MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

DESCRIPTION

2044

2007 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2044

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2044

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 1/12/07

Recorder Job Number: 998

Committee Clerk Signature	Vernica Spalding

Minutes:

Roll was taken and all members were present.

Sen. Dever, Chairman, opened the hearing on SB 2044.

Sparb Collins, Executive Director of ND Public Employees Retirement System, introduced the bill. See attachment #1. He emphasized that this "13th payment" was just a one time payment and would not effect the liability of the fund. As he explained the information on the maps on pages 4 and 5 he mentioned that the payouts to the retirees directly contribute to the economy.

Sen. Dever asked whether there was a history of making the 13th check payments.

Sparb mentioned that it has only been done once which was last legislative session. In the 90's PERS did the percentage increases because the funds were there to do so. That is the preferred way of doing it. There was a market downturn in 2001 making it impossible to do an increase and then last session they did the 13th payment.

Sen. Dever asked about the ability to pay this.

Sparb replied they do feel confident of that because they are already at over 8% return this year.

Sen. Dever asked about the difference between employees in general getting 75% of their monthly pay whereas judges get a 2% increase.

Sparb clarified that for the judges it is a percentage increase that is ongoing, whereas the 75% payment is just a one time payment.

Sparb explained the various groups within PERS and that some of them are in separate trust funds. From an investment standpoint they co-mingle and invest the monies to get better rates.

Sen. Nelson asked how many retired judges there are.

Sparb estimated the number at 20.

Sen. Horne asked if the 13th payment would be similar to a "bonus" whereas the judge's adjustment is more like a permanent upward adjustment.

Sparb confirmed that.

Support: Bill Kalanek representing the Association of Former Public Employees and Independent ND State Employee Association spoke in favor of the bill. The previous 13th payment was very appreciated.

Support: Jodee Buhr ND Public Employees Association spoke in support of the bill.

Opposition: -

Neutral: -

Sen. Nelson asked whether the 87% retention of retirees in our state was a high figure compared to other states.

Sparb was not sure.

Chairman Dever closed the hearing on SB 2044.

Sen. Nelson made a motion to pass.

Sen. Oehlke seconded the motion.

Roll Call Vote Yes 6 No 0 Absent 0

Carrrier: Sen. Horne

FISCAL NOTE

Requested by Legislative Council
12/26/2006

Bill/Resolution No.: SB 2044

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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill allows a one-time payment of 75% of the monthly retirement benefit in January of either 2008 or 2009, if the fund's return for either year is at least 9.06%.
In addition, the proposed legislation would increase retired judges benefits by 2% beginning January 1, 2008 and January 1, 2009.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The above payments would be paid from the retirement trust funds and would not effect state revenues, expenditures or require additional appropriation authority

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, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Sparb Collins	**Agency:**	NDPERS
Phone Number:	328-3901	**Date Prepared:**	12/29/2006

Date : 1-12-07

Roll Call Vote # : 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2044

Senate Government and Veteran Affairs **Committee**

☐ Check here for Conference Committee

Legislative Council Amendment Number ______

Action Taken do pass

Motion Made By Nelson **Seconded By** Oehlke

Senators	Yes	No	Senators	Yes	No
Senator Dick Dever - Chairman	✓		Senator Robert Horne	✓	
Senator Dave Oehlke – VC	✓		Senator Richard Marcellais	✓	
Senator Judy Lee	✓		Senator Carolyn Nelson	✓	

Total **(Yes)** 6 **No** 0

Absent 0

Floor Assignment Horne

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

L

REPORT OF STANDING COMMITTEE

SB 2044: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2044 was placed on the Eleventh order on the calendar.

2007 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2044

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2044

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: March 1, 2007

Recorder Job Number: 4164

Committee Clerk Signature

Minutes:

Sparb Collins: Testimony attached.

Rep. Kasper: I have a couple of questions on page 2 of your testimony when you are talking about the one time payments. What would that total gross amount be if that payment were able to be paid?

Sparb Collins: I can give you an exact number but I'll follow that up with an email. The approximate number is $4 million.

Rep. Kasper: On the bottom of the page you say the funds have not returned to 100% fund status on an actuarial basis. Where are you at percentage wise on the flow?

