

2009 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1173

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1173

House Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 01/22/09

Recorder Job Number: 7526

Committee Clerk Signature

*Lou Engleson*

Minutes:

**Chairman Grande** opened the hearing on HB 7526. The title was read by the clerk.

**Judge Kapsner:** Representative Klemin was one of the sponsors of this bill and is testifying on another bill at the moment. Judge Kapsner offered testimony in support of HB 1173. See attachment #1.

**Chairman Grande:** Any questions of the judge?

**Rep. Wolf:** If we would pass this and if it was approved by 75% and you mentioned a 1% deduction from payroll, could a judge or a justice submit more than that percentage. Are you all tied to the exact same percentage?

**Judge Kapsner:** The plan must be uniform so everybody who falls within the defined group would have to make a uniform contribution.

**Rep. Wolf:** Do current state employees have this same type of a IRS section 115 trust health care savings plan?

**Judge Kapsner:** They do not.

**Rep. Schneider:** Are they individual trust accounts or is it a group plan?

**Judge Kapsner:** I'm going to defer to Sparb Collins if he wants to answer on a technical basis. My understanding is that they are individual accounts so that what is contributed in your name is available for your use after retirement.

**Sparb Collins:** It's a single trust.

**Rep. Schneider:** What happens if a judge doesn't make it to retirement if they pass away early? Does the beneficiary then have access to those funds?

**Judge Kapsner:** Under the Minnesota plan they do. So when that plan is developed I assume that would be one of the benefits that the family members can also exhaust the fund.

**Rep. Konklin:** Does this include other public employees then? Is it limited to the court?

**Judge Kapsner:** It is designed to be a group benefit so that other groups could ask for the adoption of a similar plan. It's a defined group and all members of that group must participate.

Other states have done this through collective bargaining with their public employees, but North Dakota does not have a similar plan for their employees.

**Rep. Boehning:** What is the rate of withdrawal? Can you take it out all at one shot? Do you have to take out a certain percent a month? How would this work?

**Judge Kapsner:** You take it out to pay health care costs. As long as you're paying health care costs there are no restrictions on it. If you had a catastrophic surgery that insurance did not cover and you had multiple thousands of dollars worth of health care costs associated with that illness, you could use it for that. You can use it until your account is depleted.

**Chairman Grande:** PERS. If I want I can set up a plan similar to this. I can purchase it. Correct? I can purchase my tax-free, so I can get my medical stuff paid for. They're called flex plans.

**Sparb Collins:** What you're thinking about is our flex comp program available for active state employees and the legislature. It's not available on a retired basis.

**Chairman Grande:** Then I can also do a long-term health care?

**Sparb Collins:** There is a long-term health care plan option.

**Chairman Grande:** So things are available to PERS. It's just that the justice is a whole different branch of government, and they want to set up something separate.

**Sparb Collins:** They looked at this, and it's available to Minnesota judges. They determined this might be a good option for North Dakota judges.

**Chairman Grande:** We're dealing with different branches of government. This is what they want to do. They want to pay for this. Blending in and asking where PERS fits into this has nothing to do with this particular bill.

**Rep. Dahl:** This is a pre-taxed deduction?

**Judge Kapsner:** Yes.

**Rep. Dahl:** And would that affect FICA or would there be any sort of impact to taxes?

**Judge Kapsner:** I doubt that it would have any impact. Can you think of any impact it would have on FICA?

**Sparb Collins:** If it's on a pre-taxed basis and it was below 1%, no.

**Rep. Amerman:** Sparb had mentioned that if it's a big group thing, it would be individual for each judge or justice. Are the benefits the same for each one?

**Sparb Collins:** A good way to think about this is like a supplemental defined 457 plan. It's an overall deferred account. You put money into an account in your name and they will put money into the account in their name. The benefit that they're able to draw is going to be the amount of money they have in that account at the time they're eligible to draw. They're already putting 1% in. Why would it be any different at the end of the period? Maybe because

of the length of their employment? For example in the Minnesota plan, they have options.

