

2011 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1134

# 2011 HOUSE STANDING COMMITTEE MINUTES

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

HB 1134  
January 14, 2011  
12919

Conference Committee

Committee Clerk Signature <i>Carmen Hart</i>
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## Explanation or reason for introduction of bill/resolution:

Definitions of member tiers under the TFFR, employee and employer contribution requirements, eligibility for normal unreduced retirement benefits eligibility for early reduced retirement benefits, eligibility for disability benefits, and retiree reemployment under the TFFR

## Minutes:

**Chairman Bette Grande** opened the hearing on HB 1134.

**Fay Kopp, Deputy Director-Retirement Officer, ND Retirement and Investment Office (RIO)-Teachers' Fund for Retirement (TFFR)** appeared. **Attachment 1.**

**Rep. Lonny Winrich:** Explain the significance of a guaranteed account value for an individual.

**Fay Kopp:** A member's account value represents the amount that the employee has paid in plus a statutory rate of 6% interest earnings on that account. That minimum must be paid to any employee either upon termination or upon retirement. For example, you had an account value of \$50,000 and you retired and passed away very early in your retirement, within a year or so and say your wife was a beneficiary, if you hadn't selected joint and survivor option, the remainder of that account value would have to be paid to that beneficiary.

**Rep. Lonny Winrich:** I have received quite a bit of mail on this particular bill, and most of it is supportive. The one issue that seems to bother some people in particular is the change for tier 1 non grandfathered employees from the rule of 85 to the rule of 90. I was thinking about the way that full benefits for social security retirement were phased in over a series of ages. Was any consideration given to phasing that change in so it didn't hit so many people so drastically?

**Fay Kopp:** Yes, the TFFR Board and the study group evaluate a lot of different options as to how to apply changes to the current active memberships. One of the issues, however, is that by phasing it in, the savings becomes smaller and smaller. As is, savings from benefit changes are pretty small unless you apply them to a larger group of people. I think a lot of thought was given. At the end, the board—you need to establish a line somewhere. While

phasing was an option, we felt it would get very complicated, and the cost would not be worth making at that point.

**Rep. Lonny Winrich:** The most encouraging thing about this is on Chart 2. Even if you don't achieve the 8% average interest over the next few years and even if it is 0%, that curve still turns around and starts to climb up again a little bit.

**Fay Kopp:** For clarification, the percents on the side relate to what our return would be for this year. We would still be assuming 8% every year into the future after that. The 0% line is for this current year. This proposal keeps us from running out of funds in the next 30 years.

**Rep. Roscoe Streyle:** What is the breakdown on the fund as far as percentage of stockholdings, bonds, and is there any North Dakota real estate held in the investment fund?

**John Geissinger, Executive Director and Chief Investment Officer, NDRIO,** appeared to answer the above question. As of the end of the fiscal year the fund had approximately 27% in domestic large cap equity, 9% in domestic small cap equity, 14% in international equity, 6% in equity in emerging market countries, 14% in domestic fixed income, 7% in below investment great fixed income--invest in the US companies, 6% in international fixed income, 10% in global real estate—the majority of the real estate is in the United States, 5% in private equity, and 2% allocation to cash. I don't have the exact breakdown in how much of our real estate is actually located in the state of North Dakota. We hire outside managers to implement all of the investments and strategies that we pursue in the fund. I would be more than happy to request from our managers a breakdown if the committee would so prefer.

**Chairman Bette Grande:** Would you do me a favor and print off that nice little colored pie chart of what you just said and get that to the committee.

**Rep. Roscoe Streyle:** There is really not much of the fund invested in North Dakota real estate?

**John Geissinger:** For the most part that is a fair assumption.

**Vice Chairman Randy Boehning:** I was looking at the fiscal note. That is just showing the one year of the biennium that should be collecting the 2%. Then the following biennium year that would be 3. You are collecting 2%. Then it jumps up to 4%.

**Fay Kopp:** Correct. Another way to look at this if you look at Chart 4 on Page 12, it shows on a year by year basis of what we project would come in employee and employer contributions. The first line is the year beginning July 1, 2010-2011. We have a projected payroll of our active membership of about \$493 million. Under current law about \$43.9 million will come in from the employer, about \$38.2 million from the employee, or total contributions under current law, \$82.1 million this year. If you look at July 1, 2011-2012 there is no increase there either. That is the first year of the next biennium. The increase becomes effective July 1, 2012-2013 at which time we are projecting increases in payroll,

\$519 million. We expect under current law total contributions of \$86.3 million to come in, employer contributions of \$56.7. The difference between the \$56.7 in employer contributions and what they would already be paying of \$46.1 is about \$10 ½ million, and employee contributions, the difference between the \$51 and the \$40 is about \$11.2. The other difference in there is reemployed retiree contributions, so anytime you see about \$600 million difference, it is that share. Employee contributions are always going to look about \$600 million more per year because of that provision. Again, total \$108 million compared to the \$86.3 million, a total of \$21.8 of which about half of that is the employer share in that year. This is what I used as the basis for the fiscal note having to, of course, pull out employer side only and then breaking the employer side out between school districts, counties, and state.

**Chairman Bette Grande:** As you are looking at that chart and looking at that second grouping of employer-employee total, where you see Bill 54, that is what we called it in the interim. It is now called HB 1134.

