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DESCRIPTION

2057

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Date

2003 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2057

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2057

Senate Government and Veterans Affairs Committee

Conference Committee

Hearing Date 01/17/03

Tape Number	Side A	Side B	Meter #
Tape 1	x		0-5006
Committee Clerk Signature <i>Lisa Huxon</i>			

Minutes:

Senator Karen Krebsbach, Chairman opens SB 2057. Senators Krebsbach, Dever, Brown, Wardner, and Fairfield.

Fay Kopp, Deputy Director on North Dakota Retirement and Investment Office

(Testimony attached)

Senator Nelson joins committee.

Senator Krebsbach : Questions?

Senator Brown: You want to change 5 year to 20 years? Have teachers asked for this and what if teacher passed on?

Fay Kopp: Yes, this was a member generated request. If member passes on the beneficiary receives the rest.

Senator Nelson: If someone dies 2 months after they retire, does the estate get what they paid in less what has been received?

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10/15/03
Date

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Senate Government and Veterans Affairs Committee

Bill/Resolution Number SB 2057

Hearing Date 01/17/03

Fay Kopp: Yes

Senator Krebsbach : How many do we have in plan right now?

F. Kopp: 5060 retired teachers, 9800 active teachers in plan.

Senator Brown: Is there a spike in retirement coming?

F. Kopp: We believe it will exceed in the next 5 to 10 years.

Senator Krebsbach : How many are on TFFR board?

F. Kopp: 7

Senator Krebsbach : further questions...Further testimony...

Nancy Sandy, ND Education Association : We would like to state for the record that we are in favor of SB 2057. We support the options this bill provides plus the changes throughout the bill.

Senator Krebsbach : Further testimony...

Mary Wall, ND Council of Education Leaders : We support these proposed bills.

Senator Krebsbach : Any more questions...testimony in favor...neutral...in opposition? We will close SB 2057.

Tape 1 Side B Meter #5400

Senator Krebsbach : We will return to SB 2057

Senator Nelson : I motion we Do Pass SB 2057

Senator Wardner : 2nd

6 Yes, 0 No, 0 Absent and not voting

Carrier: Senator Krebsbach

FISCAL NOTE
 Requested by Legislative Council
 01/03/2003

Bill/Resolution No.: SB 2057

1A. **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.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. **Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

The changes in SB 2057 should have no fiscal impact. The changes are intended to clarify TFFR statutes, administer the plan more efficiently, and add benefit payment options on an actuarial neutral basis. According to TFFR's actuary, none of the provisions have material actuarial cost implications.

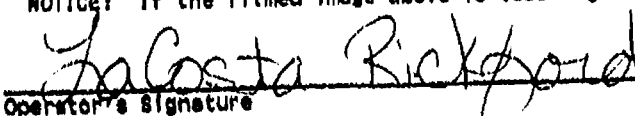
3. **State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:
 A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

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.

C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name:	Fay Kopp	Agency:	ND Retirement and Investment Office
Phone Number:	328-9895	Date Prepared:	01/09/2003

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10/15/03
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REPORT OF STANDING COMMITTEE (410)
January 17, 2003 1:08 p.m.

Module No: SR-09-0732
Carrier: Krebsbach
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
SB 2057: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman)
recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2057
was placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-09-0732

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Operator's Signature

La Costa Rickford

Date

10/15/03

2003 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2057

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10/15/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2057

House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 3-13-03

Tape Number	Side A	Side B	Meter #
1	x		0-36.0
Committee Clerk Signature <i>Jody Runke</i>			

Minutes: Chairman Klein: called the hearing to order on SB 2057.

All committee members were present.

Fay Kopp, Deputy Executive Director, ND Retirement and Investment Office: appeared and was in support of SB 2057 (SEE ATTACHED TESTIMONY).

Representative Jaas: made a DO PASS motion on SB 2057.

Representative Tieman: SECOND the DO PASS motion.

VOTE: 12-YES 1-NO 1-ABSENT (WILLIAMS).

Motion carried.

Representative Grande: will carry the bill to the floor.

Meeting adjourned.