They can put this money in. They put it into a fixed income thing. Or they can put it into the

stock market if they want to make some more. So you may have some variance based upon your investments. But the benefit is going to be based on the account value.

**Rep. Amerman:** It's still not clear because if I'm a justice and I'm making this amount of money and I put 1% in, it's going to be higher than if I'm a judge over here and put in 1%. So am I going to get the same health care dental care for my lesser contribution than they put in?

**Sparb Collins:** Let's say at the end of the period you have two justices that have put in money over a period of time and that grows, and at the end of the period one has \$10,000 and one has \$15,000 in their account, one is going to have \$10,000 worth of benefits, and one is going to have \$15,000 worth of benefits. Those benefits aren't like an insurance benefit. What they are is if you have a medical expense or premium. Let's say you want to pay \$50 of your premium out of that account, you can take it out of that account until it's exhausted.

**Chairman Grande:** Sparb, this is when you brought up the 457 plan. It's a savings account. They're putting in their own money. It's a savings account. It should never come out equal. It's however much they put in to make their own savings account. It's not an equity issue here.

**Rep. Froseth:** What is the benefit for creating a fund like this rather than each individual judge? They are investing a portion of their salary into their own personal account. Do you think the investment return would be larger?

**Sparb Collins:** The advantage to this is strictly the way the IRS set it up. It's an IRS thing. Money goes in on a pre-taxed basis. You get to take it out and spend it on a pre-tax basis. Your advantage is that you're able, through this mechanism, to put it in without having to pay any taxes on it, and you get to take it out and spend it without paying taxes for eligible health care expenses.

**Rep. Froseth:** This fund would be invested through the Investment Board, same as PERS?

**Sparb Collins:** Not necessarily. Probably not because the Investment Board doesn't administer any individual accounts. What we're going to have to do is like what we do with the 457 plan is we're going to have to find somebody to do the administration of the plan. We will be plan sponsor and coordinate it, but we're not going to administer the accounts. We're not going to make payments out the accounts.

**Rep. Meier:** What would be the cost for establishing the fund and then managing the fund?

**Sparb Collins:** For PERS to establish and manage it?

**Rep. Meier:** Exactly.

**Sparb Collins:** I don't know if given the small numbers of judges, I don't know if this is something that would be worth it for us to do. Because really, we have 47 judges and for us to set up a structured plan for 47 people it would probably be more costly.

**Rep. Kasper:** I would imagine that when you said you'd go find someone Sparb to administer the account, you'd be looking at a bank or you'd be looking at some trust company that specializes in these types of accounts? They're probably out there already someplace.

**Sparb Collins:** They're probably out there or maybe we even tie in to some other entity that's already bided it out. When we're bidding out a plan for 50, maybe we can find a partnership with Minnesota, for example and tie in with their bidding process.

**Rep. Kasper:** Are you aware of what Minnesota is doing as far as how the fund is managed.

**Sparb Collins:** No.

**Rep. Kasper:** Could you find that out? Would you be able to find that out.

**Sparb Collins:** We can look on the web site.

**Chairman Grande:** Anyone else who wishes to speak in favor of 1173? Anyone against 1173? Neutral to 1173?

**Laura Glatt:** The only thing I want to add is we (North Dakota State University Systems) are starting an internal study of an option such as this for some of our employees as well. But we're in the very early stages.

**Chairman Grande:** Close the hearing on 1173

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1173

House Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 01/22/09

Recorder Job Number: 7609

Committee Clerk Signature

*Lou Engelson*

Minutes:

**Chairman Grande:** 1173. Are we ready for that?

**Rep. Dahl:** I move a do pass.

**Chairman Grande:** We have 1173 in front of us. I have a motion for a do pass. Do I have a second.

**Rep. Meier:** I'll second.

**Chairman Grande:** We have a do pass by Rep. Dahl. I have a second by Rep. Meier. Any discussion?

The roll was called by the clerk.