**Rep. Bill Amerman:** In your projected payroll in testimony and just common sense, the employer increases into the fund, payrolls probably aren't going to be as much. Was that kind of figured when you projected this?

**Fay Kopp:** We utilized our typical salary projections in running these scenarios. This is the maximum amount that we believe that it would be. I think realistically speaking, it is likely that it could be somewhat less, but we wanted to ensure that this would be the maximum. This is assuming average payroll increases of right around 2 ½ %. That is generally what we have seen payroll do in the last few years, so that is what is projected in the future.

**Rep. Mark Sanford:** As a follow up to that question, assumptions are a critical part of whatever the actuaries \_ the game. You stated that the assumption for increase in salary is 2 ½ %. Could you share what the assumption is for final average salary going forward in a similar time frame? Could you comment on the 8% return assumption, because sometimes that gets a little bit more attention than anything else? We know the return over a long time frame is almost 9%. But the 8%--there is some skepticism to that.

**Fay Kopp:** As it relates to salary increase assumptions—when the actuary analyzes all of the salary data for the plan—the board also went through what is known as an experience study in the last year. In that experience study we compare actual experience with assumed experience that the actuary uses as it relates to salary increases, payroll growth, and the number of people that are going to retire, and when they are going to pass away. All of these things are assumptions that the actuary makes. We test that at least every five years comparing actual experience with expected experience and make modifications as we need to. Obviously, the salary increase assumption is a bit volatile. We are not exactly sure what is going to happen in the future. As we have looked back historically we have adjusted salary increases. When we made our adjustments this round, we did assume that salaries would increase somewhat greater. When you go through the salary assumptions, we also utilize the consideration that people will earn these salary increases at different times in their career. Often times salary increases are greater at the front end of a person's career than at the back end of a person's career once they top out on salary scales or

things of that nature. This is kind of a blended average of all that condition happening. It is just an assumption. Even if we didn't assume any salary increases and that is where I go back to my rule of thumb. Let's say we assume that there will be no salary increases and that annual payroll is at \$500 million. That is where my rule of thumb comes in—for every 1% increase in contributions, that equates to about \$500 million per year in general. Earlier in my testimony I indicated somewhere between 40 and 45 million after the adjustments are phased in. It is somewhat dependent. As it relates to the 8% investment return assumption, certainly over the long term, over the last 30-year period, TFFR has earned an 8% investment return rate. History certainly supports that. Where it will go in the future, there certainly are some other questions. We are long-term investors, and that is one of the things that we have to consider. Eight percent, we will be looking closely at. We may have to change that in the future recognizing that if we think that earnings will be lower, then that will require contribution rates be made up higher. That is the flip side of that.

**Vice Chairman Randy Boehning:** With all these assumptions there is no increase in the retirement paid to the teachers, correct?

**Fay Kopp:** Under the proposal we have here, there are no benefit increases to retirees.

**Chairman Bette Grande:** For clarification, their ending salary and that type of thing has the effect of that, but not, as you used the word, enhancements. As you hear her talking about that 90%, the goal was to get to this 90%. Once we get to that 90% and we cut back on those percentages going in, then we are going to see what the fund does in 40 years. Do we need to make an adjustment yet again to see employer-employee increases? What does it take to get to the 100 if they were looking for 100% funded? The actuary dealing with this dealt with a 90%. That is a historical thing with this.

**Vice Chairman Randy Boehning:** If a teacher retires with a pay of \$1500, that pay is flat until he dies or until we make a decision to change the retirement benefit to them?

**Fay Kopp:** That is correct. Once we start paying out that \$1500 per month or whatever it is, there is no guarantee that the amount will ever go up.

**Rep. Gary Paur:** At what point does the market returns-- have you studied when they start going down? You are assuming 8%. At such a point, would it be 7, 6, 5?

**Fay Kopp:** Certainly the board has analyzed what would happen if our returns are greater than 8% or less than 7%. If you see the charts that we have included, even at 8% we are basically running to 0 within about 30 years. If we only earn 7% in the next 30 years, that line just moves forward. It probably moves forward by about 10 or 15 years. Ten years for sure it moves forward.

**Rep. Gary Paur:** At which point does it reverse and not achieve eventually over 50 or 100 years, 90%? You are always talking about it going up. At some point when the percentage of return to keep reducing that, that line would start going down instead of up.