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Jacosta Rickford 10/15/03
Operator's Signature Date

Date: 3-13-03

Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTE
SENATE BILL/RESOLUTION NO.

House GOVERNMENT AND VETERANS AFFAIRS Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Haas Seconded By Rep. Tieman

Representatives	Yes	No	Representatives	Yes	No
Chairman M.M. Klein	X		B. Amerman	X	
Vice Chairman B.B. Grande	X		L. Potter	X	
W.R. Devlin	X		C. Williams		X
C.B. Haas	X		L. Winrich	A	
J.Kasper	X				
L.R. Klemin	X				
L. Meier	X				
M. Sitte	X				
W.W. Tieman	X				
R.H. Wikenheiser	X				

Total (Yes) 12 No 1

Absent (1) Rep. Williams

Floor Assignment Rep. Grande

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

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In Costa Rickford 10/15/03
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)
March 13, 2003 1:23 p.m.

Module No: HR-44-4690
Carrier: Grande
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
SB 2057: Government and Veterans Affairs Committee (Rep. M. Klein, Chairman)
recommends **DO PASS** (12 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2057
was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-44-4690

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10/15/03

2003 TESTIMONY

SB 2057

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10/15/03
Date

SENATE BILL NO. 2057

SENATE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE JANUARY 17, 2003

Fay Kopp, Deputy Executive Director
ND Retirement and Investment Office

Senate Bill No. 2057 was submitted by the TFFR Board. The changes are being proposed to clarify TFFR statutes, administer the plan more efficiently, and add benefit payment options. In addition, the bill incorporates various federal tax law changes to increase contribution limits and expand portability as authorized by the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001.

TFFR actuarial consultants, Gabriel, Roeder, and Smith, Inc. (GRS) have reviewed the provisions of this bill. According to GRS, there is no measurable actuarial cost to SB 2057.

Section 1. Amends NDCC 15-39.1-04 (9). Definitions - Salary

TFFR statutes take a very broad view of eligible salary to include a member's earnings for teaching, supervisory, administrative, and extra-curricular duties. This typically includes a teacher's base contract salary, plus additional pay for extra duties such as coaching, extra-curricular activities, adult education, driver's education, in-staff subbing, summer school, etc. However, any fringe benefit or payment expressly prohibited by state statutes would not be eligible TFFR salary.

Undoubtedly, there are many variations of salary and fringe benefits packages that have been negotiated between teachers, administrators, and school boards. As a result, it has become increasingly difficult for TFFR members and employers to determine whether or not certain elements of the salary and fringe benefits package are reportable to TFFR as retirement salary, subject to member and employer retirement contributions, and ultimately used to calculate retirement, disability, and survivor benefits.

TFFR statutes do not allow individual employees to modify salary arrangements to improve their retirement benefits (spiking salaries). If members were allowed to do so, most members would increase their salary when they near retirement when it is too late for increased retirement contributions to cover the cost of the increased benefit. TFFR's salary definition is designed to prohibit manipulation of amounts to be included in "salary" for purposes of fairness and cost control.

Section 1 modifies the **definition of salary** to clarify whether certain special kinds of compensation are included as salary for purposes of determining retirement

contributions and benefits under TFFR. It also addresses some kinds of compensation that, though not commonly used today, could become more common in the future.

- Eligible salary includes earnings for teaching, supervisory, administrative, and extra-curricular services; and bonus amounts paid to members for performance, retention, experience, and other service-related bonus payments.
- Eligible salary does not include fringe benefits; insurance programs; payments for unused leave; early retirement incentive pay, severance pay, or other payments conditioned on or made in anticipation of retirement or termination; teacher's aide pay, referee pay, bus driver pay, janitorial pay; amounts received by a member in lieu of previously employer-provided benefits or payments that are made on an individual selection basis; recruitment bonuses; other benefits or payments the Board determines to be ineligible TFFR salary.
- Increases annual compensation limit that can be taken into account for calculating contributions paid to or benefits paid from the plan. This limit increased from \$170,000 to \$200,000 in 2002, and will be indexed to inflation in \$5,000 increments thereafter, as authorized by federal law changes in EGTRRA.

