

2011 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1133

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee  
Fort Union Room, State Capitol

HB 1133  
January 14, 2011  
12918

Conference Committee

Committee Clerk Signature *Carmen Hart*

## Explanation or reason for introduction of bill/resolution:

Definitions of beneficiary and salary, incorporation of federal law changes, and modification of death and beneficiary provisions under the TFFR

## Minutes:

**Chairman Bette Grande** opened the hearing on HB 1133.

**Fay Kopp, Deputy Director, Retirement and Investment Office**, appeared. **Attachment 1.**

**Rep. Lisa Meier:** When the death benefit is not claimed, what happens then to the funds that are within the death benefit at that time?

**Fay Kopp:** As it exists today, the dollars just remain with the fund. If someone comes to claim that fund, if no beneficiary has been established, they are able to receive them. Now in order for someone to claim those dollars, there would actually have to be an estate opened or probate proceedings commenced in order to do so. This has not been an issue in the twenty years I have been with the plan. It is more of an administrative issue as far as cleaning up the statues, but it has not had any impact. When a member has passed away, I have always seen at least in these last 20 years that a beneficiary has been named or is available to claim those death benefits.

**Rep. Glen Froseth:** Is there a time frame on the claims that may be submitted or does that come under the statue of limitations and other code?

**Fay Kopp:** There is no time limit at which a beneficiary or an heir may claim benefits under the plan.

**Rep. Gary Paur:** I heard you say that when a member dies and on Page 4, Line 30 it says a beneficiary to receive death benefits under the plan if the member dies.

**Fay Kopp:** Maybe that could be modified to say under the plan when the member dies. It might be most appropriate, and if that amendment was put forth, obviously it makes more sense, I agree. Thank you.

**Rep. Ron Guggisberg:** I don't notice it in the legislation here, but in your testimony it says that things that are not eligible as retirement salary is payments for unused leave. If somebody has some unused vacation and when they retire they get paid for that. That is not eligible?

**Fay Kopp:** That is correct. Any payments for unused sick leave, vacation leave, what have you, would not be reported to TFFR and would not be included as part of the salary upon which contributions are based or benefits are calculated.

**Rep. Ron Guggisberg:** It just doesn't make sense to me because if they stayed on and used their vacation until they were done, they would get that included in their pension, but if they take the payout then they don't.

**Fay Kopp:** That basically is correct. I think if you look at it from the respect that a teacher that might be earning a \$40,000 salary and that's maybe been what their salary has been these last few years prior to retirement, if they get a payout of \$5,000 for unused vacation, that would spike that last year's salary up to \$45,000 upon which we would be calculating their retirement benefit. Unlike if it was unused vacation pay, their salary wouldn't be spiking up. It would be 40, 41, 42,000 whatever it would be because it is used. It is meant to prevent any additional payment such as that from spiking normal contract retirement salary for calculation of benefit purposes.

**Rep. Ron Guggisberg:** That clears it up. It was addressed and everybody is aware of it then.

**Josh Askvig, NDEA,** supports the bill.

There was no one neutral or in opposition to this bill.

The hearing was closed.

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee  
Fort Union Room, State Capitol

HB 1133  
February 3, 2011  
13950

Conference Committee

Committee Clerk Signature

*Carment Hart*

## Explanation or reason for introduction of bill/resolution:

Definitions of beneficiary and salary, incorporation of federal law changes and modification of death and beneficiary provisions under the TFFR.

## Minutes:

**Chairman Bette Grande** opened the meeting by stating this bill had some technical changes like Section 1 dealing with adding the word trust. There are updates on Page 2. Page 3 deals with IRS code issues that they need to be in compliance with. They have a change for designation for death of a member and how that would take place. On the bottom of Page 4 we need to change the word if to when.

**Vice Chairman Randy Boehning** made a motion to amend the word if to when on Page 4, Line 30.

**Rep. Vicky Steiner** seconded the motion.

**A voice vote was taken. Motion carried.**

**Rep. Mark Sanford** made a motion for a **Do Pass as amended.**

**Rep. Vicky Steiner** seconded the motion.

**Rep. Karen Rohr:** Because it includes so many legal terms, does it get reviewed by legal counsel?

**Chairman Bette Grande:** This is written by legal counsel.

**DO PASS AS AMENDED. 13 YEAS, 0 NAYS. Rep. Mark Sanford is the carrier of this bill.**

# FISCAL NOTE

Requested by Legislative Council  
12/29/2010

Bill/Resolution No.: HB 1133

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 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.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

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).*

HB 1133 includes technical and administrative changes to the TFFR program relating to Internal Revenue Code compliance, eligible salary, beneficiary, and death benefit provisions.