**Fay Kopp:** If no changes are made.

**Rep. Gary Paur:** With the changes made.

**Fay Kopp:** If changes are made and we earned a 7% return in the future instead of a 8% return?

**Rep. Gary Paur:** Then you never are going to achieve 90%?

**Fay Kopp:** Very likely, it would not happen.

**Rep. Gary Paur:** So we have to have 8% in order to?

**Fay Kopp:** Under this proposal, yes, without additional contributions or other adjustments made.

**Rep. Marvin Nelson** appeared. This bill should be thought of as a stabilization bill. This really doesn't fix the entire shortfall of the fund, but it is a very necessary bill and needs to be done at a minimum. We need to do this much. I do have a couple of serious concerns with it. A major one would be on Page 4, the disability retirement and the change in that. It would be in Sections 1 and 2, Lines 4-12. This change as was testified has a very, very small actuarial change, 5/100 of 1% is all that the fund gains by changing this disability benefit. Yet, it has a huge effect on those few individuals that need these disability benefits. As was testified, about six or seven people a year become disabled. This wouldn't affect those who are over 20 years of service at all. This doesn't affect anybody who has already become disabled. You maybe won't get a lot of contact by it, because the people that would be concerned would be the people who aren't now disabled, but maybe would think that in the next few years they are going to become disabled which youth being the way it is, is kind of probably nobody. To give you an example, someone under this bill who had five years of service would only receive 10% of their five-year average salary as their disability benefit. I would doubt that it would average more than \$300 a month. Under the current law, they would receive 40% of their average salary. That is a huge difference, 30% of their salary benefit that they would be giving up there. As they continue their years of service, that difference becomes less but it doesn't reach the same until they would have the 20 years of service. For a very small gain in actuary of the fund, we are going to severely affect a very small number of people. I just don't really understand why that was a part of the bill, because it just doesn't seem to have any real gain to me. To give you a bit of background, I serve on our Lutheran Brethren Church board, and it is the whole synod, and I am a trustee on that so I have dealt a lot with some of these issues with our own trust funds. The 8% rate of return is an area of concern. Number one, I would personally say that is very optimistic. It is not just me. Many of the advisers in the industry say that is very optimistic. Matter of fact, Kallen (?) Associates, which advises our board, until recently had a paper for free on their website which said pension funds can't expect to continue getting 8% rate of return unless they go into higher long term percent investment plus leverage. I remember one of their side boxes said to get an 8 ¼% rate of return, a pension fund should leverage itself about 55%. This seems to be the trend in the industry now as funds are under a lot of pressure to raise their earnings above what they can really seem to find in the market. What you do is take your favorable ability to borrow and you go out and buy more investments that should pay you more over the long term than what the interest costs you. By projecting everything under an 8% instead of a 7 or 7 ½% which would be much more

doable, a huge difference just a small percentage makes, we put the board under a lot of pressure to ramp up their risk, to take more volatile investments or even potentially to borrow. I don't actually know if under state law they could leverage their funds or not, but that's where a lot of pension funds are going to go. They are going to leverage their investments. The other thing I have a concern about is the long term relationship with our teachers. I can't tell you how many times I have already been contacted by teachers who say we have been paying in this 15% basically of my salary towards this pension, and I want that protected and rightfully so. The pension that we are paying is really a fairly reasonable return on that percentage of salary. Look what we are doing to new teachers. We are going to have on paper where they are paying in 24.2% total. Now, the pension that we pay for lifetime, paying in 24.2% of your salary is a very bad pension. As we go into this down the years, we are going to be creating a feeling of ill will who will be looking on paper, and we know that the 8% is going in there not to fund really the retirement of the people retiring in the future but to make up the shortfall in the fund. It is an unusual way to do it. It really would have been very much neater for the state to simply take the dollars and instead of funneling it through the school and funneling it through the teachers, to simply write the check out. This is what we did for the Teachers' Fund for Retirement years ago when there was a shortfall. We simply made an appropriation and put it in there. In conjunction with that, it becomes very important at some time in the very near future for the state to make some of those lump sum contributions like one of the interim bills that was proposed where that made \$75 million. That was enough to swing the rate of return up and to really make it reasonable that the fund would be adequately funded sometime in the teacher's lifetime. As this sits, this is like this is the forever tax. It's really not projected to drop off. You could start teaching today, and you could very much be expected to pay that same rate through your entire career. We need to do that. That would be the thing as whether it is done this biennium or whether in the very near future on some of these other bienniums. We need to take and make some lump sum contributions to this fund to allow it to become adequately funded, to take some pressure off the board as far as the rate of return they need to earn, and to, long term, show the teachers that we do take those extra percentages off their contribution for their mental well being.

**Chairman Bette Grande:** Just a point of clarification, the lump sum 75 did not have a great actuarial effect plus it did include the 2-2-2-2.

**Rep. Nelson:** Yes, I know it did.

**Chairman Bette Grande:** You had both on there, and it didn't save that many years or help much.

**Rep. Nelson:** It did change the trend(?).

**Chairman Bette Grande:** In the grand scheme of things, it wasn't going to be worth it. It would have needed to be a lot different dollar amount.

**Rep. Nelson:** Right. It does need to be. We are talking here literally hundreds of millions of dollars and how many dollars we are talking changes greatly depending on what rate of return. It is probably \$600 million at 8%. Going to 7% would probably change it to \$900 million or something like that. That rate of return has an extreme leverage effect over time.

**Chairman Bette Grande:** That's the beauty of actuaries and the word assumption. We won't go into the definition of an assumption. You make my point well. Thank you.

**Rep. Karen Karls:** I believe we tried this back in the 70s. My father was on appropriations in the senate, and he tells me it didn't really help much.

**Rep. Mark Sanford:** I am not sure that this is correct, but what I have been told is that experience in the 70s was that the legislature increased the benefits without having margin and without increasing contributions. The \$13 million contribution was really, more or less, needed to cover up for a non funded benefit increase that the legislature granted not with the request of the TFFR system or anybody else. The state did it, but it did it because they were kind of covering a mistake they made previously.

**Chairman Bette Grande:** The history of that is written up in a couple page report, and I'll have that distributed to the committee. LeRoy Gilbertson wrote me a nice paper on the 8%. John, you have also done the same. If we could have that information for the committee to review so that there is an understanding of the whole committee on why RIO handles it the way they do, I think the committee needs that history and understanding.