Sparb Collins: On the actuarial basis right now we are at 91%. On a market value we are at 107%. We use the methodology that recognizes 20% of any gain or loss in a particular year. We are still working out those years of loss. If those work out we start again. That is why we kind of crossed over. On a cash basis we are at 107% but we are still working up right now.

Rep. Kasper: On your third page where your goal or statement is to someday be able to fund 100% increase across the board. By making these one time payments you are actually moving yourself further away from getting to the point where you have to be 100% actuarially funded so you can get to across the board payment increases, are you not?

Sparb Collins: Yes, to the extent that there is a payout. An interim payout to the retiree's. They are the one time payments that aren't available will more quickly move us to the 100% of that.

Rep. Kasper: Which means each time you make these one time payments you are getting further and further away because you are losing not only the principal that is paid out but the potential earnings on those funds. I'm wondering would not your beneficiaries by happier if they had to wait two or three years until you go the actuarial 100% equivalent so you could increase their retirement benefits across the board and keep them going.

Sparb Collins: We had worked with our retiree group and had worked with them with the idea. We don't move further away. There is a target set here. This doesn't occur until we reach something over 9%. So what is happening is out of that, if we don't continue to move forward over our fund status, this doesn't occur. What we want to do first and foremost and primarily is continue to move the fund toward fund status. We are going to at least make the 8% and something more towards the funded status and continue to move forward and share this amount. We are continuing to move forward to our goal.

Rep. Kasper: I understand that.

Sparb Collins: Some of the money is being used right now you are correct.

Rep. Haas: Would it be correct to say that as a result of the one time payments and the return that you are actually continuing to increase the ratio, but at a slightly decreased rate.

Rep. Wolf: I know that it is difficult to guess but do you have any idea when this will be back to 100%?

Sparb Collins: About 6 more years. We continue to make around 9% per year. You know that we will continue to move on a market basis up. It will move from 107% to 108% and so forth. Keep in mind that during the 1990's PERS actually had a market basis that reached about

130%. On an actuarial basis we are quite a bit less than that. That was basis that we used to give the percentage increase. We improved the reserves going forward.

Rep. Wolf: If you didn't do these one time payments, would it make a significant difference in the length of time until they get a percentage increase?

Sparb Collins: My first reaction would be that I don't think so but I'm not an actuary. I'd be happy to ask them and get you an answer.

Rep. Grande: Why did the committee come out with a no recommendation?

Sparb Collins: I'm not sure. I know that on some of the other bills we have a no recommendation on it and I know that part of the discussion was that some of them have a fiscal note attached. If there wasn't a fiscal effect then I'm not quite sure.

Rep. Grande: When we had the discussion on enhancements, you spoke of the 1990's. Through the 90's we did enhancements just about every time. Our goal is to overall to get it to the percent. We really did in 2001. We met all those goals and have the program in really good shape, as far as the retirement itself. The next enhancement wasn't one of those things that we were jumping to try to make that extra enhancement.

Rep. Kasper: Is it normal procedure for the PERS board to come to the legislator with a bill where the Employee Benefits Committee has given a no recommendation and then go against that recommendation anyway?

Sparb Collins: Keep in mind that this isn't a non favorable recommendation that the committee gave, it was a no recommendation.

Rep. Kasper: Oh it was a neutral recommendation?

Sparb Collins: Correct, it was a neutral.

Rep. Wolf: Before there is an increase given to the employees, it has to reach this 100%? Is that a typical goal for all people in retirement, is that normal?

Sparb Collins: There are a lot of different methodologies that are out there. There are a quite few that provide for an automatic cost of living adjustment in their plan. It is just a matter of routine; it occurs as a normal benefit that they have. That may be set to outside targets. It is just something that occurs automatically. The dilemma with doing that is that when we had like we did in the downturn market, our liabilities will continue to grow based on these percentage increases. Those plans generally allow for automatic changes in the employer contribution to be able to provide for that. We find that in those environments that an increase would occur. ND, like some other states, uses it with a different approach. We have a fixed employer contribution. We do not have a guaranteed cost of living adjustment for the retiree. Now some plans may say that if we reached a market by that 100% we can give them cost of living adjustments. At this point the PERS board feels more comfortable in not doing that and waiting until we get to 100% at actuarial value and not just market value. We know from an experience that occurred a few years ago, how quickly some of the assets can go in a downturn market. In our downturn market we didn't really experience difficult times. Our worst year was a negative 6%. That wasn't bad. Then we hit a negative 4. What we would like to do is do it in a way where we could continue to build and keep the long term liabilities fairly level until we get to a place where we have more reserves.

