and after "committee" insert "a statement"

Renumber accordingly

**1999 HOUSE GOVERNMENT AND VETERANS AFFAIRS**

**SB 2208**


1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2208

House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 3-5-1999

Tape Number	Side A	Side B	Meter #
1	X		0.8 - 11.6
1		X	14.1 - 19.7
Committee Clerk Signature 			

Minutes: Some of the individuals testifying submit written testimony. When noted please refer to it for more detailed information.

Representative Klein, Chairman of the GVA Committee opened the hearing on March 5, 1999.

Summary of the Bill: Relating to recommendations of employee benefits program committee.

Testimony in Favor:

Senator Gary Nelson, Appeared before the committee to introduce the bill. What we are attempting to arrive at with this bill is a method by which the employee benefits committee has had fully explained to them and is aware that there is a proposal before them that deals with automatic increases in retirements. I think asking for automatic increases through retirement bills eliminates the legislatures ability to be able to track what's going on and ultimately it is our responsibility to keep these funds actuarial sound.

Representative Klein, We had a bill in this committee earlier that had automatic increases in it.

One of concerns was to commit future legislatures to something they had no control over and it was something we amended out. Is this part of what your trying to do here? Automatic increases.

Nelson, That's exactly what were trying to get to. If an automatic increase is put into place and someone retires, that benefit is there. You cannot go back say 4 years later and tell them that the fund is in jeopardy so were going to eliminate that increase.

Representative Klein, The bottom line is if the fund gets into trouble the legislature would have to fund it.

Representative Cleary, In 1977 wasn't the reason the funds got into trouble because the legislature had taken some money out?

Nelson, That is not my understand. I don't care what the reason is that it got into trouble. We have a moral responsibility to these people to keep their retirement viable.

Representative Winrich, You gave a couple of examples of bills that had automatic increases in them but were killed by the legislature. This is an example of preventing something slipping by. Are there any examples of something slipping by, has the legislature passed something with automatic increases without realizing it?

Nelson, I cannot say yes to that. As far as I know we have not passed anything like that.

Representative Dorso, Appeared before the committee has a sponsor of this bill. Every session I have been here something like this takes place such as the judges retirement system. I whole heartily agree with Senator Nelson. We have to keep them actuarial sound and this is why we have employee benefits committee.

Testimony in Opposition: None.

Page 3

House Government and Veterans Affairs Committee

Bill/Resolution Number SB 2208

Hearing Date 3-5-1999

Representative Klein, Closed the hearing on SB 2208

Committee Action:

Representative Hawken, Made a motion for a Do Pass.

Representative Devlin, Seconded the motion.

Representative Winrich, Are the bills going to be referred to this committee and aren't they going there now.

Representative Klein, If they require an increase that doesn't require legislative approval.

Representative Winrich, Does it change anything.

Representative Klemm, The committee doesn't really decide anything, it just points out that there is an automatic increase.

Motion Passes: Do Pass 12-1-2.

Representative Thoreson, Is the carrier for the bill.

Date: 3-5-99

Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2208

House GOVERNMENT AND VETERANS AFFAIRS Committee

- Subcommittee on \_\_\_\_\_
- or
- Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By HAWKEN Seconded By DEVLIN

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN KLEIN	✓		REP. WINRICH		✓
VICE-CHAIR KLINISKE	✓				
REP. BREKKE	✓				
REP. CLEARY	✓				
REP. DEVLIN	✓				
REP. FAIRFIELD					
REP. GORDER	✓				
REP. GRANDE					
REP. HAAS	✓				
REP. HAWKEN	✓				
REP. KLEMIN	✓				
REP. KROEBER	✓				
REP. METCALF	✓				
REP. THORESON	✓				

Total (Yes) 12 No 1

Absent 2

Floor Assignment THORESON

If the vote is on an amendment, briefly indicate intent:



REPORT OF STANDING COMMITTEE (410)  
March 5, 1999 12:37 p.m.