Actuarial comments:

The revised definition makes no significant changes from existing policy, but makes formal some Board policies and interpretations relating to salary.

Section 2. Amends NDCC 15-39.1-10.3. Multiple plan membership

Dual (multiple plan) member provisions were originally enacted in 1985 to provide portability to members of the various state retirement plans as they went from one type of public employment to another (teacher, state employee, and highway patrol). The changes in Section 2 will update **dual (multiple plan) membership** guidelines for retirement plan participation and benefit calculations for individuals whose job duties require participation in TFFR and/or PERS. PERS is proposing similar language changes.

The current law provides that a dual member must be assigned entirely to either TFFR or PERS. Because of the complex personnel situations that exist today, problems have arisen. These problems include difficulty in identifying the individuals who come under this provision, difficulty employers have in understanding this provision, and difficulty members have understanding the assignment process to one system or another. To implement the current statutes, both TFFR and PERS have had to reverse certain administrative transactions which affect member expectations.

Another problem deals with using the final average salary from the plan of last membership to calculate retirement benefits in all systems. While this provides

portability between systems and is usually appropriate (and beneficial) to most members, this procedure can result in the possibility of over or under compensating certain other dual members in retirement.

In general, the changes PERS and TFFR are proposing should treat dual members more equitably by coordinating how plan benefits should be calculated. It should also ease the confusion regarding retirement system membership for members, employers, and retirement system staff.

- New method would not require that an employee be assigned to one system or another. Instead the employee would participate in both retirement systems based upon job duties. Employer would report service credit and salary to both systems. Service credit would be combined to determine vesting and eligibility for benefits, however, no more than one year of credit would be recognized in any fiscal year.
- At retirement, the employee would have the option of choosing the method of benefit calculation that best meets the employee's needs while still maintaining the portability provisions. Under one option, the member could have their retirement benefit calculated using all years of service in each system and the final average salary from each system applied. Under the second option, the member could combine the final average salary from either or both plans to calculate the benefit under each system, but no more than one year of service credit could be used.
- Existing dual members could choose if they want their benefit calculated under the existing law or the new law.

Actuarial comments:

The changes are very small and apply to few members, so actuary does not believe there would be a measurable actuarial impact.

Section 3. Amends NDCC 15-39.1-10.6. Benefit Limitations

The Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001 made various federal tax law changes to increase contribution limits and expand portability. Most of the provisions within EGTRRA that apply to the public sector are effective on or after January 1, 2002.

Section 3 reenacts the **maximum benefit limitations** specified under section 415 of the Internal Revenue Code (IRC) in effect on August 1, 2003. Due to EGTRRA, the defined benefit dollar limit increased from \$140,000 to \$160,000 in 2002, and will be indexed to inflation in \$5,000 increments thereafter.

Section 4. Amends NDCC 15-39.1-15. Withdrawal from fund

This change moves language allowing **acceptance of rollovers** from other qualified plans from Section 4 to Section 9. See Section 9 explanation.

Section 5. Amends NDCC 15-39.1-16. Options of teachers

Section 5 updates language describing a teacher's **designated beneficiary**. It also makes two changes to the options available for teachers who will retire in the future:

1. Replaces the 5-year term certain option with a **20-year term certain option** to provide beneficiary coverage for a longer time period. The 5-year option is seldom used (36 retirees) and members have expressed interest in a 20-year option. The member's annuity would be actuarially reduced to reflect the cost of the option. In addition to the single life annuity option (3060 retirees), TFFR also offers a 10-year term certain option (160 retirees), 100% joint survivor option (1,040 retirees), 50% joint survivor option (336 retirees), and level income option (422 retirees).

Actuarial Comments:

This change is intended to have no impact on members who have already retired. Future retirees would no longer be able to elect the 5-year option, but would be able to adopt the new 20-year option. The 20-year certain and life option would be determined as the actuarial equivalent to the standard life annuity, so TFFR would incur no cost.