**12 yes, 0 no, 1 absent. Rep. Froseth was assigned to carry the bill.**



**FISCAL NOTE**  
**Requested by Legislative Council**  
12/30/2008

Bill/Resolution No.: HB 1173

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>			\$0	\$0	\$0	\$0
<b>Expenditures</b>			\$0	\$0	\$0	\$0
<b>Appropriations</b>			\$0	\$0	\$0	\$0

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 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).*

This bill will have no fiscal impact on NDPERS. As proposed the bill allows the NDPERS Board to implement an IRC Section 115 Trust for retiree healthcare expenses for all state supreme and district court judges that participate in NDPERS.

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.*

No fiscal impact is expected. It is expected that this bill can be implemented with the existing NDPERS resources.

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.*

No additional revenues will be received.

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.*

No incremental expenditures are anticipated.

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.*

No additional appropriations are requested

<b>Name:</b>	Sparb Collins	<b>Agency:</b>	NDPERS
<b>Phone Number:</b>	328-3901	<b>Date Prepared:</b>	01/03/2009

Date: 1-22-09  
Roll Call Vote #: \_\_\_\_\_

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1173

House Government and Veterans Affairs Committee

Check here for Conference Committee

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

Action Taken DP

Motion Made By Dahl Seconded By Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman Grande	✓		Rep. Amerman	✓	
Vice Chairman Boehning	✓		Rep. Conklin	✓	
Rep. Dahl	✓		Rep. Schneider	✓	
Rep. Froseth	✓		Rep. Winrich		
Rep. Karls	✓		Rep. Wolf	✓	
Rep. Kasper	✓				
Rep. Meier	✓				
Rep. Nathe	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Froseth

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

**REPORT OF STANDING COMMITTEE**

**HB 1173: Government and Veterans Affairs Committee (Rep. Grande, Chairman)**  
recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).  
HB 1173 was placed on the Eleventh order on the calendar.

2009 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1173

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1173


Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 25, 2009

Recorder Job Number: 9728

Committee Clerk Signature



Minutes:

Representative Klemin: I sponsored House Bill 1173 at the request of the justices and judges in North Dakota. This would allow them as I understand it to develop a free tax health care savings plan on which the interest would not be transuded until they used it. This I understand was approved by the employee benefits committee last summer. Here today is Justice Mary Maring.

Mary Muehlen Maring, Justice of the North Dakota Supreme Court: Written testimony attached. Testifies in favor of the bill.

Senator Wanzek: My understanding of health savings plans is that they have to coincide with a qualifying high deductible health insurance program.

Justice Maring: I will have to differ that question.

Deb Knudsen, Public Employees Retirement System: This plan would not require such a plan to be in place. This plan would be held in trust and you could not opt out of it. We would have an election and if seventy five percent voted for this plan it would go through.

Senator Nodland: This is one agency in the state do you think it will start a process for others coming and doing the same thing?

Deb: I can't say that it wouldn't happen but what makes this a unique opportunity for the judges is their distinct group. So it would be more difficult for another group to come in. For instance the rest of the state employees are classified together. And to get seventy five percent of them to say they want to do that would be rather difficult.

Senator Andrist: Why is this not available to everybody? As I understand it we are stuck with PERS which I rather not have and I'd be happy to get an alternative to it. Only for retired people or self employed people.

Deb: You are prefunding it while you are actively employed and you're putting your own money away. It is similar to the flex comp program only the flex program requires you to make a claim within a certain tax year. And this one would not work that way it would be a pool of money that you would be able to use for your expenses in a medical area.

Senator Andrist: Can you not contribute to it after retirement?

Deb: I don't have that information; it seems to me it has to be prefunded.

Chairman Klein: Do we need a vesting time or so once we're signed on we can retire tomorrow?

Deb: There is no vesting time required because it's your own money.