The proposed changes are not expected to have any fiscal impact.

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.*

NA

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.*

NA

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.*

NA

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.*

NA

Name:	Fay Kopp	Agency:	ND Retirement & Investment Office
Phone Number:	328-9895	Date Prepared:	01/05/2011

11.0305.01001  
Title.02000

Adopted by the Government and Veterans  
Affairs Committee

February 3, 2011

VR  
2/3/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1133

Page 4, line 30, replace "if" with "when"

Renumber accordingly

Date: 2-3-11  
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1133

House GOVERNMENT AND VETERAN AFFAIRS Committee

Check here for Conference Committee

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

Action Taken  Do Pass  Do Not Pass  Amended  Adopt Amendment

Rerefer to Appropriations  Reconsider

Motion Made By Rep Boehning Seconded By Rep Steiner

Representatives	Yes	No	Representatives	Yes	No
Chairman Bette Grande			Bill Amerman		
Vice Chairman Randy Boehning			Ron Guggisberg		
Glen Froseth			Lonny Winrich		
Karen Karls					
Lisa Meier					
Gary Paur					
Karen Rohr					
Mark Sanford					
Vicky Steiner					
Roscoe Streyle					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

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

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

*if to when  
Pg 4  
Line  
Vote motion Carried  
to adopt  
amendment*

Date: 2-3-11  
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1133

House GOVERNMENT AND VETERAN AFFAIRS Committee

Check here for Conference Committee

Legislative Council Amendment Number 11.0305.01001

Action Taken  Do Pass  Do Not Pass  Amended  Adopt Amendment

Rerefer to Appropriations  Reconsider

Motion Made By Rep Sanford Seconded By Rep Steiner

Representatives	Yes	No	Representatives	Yes	No
Chairman Bette Grande	✓		Bill Amerman	✓	
Vice Chairman Randy Boehning	✓		Ron Guggisberg	✓	
Glen Froseth	✓		Lonny Winrich	✓	
Karen Karls	✓				
Lisa Meier	✓				
Gary Paur	✓				
Karen Rohr	✓				
Mark Sanford	✓				
Vicky Steiner	✓				
Roscoe Streyle	✓				

Total (Yes) 13 No 0

Absent \_\_\_\_\_

Floor Assignment Rep Sanford

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

**REPORT OF STANDING COMMITTEE**

**HB 1133: Government and Veterans Affairs Committee (Rep. Grande, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1133 was placed on the Sixth order on the calendar.

Page 4, line 30, replace "if" with "when"

Renumber accordingly

2011 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1133

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veteran's Affairs Committee  
Missouri River Room, State Capitol

HB 1133  
March 17, 2011  
15572

Conference Committee

Committee Clerk Signature

*Kate O'Neil*

## Explanation or reason for introduction of bill/resolution:

Relating to definitions of beneficiary and salary, incorporation of federal law changes and modification of death and beneficiary provisions under teachers' fund for retirement.

## Minutes:

*Testimony attached*

**Fay Kopp:** Deputy Director, Retirement Officer North Dakota Retirement and Investment Office (RIO)-Teachers Fund for Retirement (TFFR). See attached testimony #1.

**Chairman Dever:** House made amendments to this legislation?

**Fay Kopp:** No. Depending on what sorts of changes it could be changes

**Senator Nelson:** This is the technical corrections bill?

There was no further testimony in support, opposition or neutral position, Chairman Dever closed the public hearing A motion for a do pass was made by Senator Nelson with a second by Senator Marcellais, roll was taken, the motion passed 7-0 with Senator Nelson carrying the bill to the floor.



**REPORT OF STANDING COMMITTEE**

**HB 1133, as engrossed: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1133 was placed on the Fourteenth order on the calendar.**

2011 TESTIMONY

HB 1133

Attachment  
1  
1133

HB 1133

HOUSE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE

Fay Kopp, Deputy Director - Retirement Officer  
Retirement and Investment Office (RIO) - Teachers' Fund for Retirement (TFFR)  
January 14, 2011

HB 1133 was submitted by the TFFR Board. This bill makes a number of technical and administrative changes to the TFFR program. These changes are not expected to have an actuarial effect on the plan.

In general, the proposed changes clarify the definition of eligible retirement salary and update beneficiary and death benefit provisions. The bill also incorporates federal tax law changes to stay current with federal Internal Revenue Code (IRC) changes as they relate to qualified governmental plans. The amendments are intended to prevent a change in the federal IRC from automatically triggering a change in ND law.