2. Adds a **partial lump sum option plan (PLSO or PLOP)** to menu of options for future retirees eligible for an unreduced retirement annuity. It would allow future retirees to take a partial lump-sum distribution equal to twelve monthly payments determined under the standard life annuity in addition to a reduced monthly benefit. If they make this election, the members' monthly annuity would be actuarially reduced (approximately 10%). Retiring members would still be permitted to choose one of the other optional forms of payment except level income with Social Security.

Example: Teacher retires on August 1, 2003, with the Rule of 85. Teacher's Single Life annuity benefit is \$1,700 per month. Teacher may elect the regular retirement option and receive \$1,700 per month for life or receive a PLSO of \$20,400 ($\$1,700 \times 12$) and a lifetime benefit of \$1,530 per month. If teacher wants to provide a continuing benefit to a beneficiary under a joint and survivor or term certain option, the \$1,530 would again be actuarially reduced.

This option gives additional flexibility to members who are planning to retire. For example, the retiring member may want a PLSO in order to pay off a mortgage or other debt or to use as an investment in a post teaching business or career.

Actuarial comments:

Because the annuity benefit would be actuarially adjusted, the PLSO option would have no cost for TFFR. Although the amount of the reduction will depend on the retiree's age, most retirees who elect this option will still receive a monthly annuity equal to about 90% of the amount they would have received had they not elected this option. If not rolled over to an IRA or other qualified plan, PLSOs are taxed as ordinary income and are subject to automatic 20% withholding. Members younger than 55 who do not roll the PLSO over are also subject to a 10% penalty tax.

Section 6. Amends NDCC 15-39.1-18. Disability retirements

Section 6 states that the level income with Social Security option and partial lump sum option are not available to members under **disability retirement**. Disabled retirees pose special anti-selection risks (i.e. members in poor health are more likely to select the PLSO). Also, allowing the combined option of level income and PLSO would increase the costs and complexities of plan administration and communication with the members.

Actuarial comments:

Clarifies that disabled members may not elect either the partial lump sum option or a level income option.

Section 7. Amends NDCC 15-39.1-19.1. Annuities discontinued on resumption of teaching

Under current law, after a 30-day break-in-service, retirees can return to TFFR covered employment for a maximum of 700 hours in a fiscal year (general rule). Retirees can continue to receive monthly retirement benefits; employer and employee contributions will not be paid to TFFR; and the retirees' monthly TFFR benefit amount will not be affected.

Section 7 increases the number of hours **retirees** can teach under the general rule while continuing to receive TFFR benefits. The **annual hour limit** would be based on length of contract duties.

- 700 hours – 9 month contract (or less)
- 800 hours – 10 month contract
- 900 hours – 11 month contract
- 1000 hours – 12 month contract

Substitute teaching, extracurricular duties, and continuing professional development would not apply to the annual hour limit.

Retirees can also return to teach under other exceptions including critical shortage area, educational foundation donation, and benefit suspension and recalculation. Special provisions apply in these situations.

During 2001-02, about 75 retired teachers and administrators returned to work. Sixty retirees received TFFR benefits while working part time under the 700 hundred hour limit. Ten teachers worked full-time in critical shortage areas. Five retirees returned to work full time and had their retirement benefits suspended; benefits will be recalculated at final retirement. The 2002-03 numbers appear to be similar to last year. Average age was about 60, and average salary was around \$20,000 for re-employed retirees.

Section 7 makes identical changes to both versions of this section (effective through 7/31/2005 includes educational foundation donation, and effective after 7/31/2005 does not include educational foundation donation).

Actuarial comments:

Intent of this provision is to treat rehired retirees equitably, reflecting their actual contract year (9-month, 10-month, or 12-month).

Section 8. Amends NDCC 15-39.1-20. Withdrawal from fund.

Section 8 reenacts member **refund and rollover options** to eligible retirement plans specified in Section 401(a)(31) of the Internal Revenue Code in effect on August 1, 2003. This allows eligible rollover distributions to be made to traditional IRAs, qualified 401(a) and 401(k) plans, 403(b) tax sheltered annuity plans, and governmental 457 deferred compensation plans.