**Josh Askvig, NDEA,** appeared in support. **Attachment 2.**

**Bev Nielson, North Dakota School Boards Association,** appeared in support. We echo what Josh said about the process that the TFFR Board used in including all of the interested parties in the writing of this piece of legislation. In a lot of ways like the Commission on Education Improvement's work, it was historic in a way. We sat down and we were very honest with each other what we were willing to concede and what we were willing to accept because, of course, none of us wanted to be in this position but we are. From our prospective, we said we will go along with contribution increases if there are concessions on benefits. The teachers' union said we are willing to do that. We know in the past there have been threats about constitutional issues and so forth. Even though some of those concessions don't show a lot of dollar value savings, I want you to understand the philosophical shift, the willingness, the positive nature of the negotiations that has those benefit concessions in there. From our prospective, we see the bill as a coming together of labor and management in a very difficult situation to do what we have to do to meet from a management standpoint our liability along with the state to provide for the solidity of this benefits program. Our delegate assembly voted unanimously not specifically on the bill, but our resolution read that we would support contribution increases as long as there were benefit concessions.

**Doug Johnson, Executive Director, North Dakota Council of Educational Leaders (NDCEL)** appeared in support. I, too, want to publicly acknowledge the work that the TFFR Board along with Fay Kopp and the RIO Board working with us as a collective group with our three associations and coming to a solution that we could all agree upon. It was a hard time that we went through. We believe that the bill you have before you is a very sound bill that our organization supports. Our representative assembly did support the concept of making sure the funds stays a defined benefit program and that it is funded so that it will be actuarially funded so that it has a funding ratio 30 years out and maintain the benefits for those that are retired or do retire in the future.



**Erica Cermak, North Dakota Retired Teachers Association**, appeared in support.  
**Attachment 3.**

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

The hearing was closed.

The recording was stopped briefly and then started again. Some breakdowns were asked for. Also the ND Benefits Guide prepared by Job Service was distributed to committee members.

**Chairman Bette Grande:** ...What will be better is when you do that, we are going to get a more accurate number because it is going to be taxpayer cost. I think what they are looking for is how much is this going to cost in mills or tax dollars.

**Rep. Karen Rohr:** And then again if those assumptions would be made apparent on the document.

**Fay Kopp:** Yes, whatever assumptions we bring in. This will only be the employer's side, the school district's side. It will not encompass the employee's side, because again on some employers, they may pick up the employee's side. I wouldn't be able to bring that in to these calculations at this time if they are also picking up the employee's side. This will not be immediate.

**Chairman Bette Grande:** Committee, you just have to maybe do a little bit of your own homework. I know my district only pays one side. They don't pay both. You can find out what your school district does. You will know whether or not that number needs to be adjusted.

**Rep. Gary Paur:** If the projected rate of returns drops below 8%, we are going to be doing this all over again in some point in the future?

**Fay Kopp:** Yes, if that would be the case and depending upon on what happens with actuarial experience. It is possible that additional contribution increases could be needed in the future. Just like if we would do better than 8%, it is possible that these contribution increases would drop off sooner.

**Rep. Gary Paur:** But 8% is the break point?

**Fay Kopp:** That is the estimate, yes.

**Rep. Roscoe Streytle:** Do we know what the cost would be let's say we go to defined contributions next year? What would be needed to sustain the fund until everyone is passed out of that fund?

**Chairman Bette Grande:** We do have these numbers. I think it turns out to be 1.1 billion—over the life of that employee. We will get those numbers next Friday.

**Rep. Glen Froseth:** Just a thought. Maybe we could go down to the oasis return.

**Chairman Bette Grande:** Switching to the defined contribution will cause an oasis.

# 2011 HOUSE STANDING COMMITTEE MINUTES

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

HB 1134  
February 3, 2011  
13951

Conference Committee

Committee Clerk Signature

*Carmen Hart*

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

Definitions of member tiers under the TFFR, employee and employer contribution requirements, eligibility for normal unreduced retirement benefits eligibility for early reduced retirement benefits, eligibility for disability benefits and retiree reemployment under the TFFR

## Minutes:

**Chairman Bette Grande** opened the meeting on HB 1134 and handed out an amendment. **Attachment 1.** I don't think this is the amendment I asked for. I am not reading this as my intent. My intent was that when implementing 1134, we would be stating that for negotiation purposes only on this bill, there is no negotiation. It will be employer, employee contributions. Currently we have some school districts that are paying both sides, some that are paying a portion of this or a portion of that. In this case the 2 and 2 is split. Employer is paying theirs. The employee will pay theirs. This does not have anything to do with what is currently negotiated. If you are a school district that has said we are paying both sides, you are paying both sides but not on this 2%. That is not negotiable. I want to be real clear as to what transpired through the interim. I will read testimony from Greg Burns from NDEA and his statement being the members of NDEA voted overwhelmingly to support the solution (referring to this bill) of the TFFR funding problem found in which was then called Bill 54. Their willingness to accept a contribution increase which results in a reduction in their take home pay—they very clearly stated they understood this was it. I want to make sure it is the legislative intent that they follow through and that be nonnegotiable. The School Board's intent was the same thing. I want to make sure that the school districts out there understand this is not negotiable. This 2%, 2% is not negotiable. We are going to pay it the way it was intended to be paid. That is what this amendment is suppose to say.