**Section 1. NDCC 15-39.1-04 (2) Definitions: Beneficiary**

Clarifies the definition of beneficiary to include any person, estate, trust, or organization designated in writing by a participating member, or any benefit recipient, or as provided for in NDCC 15-39.1-17 (payment of death benefits).

Language describing to whom and when death benefits are paid to a beneficiary or spouse, has been moved to NDCC 15-39.1-17. (See Section 4.)

**Section 1. NDCC 15-39.1-04 (9) Definitions: Eligible Retirement Salary**

State statutes broadly define eligible retirement salary for TFFR purposes. In general, eligible salary means a member's earnings in covered employment for teaching, supervisory, administrative, and extracurricular services during a school year. The current definition of salary also includes bonus amounts paid to members for performance, retention, experience, and other service-related bonuses, unless amounts are conditioned on or made in anticipation of an individual member's retirement or termination.

State statutes also describe what benefits or payments are not eligible retirement salary. For example, eligible retirement salary does not include fringe benefits; insurance programs; payments for unused leave; early retirement incentive payments, severance pay, or any other payments conditioned on or made in anticipation of retirement or termination; teacher's aide pay, referee pay, bus driver pay, or 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; or other benefits or payments not defined which the board determines to be ineligible teachers' fund for retirement salary.

Salary practices which used to be relatively simple and straightforward (employment contract based on negotiated agreement containing salary schedule and extracurricular activity pay schedules) are becoming more complex (salary schedules with special payment provisions, special payments funded through oil royalty funds, unused budget surpluses, new programs, special grants, additional professional development funding, pay for performance programs, etc.) Some special payments are included in negotiated agreements, while others are not included and based upon special school board action or policy. Sometimes special payment provisions are included on the member's employment contract; sometimes they are not. The reasons for these special payments are many and varied. TFFR is increasingly faced with making determinations about whether special payments are eligible retirement salary for TFFR purposes, subject to employer and employee contributions, and ultimately used to calculate pension benefits at retirement.

The proposed changes to the salary definition are being made to comply with IRS requirements, to better clarify eligible salary, and to clearly allow the Board to determine ineligible salary.

- Updates reference to federal tax law changes in effect on August 1, 2011 to comply with IRS qualification requirements. Increases the maximum annual compensation limit that can be used in benefit calculations (\$245,000 in 2011). No active TFFR member has a salary large enough to be affected by this limit.
- Modifies whether certain special payments are includable as eligible retirement salary. Current language allows any performance, retention, experience, or service-related bonus to be included, unless it was conditioned on, or made in anticipation of, the member's retirement. HB 1133 modifies this language by removing retention, experience and service related bonuses from automatically being included as eligible retirement salary, while performance payments may continue to be included. It is TFFR's understanding that the only bonuses that can legally be paid to teachers are recruitment/signing bonuses (authorized in NDCC 15.1-09-33.1), and those payments are clearly described as ineligible salary for retirement purposes. Any other amounts paid to members may need to be reviewed to determine whether such special payments are for performance of duties (eligible retirement salary), or whether the amounts are conditioned on or made in anticipation of an individual member's retirement or termination (ineligible retirement salary). The Board plans to detail the criteria for making these determinations in administrative rules.
- Defines recruitment bonuses (which are not eligible retirement salary) as the signing bonuses authorized in NDCC 15.1-09-33.1 in 2007.

- Clarifies the TFFR Board is authorized to determine whether special benefits or payments not defined in this section are eligible or ineligible retirement salary.

### **Section 2. NDCC 15-39.1-10(4) Eligibility for benefits**

Updates reference to federal tax law changes in effect on August 1, 2011 to comply with IRS qualification requirements. Provision relates to minimum distribution requirements requiring payment of retirement benefits at age 70.5 or termination of employment, whichever is later.

### **Section 3. NDCC 15-39.1-10.6 Benefit limitations**

Updates reference to federal tax law changes in effect on August 1, 2011 to comply with IRS qualification requirements. Increases the Section 415 maximum annual benefit limit (\$195,000 in 2011). To date, no retiree's benefit has ever exceeded the annual benefit limit, nor is it expected to apply to any retiree's benefit in the future.

### **Section 4. NDCC 15-39.1-17 Death of Member**

Because some of TFFR's beneficiary and death benefit payment provisions are unclear, out of date, and could be better handled through probate proceedings, TFFR's legal counsel from the Attorney General's Office recommends amending this section.