Section 9. Amends 15-39.1-24(11). Purchase of service credit.

Section 9 incorporates federal tax law changes to allow TFFR to accept eligible rollovers from traditional IRAs, qualified 401(a) and 401(k) plans, 403(b) tax sheltered annuity plans, and governmental 457 deferred compensation plans, for the **purchase of TFFR service credit**. The TFFR Board must adopt rules to ensure that rollovers and transfers comply with IRS regulations.

Actuarial comments:

Sections 4 and 9 modify the provisions governing the kinds of rollover contributions that TFFR can accept as allowed by EGTRRA. This will make it easier for members to purchase service credit using money from other kinds of plans or retirement accounts.

Section 10. Create new section to 15-39.1. Employer Service Purchases.

Under current law, teachers are allowed to purchase service credit for use toward retirement eligibility. However, in the past few years, TFFR has been asked by employers whether they can purchase service credit on behalf of employees. The main reason employers are requesting this option is to assist older teachers nearing retirement whose positions may be eliminated due to school closings or consolidations. Employers may currently provide a cash benefit to employees and then allow them to purchase their own service. However, the option of allowing the employer to purchase the service provides certain tax advantages. As long as the member has no "cash-or-deferred" choice, the teacher is not immediately taxed on the purchase price.

Allowing employers to purchase service credit assists employers in managing their workforce and adds more flexibility and portability to TFFR plan benefits. Because ND is facing a declining student population and there is the possibility of an increased number of school closings and/or consolidations, such flexible options relating to TFFR benefits could help both members and employers during this phase. On the other hand, the more flexibility members and employers have, the more likely it is they will choose to buy service credit to retire early at the Rule of 85.

The TFFR Board proposes to allow **employer service purchases** under the following conditions:

- 1) The member may not be given the option to choose between an employer service purchase and an equivalent amount paid in cash.
- 2) The member must be eligible for retirement or close to being eligible. To be eligible, either the sum of the member's age plus service credit must be at least 77, or the member must be at least age 55 with at least three years of service credit.
- 3) Purchase price is determined on an actuarially equivalent basis.
- 4) Purchase must be completed prior to the member's retirement.
- 5) Employer may purchase a maximum of three years of credit for the member.
- 6) The employer must pay the purchase price in a lump sum.

Actuarial comments:

Because the purchase price is determined actuarially, this provision will not have an actuarial impact. The proposal includes a requirement that the member not be offered a choice between the service and a like amount paid in cash, because providing such an option would violate the Internal Revenue Code prohibition against governmental entities offering cash-or-deferred options to employees.

Employer service purchase provisions do not raise significant legal or regulatory issues, and they are simple to administer. TFFR would not need to secure any federal regulatory approval.

SUMMARY

The TFFR Board designed the changes in SB 2057 for the benefit of the membership and the school districts.

According to TFFR's actuary, none of the provisions have actuarial cost implications. None of the provisions are expected to complicate administration or communication with members or employers. Finally, none of the provisions conflict with federal or state laws or IRS regulations.

SB 2057 was studied by the Interim Legislative Employee Benefits Programs Committee and received a FAVORABLE recommendation. The TFFR Board encourages your Committee to give the bill a DO PASS recommendation.

SENATE BILL NO. 2057

**HOUSE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE
MARCH 13, 2003**

**Fay Kopp, Deputy Executive Director
ND Retirement and Investment Office**

Senate Bill No. 2057 was submitted by the TFFR Board. The changes are being proposed to clarify TFFR statutes, administer the plan more efficiently, and add benefit payment options. In addition, the bill incorporates various federal tax law changes to increase contribution limits and expand portability as authorized by the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001.

TFFR actuarial consultants, Gabriel, Roeder, and Smith, Inc. (GRS) have reviewed the bill. According to GRS, there is no measurable actuarial cost to SB 2057.

Section 1. Amends NDCC 15-39.1-04 (9). Definitions - Salary

TFFR statutes take a very broad view of eligible salary to include a member's earnings for teaching, supervisory, administrative, and extra-curricular duties. This typically includes a teacher's base contract salary, plus additional pay for extra duties such as coaching, extra-curricular activities, adult education, driver's education, in-staff subbing, summer school, etc. However, any fringe benefit or payment expressly prohibited by state statutes would not be eligible TFFR salary.