**Rep. Glen Froseth:** I believe that is what it does say. Except for the member contribution increases beginning after June 30, 2012, each

**Chairman Bette Grande:** If you are understanding that in this amendment, I am willing to accept this amendment. Rep. Winrich are you reading that when you read it?

**Rep. Lonny Winrich:** I agree with Rep. Froseth. I think it does say that.

**Rep. Glen Froseth** made a motion to adopt amendment.

**Rep. Roscoe Streyle** seconded the motion.

**Rep. Lonny Winrich:** I understand your position on this. I am not sure that I would interpret what you quoted from the testimony as supporting this kind of restriction on the right of the bargaining with school boards or on the school boards' options of doing something. I frankly don't see the need for this.

**Chairman Bette Grande:** For me I see the need in this aspect. When we have had this plan out there all these years and it was always the intent that this be a shared contribution, and yet it was negotiated away, and I realize that is between the school boards and those who believe in collective bargaining, but this particular point when we are dealing with the severity of the issue with this plan and the agreement to come to the table, this was a big deal for this compromise. I want to make sure that everybody understands that they worked hard to come to that compromise and let us put it in code because now we all are clear that when they were all at the table that was what was agreed to.

**Rep. Lonny Winrich:** I don't see a great difference. Within the state we have on certain occasions treated state employees in such a way that we would forego a pay increase in order to maintain health benefits or something like that. In this case the bargaining may take the direction, well since this has to be an employee contribution, then the bargaining will be for a higher increase in salary at the local level or something. There are many tradeoffs in the bargaining process. Again, I just don't see the need for this.

**Chairman Bette Grande:** I am hoping what I did was address that need for we are not going to salary increase, we are going pay this. I don't want to deal with that past negotiation. That can still stay in place. On this one little issue I wanted to block it in.

**A voice vote was taken to adopt the amendment. The motion carried.**

**Rep. Lisa Meier** made a motion for a **Do Pass** as amended.

**Rep. Mark Sanford** seconded the motion.

**Vice Chairman Randy Boehning:** I am going to be opposing this bill. After running the numbers for the Fargo and West Fargo school districts, it is going to be awfully expensive for the taxpayers in the 2013-15 biennium which this bill will affect. It will be 2-2 ½ million in Fargo and 1 ½ million in West Fargo. I wasn't at the interim employee benefits where it came out in favor of the bill. I guess after campaigning this last time, the people wanted a change, no more government bailouts, etc. It is a tax increase whether the state pays it or the locals pay it. I think a 10 mill increase for the Fargo school district in order to cover their share in the 2013-15 biennium is a pretty large tax increase. Teachers will probably not get a pay raise at that point unless the valuations increase quite substantially in the district.

**Chairman Bette Grande:** I understand exactly what you are saying. That type of thing is very clear to me, but we as a state set up this obligation and we will not shirk our obligation

to pay out the defined benefit that was given to our teachers. They have worked for that. They were guaranteed that, and we will pay it for those who are in the plan. It is our obligation.

**Rep. Mark Sanford:** I would add that there was a rather unique set of agreements or hand holding on the development of this strategy here, but the players were all at the table. The school boards were represented there, and teachers were represented there. They knew what they were signing on to.

**DO PASS AS AMENDED, REREFERRED TO APPROPRIATIONS, 12 YEAS, 1 NAY.  
Chairman Bette Grande is the carrier of this bill.**

**Note: There is some information attached. This information was forwarded to Rep. Grande as requested at the hearing on 1-14-11.**

**FISCAL NOTE**  
 Requested by Legislative Council  
 04/11/2011

Amendment to: Engrossed  
 HB 1134

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						
Expenditures			\$75,260		\$235,720	
Appropriations			\$75,260		\$235,720	

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
			\$8,480		\$10,516,260	\$26,560		\$32,937,720

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).*

HB1134 provides for increased employee and employer contributions to improve funding of TFFR plan. Estimated fiscal impact of employer contribution rate increase is \$10.6 million for 2011-13 and \$33.2 million increase for 2013-15. Amendment 11.0302.02002 has no identifiable additional 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.*

Section 2 increases TFFR employer contributions from 8.75% to 10.75% beginning 7/1/12 and from 10.75% to 12.75% beginning 7/1/14 (additional \$10.6 million for 2011-13 biennium and \$33.2 million for 2013-15 biennium). Total of \$43.8 million increase in employer contributions each biennium after increases are totally phased in until TFFR reaches 90% funded level. Estimates are based on assumptions and calculations from TFFR's actuarial consultant (Attached letter dated 10/22/10.) Fiscal impact may be more or less depending on actual salary paid to active members.

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.*

Total additional expenditures by state, counties, and school districts resulting from increased employer contribution rates are estimated at \$10.6 million for 2011-13 biennium and \$33.2 million for 2013-15 biennium.) Estimates are based on 10,505 TFFR participating members employed by 221 school districts, counties, and state entities as of 12/2010.

208 school districts, special education units, vocational centers, and other public education entities employ the majority of TFFR participating members (99.21%) and would be required to pay the increased employer contributions

of \$10,516,260 for 2011-13 biennium and \$32,937,720 for the 2013-15 biennium totaling \$43,453,980 for both bienniums after increases are phased in.

9 counties currently employ 9 county superintendents (0.08%) who are TFFR participating members and would be required to pay the increased employer contributions of approximately \$8,480 for the 2011-13 biennium and \$26,560 for the 2013-15 biennium totaling \$35,040 for both bienniums after increases are phased in.