Rep. Haas: You have to describe ND's approach to this as a relatively conservative approach.

David Zentner: Testimony attached.

Rep. Haas: So the last time it was done it was only 50% of your monthly payments.

David Zentner: That is correct.

Rep. Kasper: You are saying that you would rather have the money now, a one time payment, then maybe waiting a year or two and have your monthly payment increase forever?

David Zentner: I think the membership could be assured that was going to happen. I think history has proven that it is difficult to determine what is going to happen in the future. I think that the membership really feels that because of the lack of increases over time and the fact that we don't have automatic increases built into the process, that if it performs appropriately and it is sound that they would appreciate that extra cash.

Jody Bohrer: *I am the executive director of NDPEA. As you may or may not know, in addition to representing active employees we represent the retired ones as well. We want to make sure that we are on the record in support of SB 2044. Our retiree's are very appreciative of the additions of the last legislative session. I just want to touch on Rep. Kasper's question to the person who was here before me. As far as what their preference would be, I would like to echo on that. If the retirees could be assured that there would be a sustainable increase given two years from now, their preferences may change. These members are a vital part of our community. They too, as state employees have been told, have a message that when times are tough stay with us. We are strongly urging this committee to remember our retiree's and we urge a do pass.*

Rep. Kasper: You realize that by accepting these one time checks now, you are in fact getting further away from getting an ongoing increase monthly because the target dollars that could have been there are gone.

Jody Bohrer: Yes we do. As I just stated that if we knew that the choice before us would give us that, we would be able to commit to a substantial increase next session, the answer would be yes. If you are asking if we would prefer to get it now and continue it, that would be the preference. We do understand that.

Rep. Haas: Is there any other testimony for SB 2044? If not we will close the hearing on SB 2044.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2044

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: March 1, 2007

Recorder Job Number: 4231

Committee Clerk Signature

Minutes:

Rep. Haas: This is the bill that allows for the one time payment if the yield on the fund has obtained a total return. It's a one time payment. If the yield is not at 9.06% by the end of June 2007 they will evaluate again at the end of June 2008. Is there any promotion discussion?

Rep. Wolf: Sparb was going to be getting us additional numbers that would show us if they didn't do this one time payment all the time it would shorten the periods. He was going to bring that to us.

Rep. Haas: Would you like to wait until we have that information?

Rep. Wolf: Yes. I had a lot of constituents that had concerns about it.

Rep. Haas: You don't mean a raise you mean an increase to retired people. Will you follow up on that and contact Sparb to make sure we have that information.

Rep. Grande: Who is worried?

Rep. Wolf: The retiree's.

Rep. Grande: This is a payment for them.

Rep. Wolf: They would rather see an increase vs. a payment.

Rep. Haas: We had the discussion on if this was going to delay a percentage increase as compared to a one time increase.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2044

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: March 2, 2007

Recorder Job Number: 4250

Committee Clerk Signature

Minutes:

Rep. Haas: This is the bill that provides essentially a 13 month payment for Public Employees providing the yield on the fund is at a certain length.

Rep. Dahl: I move a do pass.

Rep. Wolf: I Second that.

Rep. Haas: Is there any discussion?

Rep. Kasper: I'm going to vote for this bill but I have reluctance because Sparb's testimony talked about that this is going to take money out of the fund to get us further away from where they want to be. I understand the logic behind it but I wish there was a different way.

Rep. Haas: I think it is the philosophy live for the moment or live for the long haul.

Rep. Froseth: I agree with Rep. Kasper. I think it is nice to get that one lump sum of money but this might hinder the percentage increase that might be more along the terms of what we need.

Rep. Haas: I know that was Rep. Wolf's question yesterday. Did you want to comment on that?