Undoubtedly, there are many variations of salary and fringe benefits packages that have been negotiated between teachers, administrators, and school boards around the state. As a result, it has become increasingly difficult for TFFR members and employers to determine whether or not certain elements of the salary and fringe benefits package are

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10/15/03
Date

reportable to TFFR as retirement salary, subject to member and employer contributions, and ultimately used to calculate retirement, disability, and survivor benefits.

TFFR statutes do not allow individual employees to modify salary arrangements to improve their retirement benefits (spiking salaries). If members were allowed to do so, most members would increase their salary when they near retirement when it is too late for increased retirement contributions to cover the cost of the increased benefit. TFFR's salary definition is designed to prohibit manipulation of amounts to be included in "salary" for purposes of fairness and cost control.

Section 1 modifies the **definition of salary** to clarify whether certain special kinds of compensation are included as salary for purposes of determining retirement contributions and benefits under TFFR. It also addresses some kinds of compensation that, though not commonly used today, could be used in the future.

- Eligible salary includes earnings for teaching, supervisory, administrative, and extra-curricular services; and bonus amounts paid to members for performance, retention, experience, and other service-related bonus payments.
- Eligible salary does not include fringe benefits; insurance programs; payments for unused leave; early retirement incentive pay, severance pay, or other payments conditioned on or made in anticipation of retirement or termination; teacher's aide pay, referee pay, bus driver pay, janitorial pay; amounts received by a member in lieu of previously employer-provided benefits or payments that are made on an individual selection basis; recruitment bonuses; and other benefits or payments the Board determines to be ineligible TFFR salary.
- Increases annual compensation limit that can be taken into account for calculating contributions paid to or benefits paid from the plan. This limit increased from \$170,000 to \$200,000 in 2002, and will be indexed to inflation in \$5,000 increments thereafter, as authorized by federal law changes in EGTRRA.

Section 2. Amends NDCC 15-39.1-10.3. Multiple plan membership

Dual (multiple plan) member provisions were originally enacted in 1985 to provide portability to members of the various state retirement plans as they went from one type of public employment to another (teacher, state employee, and highway patrol). The changes in Section 2 will update **dual (multiple plan) membership** guidelines for retirement plan participation and benefit calculations for individuals whose job duties require participation in TFFR and/or PERS. PERS is proposing similar changes.

The current law provides that a dual member must be assigned entirely to either TFFR or PERS. However, because of the complex personnel situations that exist today, problems have arisen. These problems include difficulty in identifying the individuals who come under this provision, difficulty employers have in understanding this provision, and difficulty members have understanding the assignment process to one system or another. To implement the current statutes, both TFFR and PERS have had to reverse certain administrative transactions which affect member expectations.

Another problem deals with using the final average salary from the plan of last membership to calculate retirement benefits in both systems. While this provides portability between systems and is usually appropriate (and beneficial) for most members, this procedure can result in the possibility of over or under compensating certain other dual members in retirement.

The changes TFFR and PERS are proposing should treat dual members more equitably by coordinating how plan benefits should be calculated. It should also ease the confusion regarding retirement system membership for members, employers, and retirement system staff.

- New method would not require that an employee be assigned to one system or another. Instead the employee would participate in both retirement systems based upon job duties. Employer would report service credit and salary to both

systems. Service credit would be combined to determine vesting and eligibility for benefits; however, no more than one year would be recognized in any fiscal year.

- At retirement, the employee would have the option of choosing the method of benefit calculation that best meets the employee's needs while still maintaining the portability provisions. Under one option, the member could have their retirement benefit calculated using all years of service in each system and the final average salary from each system applied. Under the second option, the member could combine the final average salary from either or both plans to calculate the benefit under each system, but no more than one year of service credit could be used.
- Existing dual members could choose if they want their benefit calculated under the existing law or the new law.