4 state entities currently employ about 74 TFFR participating members (0.71%) and would be required to pay the increased employer contributions of approximately \$75,260 for the 2011-13 biennium and \$235,720 for the 2013-15 biennium totaling \$310,980 for both bienniums after increases are phased in:

Bienniums	2011-13	2013-15
ND Center for Distance Education	\$22,578,	\$70,716
ND Youth Correctional Center	\$22,578,	\$70,716
ND School for the Deaf	\$15,052,	\$47,144
ND School for the Blind	\$15,052,	\$47,144

**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.*

A general fund appropriation increase would also be required for the state entities affected by this bill. See 3B estimated Expenditures.

<b>Name:</b>	Fay Kopp	<b>Agency:</b>	ND Retirement & Investment Office
<b>Phone Number:</b>	328-9895	<b>Date Prepared:</b>	04/11/2011

**FISCAL NOTE**  
 Requested by Legislative Council  
 03/30/2011

Amendment to:           Engrossed  
                                   HB 1134

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						
Expenditures			\$75,260		\$235,720	
Appropriations			\$75,260		\$235,720	

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
			\$8,480		\$10,516,260	\$26,560		\$32,937,720

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).*

HB1134 provides for increased employee and employer contributions to improve funding of TFFR plan. Estimated fiscal impact of employer contribution rate increase is \$10.6 million for 2011-13 and \$33.2 million increase for 2013-15. Amendment 11.0302.02001 has no identifiable additional 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.*

Section 2 increases TFFR employer contributions from 8.75% to 10.75% beginning 7/1/12 and from 10.75% to 12.75% beginning 7/1/14 (additional \$10.6 million for 2011-13 biennium and \$33.2 million for 2013-15 biennium). Total of \$43.8 million increase in employer contributions each biennium after increases are totally phased in until TFFR reaches 90% funded level. Estimates are based on assumptions and calculations from TFFR's actuarial consultant (Attached letter dated 10/22/10.) Fiscal impact may be more or less depending on actual salary paid to active members.

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.*

Total additional expenditures by state, counties, and school districts resulting from increased employer contribution rates are estimated at \$10.6 million for 2011-13 biennium and \$33.2 million for 2013-15 biennium.) Estimates are based on 10,505 TFFR participating members employed by 221 school districts, counties, and state entities as of 12/2010.

208 school districts, special education units, vocational centers, and other public education entities employ the majority of TFFR participating members (99.21%) and would be required to pay the increased employer contributions



of \$10,516,260 for 2011-13 biennium and \$32,937,720 for the 2013-15 biennium totaling \$43,453,980 for both bienniums after increases are phased in.

9 counties currently employ 9 county superintendents (0.08%) who are TFFR participating members and would be required to pay the increased employer contributions of approximately \$8,480 for the 2011-13 biennium and \$26,560 for the 2013-15 biennium totaling \$35,040 for both bienniums after increases are phased in.

4 state entities currently employ about 74 TFFR participating members (0.71%) and would be required to pay the increased employer contributions of approximately \$75,260 for the 2011-13 biennium and \$235,720 for the 2013-15 biennium totaling \$310,980 for both bienniums after increases are phased in:

Bienniums	2011-13	2013-15
ND Center for Distance Education	\$22,578,	\$70,716
ND Youth Correctional Center	\$22,578,	\$70,716
ND School for the Deaf	\$15,052,	\$47,144
ND School for the Blind	\$15,052,	\$47,144

**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.*

A general fund appropriation increase would also be required for the state entities affected by this bill. See 3B estimated Expenditures.

<b>Name:</b>	Fay Kopp	<b>Agency:</b>	ND Retirement & Investment Office
<b>Phone Number:</b>	328-9895	<b>Date Prepared:</b>	03/30/2011

**FISCAL NOTE**  
 Requested by Legislative Council  
 02/08/2011

Amendment to: HB 1134

**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						
Expenditures			\$75,260		\$235,720	
Appropriations			\$75,260		\$235,720	

**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
			\$8,480		\$10,516,260	\$26,560		\$32,937,720

**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 1134 provides for increased employee and employer contributions to improve funding of TFFR plan. Estimated fiscal impact of employer contribution rate increase is \$10.6 million increase for 2011-13 and \$33.2 million increase for 2013-15. Amendment 11.0302.01002 has no additional 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.*

Section 2 increases TFFR employer contributions from 8.75% to 10.75% beginning 7/1/12 and from 10.75% to 12.75% beginning 7/1/14 (additional \$10.6 million for 2011-13 biennium and \$33.2 million for 2013-15 biennium). Total of \$43.8 million increase in employer contributions each biennium after increases are totally phased in until TFFR reaches 90% funded level. Estimates are based on assumptions and calculations from TFFR's actuarial consultant (Attached letter dated 10/22/10.) Fiscal impact may be more or less depending on actual salary paid to active members.

**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.*

Total additional expenditures by state, counties, and school districts resulting from increased employer contribution rates are estimated at \$10.6 million for 2011-13 biennium and \$33.2 million for 2013-15 biennium.) Estimates are based on 10,505 TFFR participating members employed by 221 school districts, counties, and state entities as of 12/2010.

208 school districts, special education units, vocational centers, and other public education entities employ the majority of TFFR participating members (99.21%) and would be required to pay the increased employer contributions of \$10,516,260 for 2011-13 biennium and \$32,937,720 for the 2013-15 biennium totaling \$43,453,980 for both

bienniums after increases are phased in.