Rep. Wolf: I talked to Sparb yesterday. He was going to be talking to the actuary. The actuary said that in about 5 or 6 years it would be about 100%. They didn't think that this $4 million would have much of an effect on that waiting period.

Rep. Haas: That percentage increase would have been an increase in mutual funds. Is there any further discussion on the do pass motion on SB 2044? If not we will take a roll call vote on a do pass for SB 2044. The do pass motion for SB 2044 passes with a vote of 13-0-0. Is there a volunteer to carry this bill?

Rep. Grande: I will.

Date: 3-2-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number SB 2044

Action Taken DO PASS

Motion Made By Rep. Dahl Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Rep. C. B Haas Chairman	X		Rep. Bill Amerman	X	
Rep. Bette Grande VC	X		Rep. Louise Potter	X	
Rep. Randy Boehning	X		Rep. Jasper Schneider	X	
Rep. Stacey Dahl	X		Rep. Lisa Wolf	X	
Rep. Glen Froseth	X				
Rep. Karen Karls	X				
Rep. Jim Kasper	X				
Rep. Lisa Meier	X				
Rep. Dave Weiler	X				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep. Grande

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

REPORT OF STANDING COMMITTEE

SB 2044: Government and Veterans Affairs Committee (Rep. Haas, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2044 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2044

attach #1

TESTIMONY OF
SPARB COLLINS
ON
SENATE BILL 2044

Mr. Chairman, members of the committee, good morning. My name is Sparb Collins and I am Executive Director of the North Dakota Public Employees Retirement System or PERS. I appear before you today on behalf of the PERS Board and in support of this bill.

Senate Bill 2044 relates to the PERS retirement plan and the Highway Patrol retirement plan. This bill authorizes an increase in retirement payments to members of these retirement systems. Attached to my testimony are two maps of North Dakota. The first one is as of December of 2006 and gives you a perspective of the number of retirees that would be affected by this bill and where they live. The second map shows the amount of retirement benefits we paid at that time to those retirees. As the attached shows this bill directly affects many people across the state.

Specifically, sections 1 and 3 of the bill would allow the PERS Board to provide a one-time post-retirement payment equal to 75% of the member's, beneficiary's, disability retirees or prior service retirees current monthly benefit payment amount payable in January of either 2008 or 2009, if the trust fund's total annualized return on investments is at least 9.06% for the fiscal year ending June of 2007 or 2008, applicable to both the PERS Hybrid Plan (except the Judges retirement plan) and the Highway Patrol Retirement System. This is a potential one-time payment for only the 2007-2009 biennium.

The fiscal year for the PERS retirement plan is July 1 to June 30. If this bill was to pass the board would review the audited investment returns for the year ending June 30, 2007 in the fall and if the return is 9.06% or greater the board would authorize an additional payment to retirees in January of 2008 equal to 75% of their January retirement allowance. For example a retiree whose monthly benefit was $1,000 would receive a one time additional payment of $750. If the return for that year was less then 9.06% the 13th payment would not occur. However if it did not occur the return would be again reviewed for the next fiscal year to determine if it was 9.06% or greater and if so a payment would be made in January of 2009. Please note that only one payment would be made in the biennium and only if the threshold return is achieved.

PERS is proposing the above increase for members of PERS (except the judges) and the Highway patrol for two reasons:

- PERS retirees have a fixed benefit and rely on ad hoc adjustments such as this to help offset the effect of inflation on their retirement benefit. During the 90's the fund was able to provide a % increase almost every 2 years with the last one in August of 2001.
- The retirement fund needs to be able to support ad hoc adjustments. The funds have not returned to 100% funded status on an actuarial basis but have returned to a 107% and 105% funded status on a

market basis. Consequently PERS and its actuary agree the fund can support a one time payment such as this that will not increase the liabilities of the plan. A bill such as this was passed last session and our retirees received a one time payment in January of 2006 that was much appreciated.