- Incorporates various provisions relating to the naming of beneficiaries which were previously contained in the Beneficiary definition section. Although relocated, all of these provisions are present in current law:
  - Members may designate a beneficiary.
  - If the member is married, the spouse is the beneficiary, unless the spouse consents in writing to the naming of another beneficiary.
  - The member may name a contingent beneficiary to receive the member's benefits if the primary beneficiary dies before receiving all benefits due.
  - If the member dies without having named a contingent beneficiary, the primary beneficiary may name one.
- Deletes outdated language.
- Clearly describes to whom, under what conditions, and what amount of death benefits should be paid to a beneficiary, spouse, or estate.
- Updates death benefit language if there is no named beneficiary or spouse. Death benefits will no longer be paid directly to the surviving children, but will instead be paid to the estate of the deceased member. The estate would then be responsible for ensuring death benefits are paid out to surviving children or others as required under probate law. TFFR would no longer be responsible for

identifying and locating surviving children in order to make death benefit payments. This is a task better suited for the court system through probate proceedings.

- Removes language that requires TFFR to pay benefits to any "heirs at law" who file claims with TFFR. Currently, TFFR is responsible for determining the meaning of "legal heirs" for the purpose of accepting or rejecting claims for death benefits. Again, this is an area of law that is well defined under North Dakota probate law. If there is no spouse, and no beneficiaries are named and no probate proceedings have been commenced for the member, under the proposed amendment, TFFR will maintain possession of the account balance until a probate estate has been opened.
- Removes the seldom used 60-monthly payment option for beneficiaries of a deceased vested non-retired member. Multiple beneficiaries would receive death benefits as a lump sum payment. If only one beneficiary is named, death benefits would be paid as a lifetime monthly annuity or a lump sum payment.

#### **Section 5. NDCC 15-39.1-20 Withdrawal from fund**

This change is being made at the request of TFFR's outside tax counsel as part of a legal review for compliance with Internal Revenue Code (IRC) qualification requirements. TFFR Board filed an IRS determination letter request in 2010 to ensure that the plan document continue to meet all IRC requirements. TFFR received a favorable IRS determination letter in 2001.

- Clarifies that a member or a member's beneficiary may elect to have any portion of an eligible rollover distribution paid to an eligible retirement plan permitted under IRC. This provision codifies current practice since TFFR is required under federal law to allow beneficiaries to elect direct trustee to trustee transfers.

#### **SUMMARY**

HB 1133 includes various technical and administrative changes to the TFFR program. Based on actuarial analysis from TFFR's actuarial consultant in a letter dated October 22, 2010, these changes are not expected to impact the actuarial position of the fund.

The interim Legislative Employee Benefits Programs Committee (LEBPC) voted unanimously to give this bill a favorable recommendation. The TFFR Board respectfully requests that your Committee give a "do pass" recommendation to this bill.

## HB 1133

### HOUSE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE

Fay Kopp, Deputy Director - Retirement Officer  
Retirement and Investment Office (RIO) - Teachers' Fund for Retirement (TFFR)  
March 17, 2011

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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; or other benefits or payments not defined which the board determines to be ineligible Teachers' Fund for Retirement salary.

Salary practices which used to be relatively simple and straightforward (employment contract based on negotiated agreement containing salary schedule and extracurricular activity pay schedules) are becoming more complex (salary schedules with special payment provisions, special payments funded through oil royalty funds, unused budget surpluses, new programs, special grants, additional professional development funding, pay for performance programs, etc.) Some special payments are included in negotiated agreements, while others are not included and based upon special school board action or policy. Sometimes special payment provisions are included on the member's employment contract; sometimes they are not. The reasons for these special payments are many and varied. TFFR is increasingly faced with making determinations about whether special payments are eligible retirement salary for TFFR purposes, subject to employer and employee contributions, and ultimately used to calculate pension benefits at retirement.

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  - The member may name a contingent beneficiary to receive the member's benefits if the primary beneficiary dies before receiving all benefits due.
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#### **SUMMARY**

HB 1133 includes various technical and administrative changes to the TFFR program. Based on actuarial analysis from TFFR's actuarial consultant in a letter dated October 22, 2010, these changes are not expected to impact the actuarial position of the fund.

The interim Legislative Employee Benefits Programs Committee (LEBPC) voted unanimously to give this bill a favorable recommendation. The House also unanimously approved the bill. The TFFR Board respectfully requests that your Committee give HB1133 a “do pass” recommendation.

Thank you.