Module No: HR-40-4119  
Carrier: L. Thoreson  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

SB 2208, as engrossed: Government and Veterans Affairs Committee (Rep. Klein, Chairman) recommends **DO PASS** (12 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). Engrossed SB 2208 was placed on the Fourteenth order on the calendar.

**1999 TESTIMONY**

**SB 2208**

January 11, 1999

## PUBLIC EMPLOYEE RETIREMENT BENEFITS - VESTING IN AUTOMATIC COST-OF-LIVING ADJUSTMENTS

This memorandum discusses whether public employees who retire under a statute providing for an automatic or cost-of-living adjustment in their retirement benefits are vested in the automatic adjustments. The general rule, as enunciated in 60A Am. Jur. 2d *Pensions and Retirement Funds* § 1619 (1988) is that the right to a pension based on state or local public civil employment depends on statutory provisions, and in particular instances is measured by the terms of the enactments establishing or regulating the pension. Also, if, by the terms of any public employee pension statute a particular payment has become due, the pensioner has a vested right to that payment. This issue was discussed at length in 52 A.L.R. 2d 437 et seq. in which the annotation discusses to what extent the rights of public officers and employees who are within the coverage of a statutory pension system are vested so as to render invalid legislation repealing or modifying the provisions of the pension statute. The annotation notes that what would appear to be a growing number of courts have viewed rights in pension systems calling for contributions on a compulsory basis as being nonvested only during the period prior to an employee's fulfillment of the requirements for grant of the pension; upon fulfillment of those conditions, the pension rights are deemed to vest, thereafter being immune from abolition, if not from adverse change of any kind.

It is interesting to note that the North Dakota Supreme Court in *Rilling v. Unemployment Compensation Division of the Employment Security Bureau*, 151 N.W. 2d 304, 309-310 (N.D. 1967) quoted from the *American Law Reports* annotation at length when it said:

We note with interest what has been said on this subject by the writers of the 1957 annotation:

With respect to pension statutes requiring (as most modern ones do) all employees to be members of the system and to make contributions thereto, it seems that the rule in the greater number of jurisdictions is that a contributing employee has no vested pension rights either before or after the pension has been granted.

But what would appear to be a growing number of courts have viewed rights in pension systems calling for contributions on a compulsory basis as being nonvested only during the

period prior to the employee's fulfillment of the requirements or grant of the pension; upon fulfillment of those conditions, the pension rights are deemed to vest, thereafter being immune from abolition, if not from adverse change of any kind.

Concerning the issue of whether a public employee's pension rights are contractual or vested, 60A Am. Jur. 2d *Pensions and Retirement Funds* § 1620 (1988) notes that the trend for a number of years has been away from the view that public employees are entitled to pensions only as a recipient of a gratuity from the state toward the view that they have certain contractual vested rights in a public pension when a pension is part of the terms of employment, and indeed, it appears that the contract approach to state and local pensions for public employees now constitutes the majority viewpoint. The article notes that though a state may reserve the right to revise or amend a public pension plan, the rights of a public employee are vested when the employee joins a voluntary pension plan and those vested rights may not be impaired. The article continues that when the pension system calls for an employee contribution on a mandatory basis, the employee's rights are sometimes viewed as being nonvested only during the period prior to an employee's fulfillment of the requirements for a grant of the pension; upon fulfillment of those requirements the pension rights are deemed to vest and are not thereafter subject to abolition or adverse change. Such a pension is deemed to be not a mere gratuity but a right resting in contract, the consideration for which is the full rendition of the stipulated services by the employee. Finally, the article concludes that regardless of whether a plan is voluntary or mandatory, when employees have served and retired, in most states the benefits to which they are entitled may not be reduced subsequent to their retirement less an express reservation of a right to amend at any time.