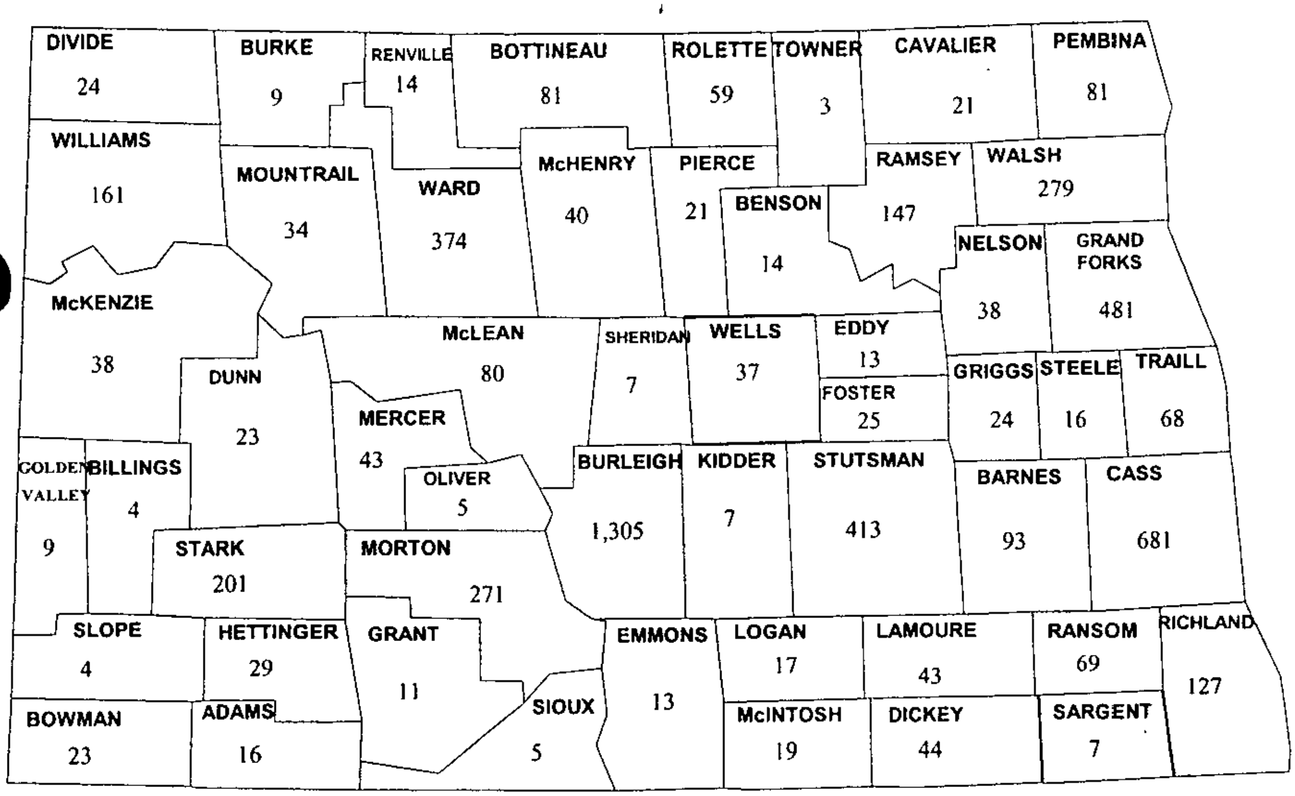
The PERS board's objective is that when this fund returns to a 100% funded basis on not only market, but on an actuarial basis, or if additional contributions are received then the fund will be able to provide % increases again.

Section 2 of the bill relates to the Judges Retirement Plan. This section authorizes a 2% increase in benefits to retired judges in January of 2008 and January of 2009. This retirement plan is funded at 127% at market and 107% at actuarial value. Since it is funded over 100% based upon both values this system can support a % increase for its retirees and that is why it is proposed for judges. The last % increase they received was in 2002.

The provisions of this bill have been reviewed by the PERS actuary. The actuary determined that the one time retiree adjustments could be paid from positive returns and that the judges could be paid for from the positive funded position of the plan. These provisions have also been reviewed by the Legislative Employee Benefits Committee and given a "no recommendation". The fiscal note for this bill indicates no fiscal effect since the proposed payment would be made directly from the retirement fund and no increase in contributions is required. On behalf of the PERS Board and its retirees I would request your favorable consideration of this bill. Mr. Chairman this concludes my testimony.