9 counties currently employ 9 county superintendents (0.08%) who are TFFR participating members and would be required to pay the increased employer contributions of approximately \$8,480 for the 2011-13 biennium and \$26,560 for the 2013-15 biennium totaling \$35,040 for both bienniums after increases are phased in.

4 state entities currently employ about 74 TFFR participating members (0.71%) and would be required to pay the increased employer contributions of approximately \$75,260 for the 2011-13 biennium and \$235,720 for the 2013-15 biennium totaling \$310,980 for both bienniums after increases are phased in:

Bienniums	2011-13	2013-15
ND Center for Distance Education	\$22,578,	\$70,716
ND Youth Correctional Center	\$22,578,	\$70,716
ND School for the Deaf	\$15,052,	\$47,144
ND School for the Blind	\$15,052,	\$47,144

**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.*

A general fund appropriation increase would also be required for the state entities affected by this bill. See 3B estimated Expenditures.

<b>Name:</b>	Fay Kopp	<b>Agency:</b>	Retirement & Investment Office
<b>Phone Number:</b>	328-9895	<b>Date Prepared:</b>	02/10/2011

# FISCAL NOTE

Requested by Legislative Council  
12/29/2010

Bill/Resolution No.: HB 1134

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						
Expenditures			\$75,260		\$235,720	
Appropriations			\$75,260		\$235,720	

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
			\$8,480		\$10,516,260	\$26,560		\$32,937,720

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 1134 provides for increased employee and employer contributions to improve funding of TFFR plan. Estimated fiscal impact of employer contribution rate increase is approximately \$10.6 million increase for 2011-13 and \$33.2 million increase for 2013-15.

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.*

Section 2 increases TFFR employer contributions from 8.75% to 10.75% beginning 7/1/12 and from 10.75% to 12.75% beginning 7/1/14 (additional \$10.6 million for 2011-13 biennium and \$33.2 million for 2013-15 biennium). Total of \$43.8 million increase in employer contributions each biennium after increases are totally phased in until TFFR reaches 90% funded level. Estimates are based on assumptions and calculations from TFFR's actuarial consultant (Attached letter dated 10/22/10.) Fiscal impact may be more or less depending on actual salary paid to active members.

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.*

Total additional expenditures by state, counties, and school districts resulting from increased employer contribution rates are estimated at \$10.6 million for 2011-13 biennium and \$33.2 million for 2013-15 biennium.) Estimates are based on 10,505 TFFR participating members employed by 221 school districts, counties, and state entities as of 12/2010.

208 school districts, special education units, vocational centers, and other public education entities employ the majority of TFFR participating members (99.21%) and would be required to pay the increased employer contributions

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4 state entities currently employ about 74 TFFR participating members (0.71%) and would be required to pay the increased employer contributions of approximately \$75,260 for the 2011-13 biennium and \$235,720 for the 2013-15 biennium totaling \$310,980 for both bienniums after increases are phased in:

Bienniums	2011-13	2013-15
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**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.*

A general fund appropriation increase would also be required for the state entities affected by this bill. See 3B estimated Expenditures.

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

V12  
2/3/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1134

Page 1, line 3, replace the first "subsection" with "subsections"

Page 1, line 3, after the first "1" insert "and 2"

Page 1, line 21, replace "Subsection" with "Subsections"

Page 1, line 21, after "1" insert "and 2"

Page 1, line 22, replace "is" with "are"

Page 2, after line 19, insert:

- "2. ~~Each~~ Except for the member contribution increases beginning after June 30, 2012, each employer, at its option, may pay the teacher contributions required by subsection 1 for all compensation earned after June 30, 1983. The amount paid must be paid by the employer in lieu of contributions by the employee. If an employer decides not to pay the contributions, the amount that would have been paid will continue to be deducted from compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining income tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the employer, they may not be included as gross income of the teacher in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The employer shall pay these teacher contributions from the same source of funds used in paying compensation to the teachers. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases. If teacher contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as teacher contributions made prior to the date the contributions were assumed by the employer. The option given employers by this subsection must be exercised in accordance with rules adopted by the board."

Renumber accordingly

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

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1134

House GOVERNMENT AND VETERAN AFFAIRS Committee

Check here for Conference Committee

Legislative Council Amendment Number 11.0302.01002

Action Taken  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep Froseth Seconded By Rep Streyle

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:

*Vote to accept amendment motion carried*

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

**2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1134**

House GOVERNMENT AND VETERAN AFFAIRS Committee

Check here for Conference Committee

Legislative Council Amendment Number 11.0302.01002

Action Taken  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep Meier Seconded By Rep Sanford

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) 12 No 1

Absent 0

Floor Assignment Rep Grande

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



**REPORT OF STANDING COMMITTEE**

**HB 1134: Government and Veterans Affairs Committee (Rep. Grande, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (12 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1134 was placed on the Sixth order on the calendar.