Section 3. Amends NDCC 15-39.1-10.6. Benefit Limitations

The Economic Growth and Tax Relief Reconciliation Act (EGTRRA) passed by Congress in 2001 made various federal tax law changes to increase contribution limits and expand portability. Most of the provisions within EGTRRA that apply to the public sector are effective on or after January 1, 2002.

Section 3 reenacts the **maximum benefit limitations** specified under section 415 of the Internal Revenue Code (IRC) in effect on August 1, 2003. Due to EGTRRA, the defined benefit dollar limit increased from \$140,000 to \$160,000 in 2002, and will be indexed to inflation in \$5,000 increments thereafter.

Section 4. Amends NDCC 15-39.1-15. Withdrawal from fund

This change moves language allowing **acceptance of rollovers** from other qualified plans from Section 4 to Section 9. See Section 9 explanation.

Section 5. Amends NDCC 15-39.1-16. Options of teachers

Section 5 updates language describing a teacher's **designated beneficiary**. It also expands the options available for teachers who will retire in the future:

1. Replaces the 5-year term certain option with a **20-year term certain option** to provide beneficiary coverage for a longer time period. The 5-year option is seldom used (36 retirees) and members have expressed interest in a 20-year option. The member's annuity would be actuarially reduced to reflect the cost of the option. In addition to the single life annuity option (3060 retirees), TFFR also offers a 10-year term certain option (160 retirees), 100% joint survivor option (1,040 retirees), 50% joint survivor option (336 retirees), and level income option (422 retirees).
2. Adds a **partial lump sum option plan (PLSO or PLOP)** to menu of options for future retirees eligible for an unreduced retirement annuity. It would allow future retirees to take a partial lump-sum distribution equal to twelve monthly payments determined under the standard life annuity in addition to a reduced monthly benefit. If they make this election, the members' monthly annuity would be actuarially reduced (approximately 10%). Retiring members would still be permitted to choose one of the other optional forms of payment except level income with Social Security.

Example: Teacher retires on August 1, 2003 with the Rule of 85. Teacher's Single Life annuity benefit is \$1,700 per month. Teacher may elect the regular retirement option and receive \$1,700 per month for life or receive a PLSO of \$20,400 (\$1,700 X 12) and a lifetime benefit of \$1,530 per month. If teacher wants to provide a continuing benefit to a beneficiary under a joint and survivor or term certain option, the \$1,530 would again be actuarially reduced.

This option gives additional flexibility to members who are planning to retire. For example, the retiring member may want a PLSO in order to pay off a mortgage or other debt or to use as an investment in a post teaching business or career.

Actuarial comments:

Because the annuity benefit would be actuarially adjusted, the PLSO option would have no cost for TFFR. Although the amount of the reduction will depend on the retiree's age, most retirees who elect this option will still receive a monthly annuity equal to about 90% of the amount they would have received had they not elected this option. If not rolled over to an IRA or other qualified plan, PLSOs are taxed as ordinary income and are subject to automatic 20% withholding. Members younger than 55 who do not roll the PLSO over are also subject to a 10% penalty tax.

Section 6. Amends NDCC 15-39.1-18. Disability retirements

Section 6 states that the level income with Social Security option and partial lump sum option are not available to members under **disability retirement**. Disabled retirees pose special anti-selection risks (i.e. members in poor health are more likely to select the PLSO). Also, allowing the combined option of level income and PLSO would increase the costs and complexities of plan administration and communication with the members.

Section 7. Amends NDCC 15-39.1-19.1. Annuities discontinued on resumption of teaching

Under current law, after a 30-day break-in-service, retirees can return to TFFR covered employment for a maximum of 700 hours in a fiscal year (general rule). Retirees can continue to receive monthly retirement benefits; employer and employee contributions will not be paid to TFFR; and the retirees' monthly TFFR benefit amount will not be affected.

Section 7 increases the number of hours **retirees** can teach under the general rule while continuing to receive TFFR benefits. The **annual hour limit** would be based on length of contract duties. Substitute teaching, extracurricular duties, and continuing professional development would not apply to the annual hour limit.