NDPERS Retirees

December 2006

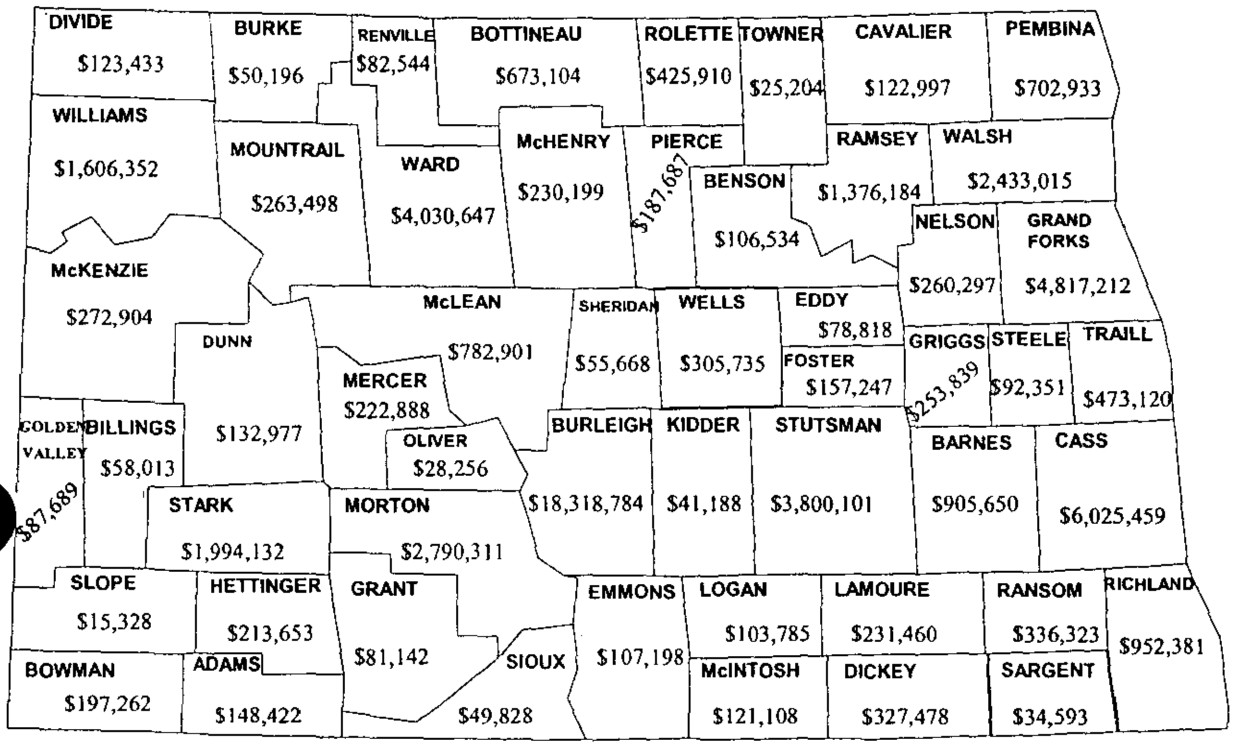


Out-of-State - 896

Total – 6,538

NDPERS Retirees

Annual Benefits 2006

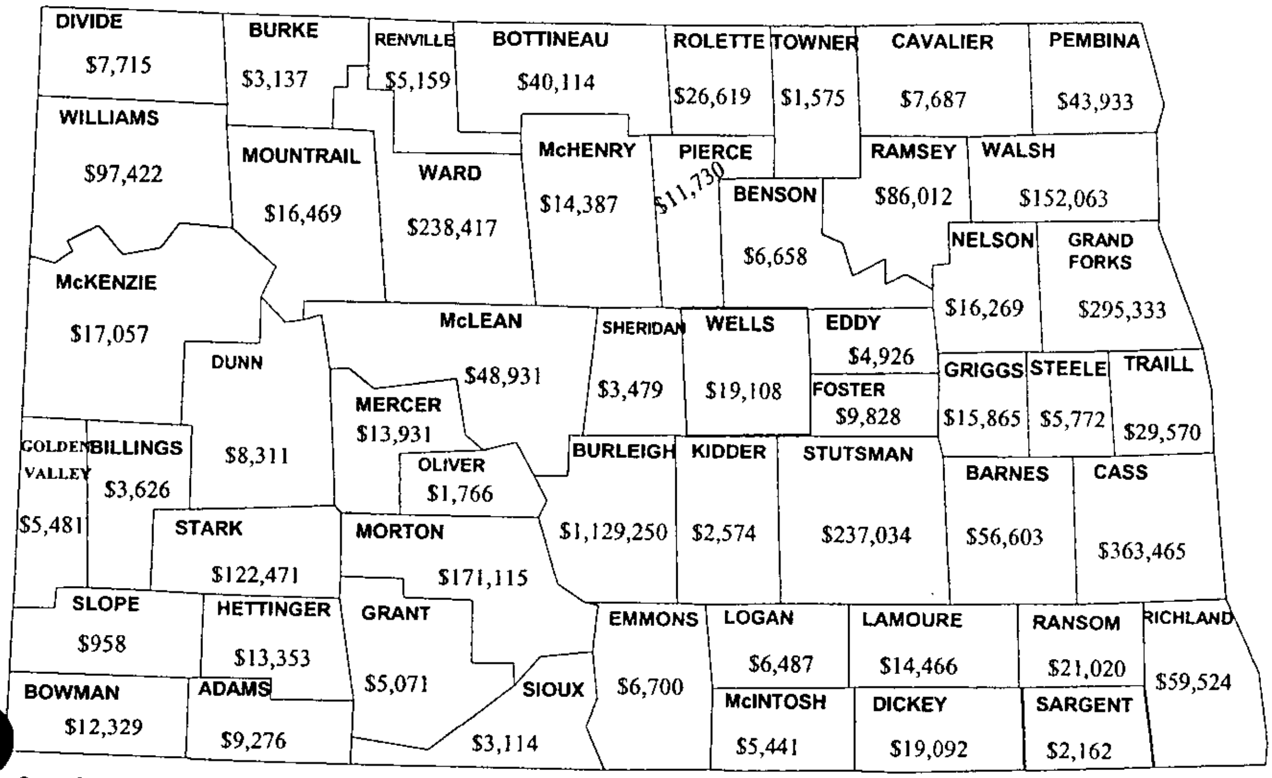


Out-of-State - $8,242,082

Total - $65,558,022

NDPERS 75% Retiree 13th Check Payments

(Based on December 2006 Benefit Payments)



Out-of-State - $505,239

Total - $4,025,098

TESTIMONY OF
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ON
SENATE BILL 2044

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Testimony before the House Government and Veterans Affairs Committee

Regarding Senate Bill 2044

March 1, 2007

Chairman Haas, members of the committee I am David Zentner, President of the Association of Former Public Employees (AFPE). AFPE has more than 900 members who formally served the citizens of North Dakota. I appear before you today to support this bill.

State public employees receive no automatic cost of living (COL) adjustments to their retirement payments. Inflation is an ever present constant that erodes the purchasing power of retirees. This is especially true for those of modest means who rely on their state pensions to meet their daily living expenses.

In the past when times were good some (COL) adjustments were provided. However, in recent times no such increases have been forthcoming. While we former employees understand the importance of maintaining a solvent retirement system we are also faced with the ever increasing costs of energy and other ordinary living expenses.

During the current biennium the Legislature did provide one-time relief to retirees by providing another half a check because the fund earned a greater return than the target amount for the 2005 fiscal year. Our membership greatly appreciated this extra payment. The bill before you would again authorize a one time 13th check representing ¾'s of a monthly check for each retiree if the retirement fund performs better than the established target. The proposal is actuarially sound and will not adversely affect the fund if the target percentage is exceeded.

Our membership urges you to support this bill and we ask that you give this legislation a do pass recommendation.

I would be happy to answer any questions you may have.

SEGAL

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Michael Moehle, FSA, MAAA
Vice President & Consulting Actuary
mmoehle@segalco.com

VIA E-MAIL

MEMORANDUM

To: Sparb Collins, Executive Director

From: Michael Moehle, FSA, MAAA, EA

Date: March 6, 2007

Re: Impact of Granting a 13th Check to Retirees

Question: Is granting a 13th check at this time equal to 75% of a members monthly pension going to increase the amount of time before the system can grant a percentage increase to its members?