In *In re Board of Trustees of the Policemen's and Firemen's Retirement Fund of the City of Gadsden, Alabama v. Kerry*, 373 So. 2d 841 (Ala. 1979), the Supreme Court of Alabama reviewed the effect of a legislative amendment to a retirement act on both retired and active employees. The Supreme Court of Alabama held that city employees who had retired prior to the effective date of the amendment had completed their obligations and satisfied their conditions precedent under the former law. The court

stated that all that remained was for the retirement fund to disburse funds to those retirees in accordance with the law under which they had served and under which they had retired. The court stated that the employee's entitlement to these funds was tantamount to vesting so as to fall within the constitutional proscription prohibiting the impairment of contracts. Thus, the Alabama Supreme Court held that without regard to whether a public retirement plan is mandatory or voluntary, when employees have served and retired, the benefits to which they are entitled may not be reduced subsequent to the retirement absent an express reservation of a right to amend at any time.

### AUTOMATIC OR COST-OF-LIVING ADJUSTMENTS

The general rule concerning automatic or cost-of-living adjustments as stated in 60A Am. Jur. 2d *Pensions and Retirement Funds* § 1706 (1988) is that when legislation provides for a cost-of-living adjustment for pension benefits the legislature may not put a cap on the level of the adjustment with regard to employees whose rights are already vested if there was no cap previously imposed, at least if no comparable new advantage is provided. In *Pasadena Police Officers Association v. City of Pasadena*, 147 Cal. App. 3d 695, 195 Cal. Rptr. 339 (1983), a California Appeals Court addressed the effect of placing a cap on a cost-of-living allowance that had been calculated to adjust a basic monthly benefit by the annual percentage change in the consumer price index. As originally enacted, the cost-of-living adjustment benefit contained no cap or limit on such changes but was fully adjustable to changes in the consumer price index. The city attempted to place a cap on the cost-of-living adjustment due to high rates of inflation. The appeals court found that the amendments substantially reducing the cost-of-living benefits of the pension plan were invalid.

In *Nash v. Boise City Fire Department*, 663 Pacific 2d 1105 (Idaho 1983), the Idaho Supreme Court addressed the issue of whether an amendment limiting cost-of-living adjustments to a firefighter's retirement pension to three percent could be applied to firefighters retiring after the effective date of the amendment who had earned benefits by virtue of service prior to the effective date of the amendment. The Idaho Supreme Court found that the firefighters' rights were vested and that the amendment limiting the cost-of-living adjustment could not be applied to a firefighter retiring after the effective date of the amendment much less to those who had already retired.

### NORTH DAKOTA

Although the issue of whether a retiree would obtain a vested interest in an automatic increase of cost-of-living adjustment has not been addressed by the North Dakota Supreme Court, several decisions of the court are instructive.

In *Payne v. Board of Trustees of the Teachers' Insurance and Retirement Fund*, 35 N.W. 2d 553 (N.D. 1948), the North Dakota Supreme Court reviewed a claim by a beneficiary against the precursor of the Teachers' Fund for Retirement. After reviewing decisions holding that retirement funds are a pension or a gratuity which may be abolished at any time and decisions holding that a relation between the employee and the retirement system is contractual in nature and subject to the principles of law governing contracts, the court stated that the latter class of decisions is better reasoned and more sound. The court noted that a teacher obtains an interest in the fund to the extent of that person's compliance with the law. If the teacher withdraws or dies in good standing, the teacher, or the teacher's estate, is entitled to a refund. Except to the extent that the teacher has fully complied with the law, the teacher's interest is prospective, but an interest nevertheless that has to be considered in relation to the fund. When the teacher has taught the required number of years, made payments, obtained the stated age, and fully complied with the law, that person's interest becomes fixed.

Finally, the court stated that:

The pension payments are added compensation for service that has been rendered. Such compensation is earned by reason of the service performed and becomes payable upon compliance with the provisions of the law authorizing payment to be made. Manifestly, the amount of compensation is measured by the terms of the law enforced at the time the period of service is terminated.

### CONCLUSION

Based upon recent cases in other jurisdictions holding that cost-of-living adjustments in retirement allowances, once granted by a legislative body, become vested when granted in the absence of a legislative intent to condition the increase, it can be argued that if the Legislative Assembly were to enact a statute providing an automatic increase or automatic cost-of-living adjustment in a retirement formula, a public employee who retired under the provisions of that statute would obtain a protected vested interest in the automatic increase or automatic cost-of-living adjustment.