- 700 hours – 9 month contract (or less)
- 800 hours – 10 month contract
- 900 hours – 11 month contract
- 1000 hours – 12 month contract

Retirees can also return to teach under other exceptions including critical shortage area, educational foundation donation, and benefit suspension and recalculation. Special provisions apply in these situations.

During 2001-02, about 75 retired teachers and administrators returned to work. Sixty retirees received TFFR benefits while working part time under the 700-hundred hour limit. Ten teachers worked full-time in critical shortage areas. Five retirees returned to work full time and had their retirement benefits suspended (benefits will be recalculated at final retirement). The 2002-03 numbers appear to be similar to last year. Average age was about 60, and average salary was around \$20,000 for re-employed retirees.

Section 7 makes identical changes to both versions of this section (effective through 7/31/2005 includes educational foundation donation, and effective after 7/31/2005 does not include educational foundation donation).

Section 8. Amends NDCC 15-39.1-20, Withdrawal from fund.

Section 8 reenacts member **refund and rollover options** to eligible retirement plans specified in Section 401(a)(31) of the Internal Revenue Code in effect on August 1, 2003. This allows eligible rollover distributions to be made to traditional IRAs, qualified 401(a) and 401(k) plans, 403(b) tax sheltered annuity plans, and governmental 457 deferred compensation plans.

Section 9. Amends 15-39.1-24(11). Purchase of service credit.

Section 9 incorporates federal tax law changes to allow TFFR to accept eligible rollovers from traditional IRAs, qualified 401(a) and 401(k) plans, 403(b) tax sheltered annuity plans, and governmental 457 deferred compensation plans, for the **purchase of TFFR service credit**. The TFFR Board must adopt rules to ensure that rollovers and transfers comply with IRS regulations.

Section 10. Create new section to 15-39.1. Employer Service Purchases.

Under current law, teachers are allowed to purchase service credit for use toward retirement eligibility. However, in the past few years, TFFR has been asked by employers whether they can purchase service credit on behalf of employees. The main reason employers are requesting this option is to assist teachers nearing retirement whose positions may be eliminated due to school closings, consolidations, or budget demands. Employers may currently provide a cash benefit to employees and then allow them to purchase their own service. However, the option of allowing the employer to purchase the service provides certain tax advantages to the member. As long as the member has no "cash-or-deferred" choice, the teacher is not immediately taxed on the service purchase price.

Allowing employers to purchase service credit assists employers in managing their workforce and adds more flexibility and portability to TFFR plan benefits. Because ND is facing a declining student population and there is the possibility of an increased number of school closings and/or consolidations, such flexible options relating to TFFR benefits could help both members and employers during this phase. On the other hand, the more flexibility members and employers have, the more likely it is they will choose to buy service credit to retire early at the Rule of 85.

The TFFR Board proposes to allow **employer service purchases** under the following conditions:

- 1) The member may not be given the option to choose between an employer service purchase and an equivalent amount paid in cash.
- 2) The member must be eligible or nearly eligible for retirement. To be eligible for employer service purchases, either the sum of the member's age plus service credit must be at least 77, or the member must be at least age 55 with at least three years of service credit.
- 3) Purchase price is determined on an actuarially equivalent basis.
- 4) Purchase must be completed prior to the member's retirement.
- 5) Employer may purchase a maximum of three years of credit for the member.
- 6) The employer must pay the purchase price in a lump sum.

Actuarial comments:

Because the purchase price is determined actuarially, this provision will not have an actuarial impact. The proposal includes a requirement that the member not be offered a choice between the service and a like amount paid in cash, because providing such an option would violate the Internal Revenue Code prohibition against governmental entities offering cash-or-deferred options to employees.

SUMMARY

The TFFR Board designed the changes in SB 2057 for the benefit of the membership and the school districts.

According to TFFR's actuary, none of the provisions have actuarial cost implications. None of the provisions are expected to complicate administration or communication with members or employers. Finally, none of the provisions conflict with federal laws, state laws, or IRS regulations.

The TFFR Board respectfully requests that your Committee give the bill a DO PASS recommendation.