Senator Wanzek: As I understand it, it's a savings account. It is kind of like an IRA. The use of it has to be qualified for certain medical expenses.

Deb: There are different flavors for different accounts. It's very straight forward.

Senator Potter: The only thing you can take the money out is for health costs.

Deb: I would have to check on that as well. When we set up the plan we will be deciding how to implement a lot of different options.

Chairman Klein: Closed the hearing on HB 1173.

Senator Horne: Motion a do pass.

Senator Nodland: Second.

Row Call Vote: Yes: 7 No: 0 Absent: 0

Floor Assignment: Senator Horne

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Date: Feb 25, 2009  
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1173

Senate

Committee

**Industry, Business and Labor**

Check here for Conference Committee

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

Action Taken  Pass  Do Not Pass  Amended

Motion Made By Senator Horne Seconded By Senator Nodland

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman	✓		Senator Arthur H. Behm	✓	
Senator Terry Wanzek - V.Chair	✓		Senator Robert M. Horne	✓	
Senator John M. Andrist	✓		Senator Tracy Potter	✓	
Senator George Nodland	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Horne

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



**REPORT OF STANDING COMMITTEE**

**HB 1173: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1173 was placed on the Fourteenth order on the calendar.**

2009 TESTIMONY

HB 1173

**HEARING ON HB 1173**

**House Government and Veteran Affairs**

**January 22, 2009**

Representative Grande and Members of the Committee:

I am Carol Kapsner, one of the justices of the Supreme Court. On behalf of the district judges and the justices of the Supreme Court, I appear to ask that you recommend a "Do Pass" on House Bill 1173. The purpose of the bill is to create a tax-favored method for judges to create accounts to pay health care costs during retirement. A section 115 trust is the vehicle that meets the requirements of the Internal Revenue Code to obtain tax benefits for savings accounts to pay health care costs during retirement. The bill carries a fiscal note showing no cost to the State, because these accounts would be funded by payroll deductions from the judges' pay and not by employer contributions.

The legislation permits the creation of a health care savings plan. The judges' contributions to the plan would be made with pre-tax dollars, and no tax is paid on distributions made to pay health care costs after retirement. The type of costs that can be paid out of the trust accounts after retirement would include health, dental, and long-term care insurance, as well as out-of-pocket health care costs. Minnesota has a similar plan for its judges.

This is a group benefit which requires several steps to achieve. The first is approval by the employer. Passage of HB 1173 would constitute the authority of the Public Employees Retirement System Board to establish the vehicle for this benefit. The second is the approval by the members of the group. As the bill notes, it would take a vote of seventy-five percent of the active district judges and justices to approve this plan. If, however, 75% approval is reached, the

*Attachment #1*

plan is binding on all members of the group. If HB 1173 is passed and the judges vote to approve it, a payroll deduction of a fixed percentage of income would be deducted from each judges' pay. The judges have considered this on a preliminary basis at our Judicial Conference and have indicated that they would approve approximately a 1% deduction, although no formal vote has yet been taken. The amounts deducted would then remain in the account until the retirement of the judge or justice after which withdrawals can be made for health care purposes.

This bill has been reviewed by the Legislative Employee Benefits Committee and has been given a "favorable recommendation" and I would ask this committee to give it a "Do Pass" recommendation. Thank you.

**EMPLOYEE BENEFITS PROGRAMS COMMITTEE  
REPORT TO THE 61ST LEGISLATIVE ASSEMBLY  
REGARDING PROPOSED HOUSE BILL NO. 1173**

**Date:** October 21, 2008

**Sponsor:** Representative Lawrence R. Klemin

**Proposal:** Allows the PERS Retirement Board to establish a trust health care savings plan for all Supreme Court and district court judges participating in PERS.

**Actuarial Analysis:** The costs of the proposal should be nominal and the proposal appears to meet Internal Revenue service requirements.