Background: Segal did a study (Margin analysis) for the PERS Board that projected when the system would return to a 100% funded status at actuarial value and develop positive margins in an amount sufficient for the system to provide a 2% increase in benefits. This study assumed the system would achieve a rate of return equal to 9.3% on average (which is the systems asset allocation strategy). The study concluded that the system may be able to provide such an increase in 2012 or 2013 if all assumptions are met.

Conclusion: After reviewing the above question and comparing to the above review we conclude that granting the 13th check will probably not affect the ability to grant a 2% cola at 7/1/2012 or at 7/1/2013. Note however that the situation at 7/1/2012 is really too close to call.

Please let me know if you have any questions on our analysis.

4009415

STATE OF NORTH DAKOTA
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Wayne Stenehjem
ATTORNEY GENERAL

March 7, 2007

Mr. Sparb Collins
Public Employees Retirement System
PO Box 1657
Bismarck ND 58502-1657

Dear Sparb:

This memorandum relates to Senate Bill 2047. Specifically, this memorandum is in follow-up to a couple of questions that were raised in the March 1 House GVA committee meeting concerning the automatic enrollment of employees under the deferred compensation plan contained in N.D.C.C. ch. 54-52.2.

The first issue concerned whether the current bill would create additional fiduciary responsibilities on behalf of the state when investing funds into a default investment where an employee fails to direct their own investments. Under the current PERS policy, the answer is no.

As part of the Pension Protection Act of 2006, Congress made changes to ERISA. Specifically, adding section 404(c)(5) to ERISA (29 U.S.C.A. § 110(c)(5)). This section extends the relief afforded by 404(c) to fiduciaries who invest participant assets in certain default investments. Section 404(c)(5) provides that, in situations where participants have an opportunity to direct their investments but fail to do so, those participants will be treated as having exercised control over their accounts if they are invested in a qualified default investment alternative ("QDIA"). Thus, by providing a default investment that meets the QDIA requirements and auto-enrolling participants in that investment, the fiduciaries are afforded the relief of 404(c)(5) for all auto-enrolled participants.

In defining the types of investments that qualify as QDIAs, the Department of Labor included Lifestyle or Target funds. These types of funds are designed to provide varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures based on the participant's age, target retirement date or life expectancy. These are the types of funds in which the PERS board places default investments under the deferred compensation plan.

Although the North Dakota deferred compensation plan is a non-ERISA plan, there does not appear to be any reason why the Department of Labor regulation would not apply to these types of governmental plans. Therefore, so long as PERS continues to give employees the opportunity to direct their own investments and places default investments into QDIAs, the state will not incur additional fiduciary responsibilities as to the performance of those investments.

The second issue that was brought up in the legislative hearing related to the specific wording of Senate Bill 2047. Specifically, the issue related to whether there was a contradiction in terms concerning the selection of investment options. I believe that the proposed language of the bill can be read together with the language of the original statute.

Currently, N.D.C.C. § 54-52.2-01 contains language that allows an employee to specify any type of investment option available under the deferred compensation program. On line 15, SB 2047 proposes the addition of the following language:

> The state shall withhold twenty-five dollars per month from the compensation of each employee subject to the automatic enrollment provided for in this section, and the state shall forward those moneys to the board for deposit into an investment option selected by the board for each employee.

Under the proposed language, the PERS board would only have the power to select the investment option for the $25 dollar contribution of each employee subject to the automatic enrollment procedure. Any employee who opts out of the auto-enrollment program (within three months of employment) by either (1) opting out of the auto-enrollment plan completely or (2) opting out of the auto-enrollment plan by choosing to invest at their own election, will not be subject to any investment options selected by the PERS board. It is only the failure of the employee to make an affirmative decision that leads to the board making a default investment on behalf of the employee under the auto-enrollment program. It should also be noted that even if the employee is auto-enrolled into the deferred compensation plan, they may change the investment options at anytime. An employee always has the power to specify their own investment options. Therefore, the original statutory language of N.D.C.C. § 54-52.2-01 is not in contradiction with the language proposed under SB 2047.

If you have any other concerns, please feel free to contact me at anytime.

Sincerely,

Aaron Webb

Aaron K. Webb
Assistant Attorney General

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