**Committee Report:** Favorable recommendation.

FORM AND STYLE APPROVED BY LEGISLATIVE COUNCIL

HEARING ON HB 1173

Senate Industry, Business and Labor  
February 25, 2009; 2:00 p.m.

Testimony of Mary Muehlen Maring, Justice  
North Dakota Supreme Court

Senator Klein and Members of the Committee:

I am Mary Muehlen Maring, one of the justices of the Supreme Court. On behalf of the district judges and the justices of the Supreme Court, I appear to ask that you recommend a "Do Pass" on House Bill 1173. The purpose of the bill is to obtain authority to create a vehicle for judges to establish accounts to pay health care costs after retirement. The bill carries a fiscal note showing no cost to the State, because these accounts would be funded by payroll deductions from the judges' pay and not by employer contributions.

The legislation permits the creation of a health care savings plan in accordance with the requirements of the Internal Revenue Code. The judges' contributions to the plan would be made with pre-tax dollars, and no tax is paid on distributions made to pay health care costs after retirement. The type of costs that can be paid out of the trust accounts after retirement would include health, dental, and long-term care insurance premiums, as well as out-of-pocket health care costs. Minnesota has a similar plan for its judges.

This is a group plan which first requires approval by the employer. Passage of HB 1173 would constitute the authority for the Public Employees Retirement System Board to establish the vehicle for this plan. The second step is approval by the members of the group. As the bill notes, it would take a vote of seventy-five percent of the active district judges and justices to approve this plan. If, however,

seventy-five percent approval is reached, the plan is binding on all members of the group. If HB 1173 is passed and the judges vote to approve it, a payroll deduction of a fixed percentage of income would be deducted from each judges' pay. The judges have considered this on a preliminary basis at our Judicial Conference and have indicated that they would approve approximately a 1% deduction, although no formal vote has yet been taken. The amounts deducted would then remain in the account until the retirement of the judge or justice after which withdrawals can be made for health care purposes.

This bill has been reviewed by the Legislative Employee Benefits Committee and has been given a "favorable recommendation," and I would ask this committee to give it a "Do Pass" recommendation. Thank you.



**North Dakota**  
**Public Employees Retirement System**

400 East Broadway, Suite 505 • PO Box 1657  
 Bismarck, North Dakota 58502-1657

Sparb Collins  
 Executive Director  
 (701) 328-3900  
 1-800-803-7377

FAX: (701) 328-3920 • EMAIL: NDPERS-INFO@ND.GOV • www.nd.gov/ndpers

February 26, 2009

The Honorable Senator Jerry Klein  
 Chair, Senate Business Industry & Labor Committee  
 North Dakota State Legislature  
 State Capitol  
 Bismarck, ND 58505

Dear Senator Klein:

I was able to contact our health actuary and consultant to gather more information after the hearing yesterday. The specific questions I recall are listed below with the responses I received.

1. **Are employee contributions to the Section 115 trust health care savings account subject to FICA?** *It is our understanding that qualified employee contributions to the Section 115 trust are not subject to FICA as long as all IRC qualifications as outlined in our October 16, 2008 letter to Representative Grande are satisfied.*
2. **Can contributions to the Section 115 trust savings account be used for any purposes other than reimbursement of qualified health care expenses?** *Because of the unique tax favored treatment of the contributions, it is our understanding that they can only be used for qualified health care expenses, including premium payments, as stipulated by the IRS and cannot be accessed for other purposes.*
3. **What if there is a trust health care savings account balance at the time of a retiree's death?** *It is our understanding that a deceased retiree's spouse and legal dependents can continue to use the account to reimburse qualified health care expenses on a tax-free basis until the account is depleted. If the deceased retiree has no spouse or dependents, then a designated beneficiary can access the account to reimburse qualified healthcare expenses; however, the reimbursements would be considered taxable income to the beneficiary.*

If there is any additional information you would like to receive Senator Klein, please contact Sparb Collins at 701-328-3901.

Sincerely,

Deb Knudsen, Manager  
 Benefits Planning & Research