Page 1, line 3, replace the first "subsection" with "subsections"

Page 1, line 3, after the first "1" insert "and 2"

Page 1, line 21, replace "Subsection" with "Subsections"

Page 1, line 21, after "1" insert "and 2"

Page 1, line 22, replace "is" with "are"

Page 2, after line 19, insert:

- "2. ~~Each~~Except for the member contribution increases beginning after June 30, 2012, each employer, at its option, may pay the teacher contributions required by subsection 1 for all compensation earned after June 30, 1983. The amount paid must be paid by the employer in lieu of contributions by the employee. If an employer decides not to pay the contributions, the amount that would have been paid will continue to be deducted from compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining income tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the employer, they may not be included as gross income of the teacher in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The employer shall pay these teacher contributions from the same source of funds used in paying compensation to the teachers. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases. If teacher contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as teacher contributions made prior to the date the contributions were assumed by the employer. The option given employers by this subsection must be exercised in accordance with rules adopted by the board."

Renumber accordingly

2011 HOUSE APPROPRIATIONS

HB 1134

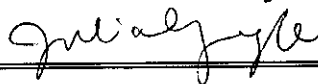
# 2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee  
Roughrider Room, State Capitol

HB 1134  
2/10/11  
14390, 14403

Conference Committee

Committee Clerk Signature



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

A BILL for an Act to create and enact two new subsections to section 15-39.1-04 of the North Dakota Century Code, relating to definitions of member tiers under the teachers' fund for retirement; to amend and reenact subsections 1 and 2 of section 15-39.1-09, subsection 1 of section 15-39.1-10, and sections 15-39.1-12, 15-39.1-18, 15-39.1-19.1, and 15-39.1-19.2 of the North Dakota Century Code, relating to employee and employer contribution requirements, eligibility for normal unreduced retirement benefits eligibility for early reduced retirement benefits, eligibility for disability benefits, and retiree reemployment under the teachers' fund for retirement; and to provide an effective date

## Minutes:

**Chairman Delzer** opened hearing on HB 1134. Clerk read bill title. Information provided regarding the bill to include testimony from Fay Kopp on TFFR (attachment **ONE**) and Employee Benefits Programs Committee Report to the 62<sup>nd</sup> Legislative Assembly (attachment **TWO**).

**Representative Grande**, District 41: 1134 is TFFR's bill that deals with their defined benefit plan and the amount in the fiscal note reflects a 2 and 2 increase. This is the 2% that is the employer portion.

**Chairman Delzer:** This came through employee benefits?

**Grande:** Correct, and it received a favorable recommendation

**Chairman Delzer:** And it has a change for new hires to a rule of 90?

**Grande:** Rule of 90 and age 60 for retirement. She referenced the top of page 3 of the bill.

**Chairman Delzer:** Currently it is straight rule of 85

**Grande:** yes and of which a lot of them are qualifying anywhere from 55-58 years of age.

**Chairman Delzer:** Questions from the committee?

**Representative Skarphol:** On pg 2 of attachment **TWO**, column number 4 (funded ratio) and there is a declining percentage, and column number 8 (funded ratio), there is climbing percentage; can you help me understand what that is telling me?

**Grande:** column 4 is the implication if you do nothing and column 8 is if you implement this bill.

**Representative Skarphol:** What's going to happen if the market turns around and the economy improves dramatically?

**Grande:** If we were to implement this bill and the market went up 20% for the next 2 years, we would still not reach 80% because the percentage of unfunded liability is over a 5 year smoothing period. We are still trying to work off the debt of those last few years and so we smooth out all 5 of them. So we had a decent return last year, but even though we were above our 8% goal, we only recognized just over 1% in gains because we still had to earn back the other portion.

**Representative Skarphol:** Out of the last 5 years, which 2 years were the worst? How long before we can look forward to the situation actually improving by the 2 worst years falling off?

**Grande:** I think we are into the third year of the five year smooth.

**Chairman Delzer:** This is set up at 90% and that could be changed if we wanted to reduce the employee/employer amount in the future?

**Grande:** Correct. That is just a number that TFFR board has decided they would like to tie the employer/employee increases to that we've taken over the last 3 bienniums and all of them are attached to a 90%. Part of that comes from the idea of not pushing to 100 as the goal is not to say, let's increase all of this and bump it to 100 so we can do an enhancement and pull money out again. They didn't want to be seen as doing that. They have said we are going to be prudent with this and move forward to that 90 and then at 90 we are going to pull off that 2 and 2 and 2 and 2 and that 1 from last biennium, and let the market ride it and see if it can reach its 100 on its own.

**Chairman Delzer:** When you were doing the actuaries on the employees' benefits, did they ever show you what difference that, that 13<sup>th</sup> check made from last time?

**Grande:** It was equal to .5. That's why it was chosen the way it was.

**Representative Williams:** Is this going to have a deleterious effect...this is going to be a hit for the school board

**Grande:** That's what we voted on yesterday

**Representative Williams:** When I taught at Wahpeton, it was decided that the board pick up both sides of the contribution. If that remains so, that is going to be a hit to the school boards.

**Grande:** the intent in this with the amendment was that they not negotiate that piece and the teacher pay their 2 and the school board pay their 2 so that it wouldn't be as big a hit to the school district as the others are. That was the intent language. The school boards were at the table in the agreement of the 2 and 2 and so were they teachers. They became a part of this process. It's not typical for the 3 main associations to be at the table with TFFR when they draft legislation like this. Since they felt that it was a big enough issue and they were looking at multiple ways to shore up this fund, those types of things came to the discussion at the table.

**Representative Williams:** I'm satisfied with that. If I understand it, the old ones would be honored; it's just the new increases that would be split between the board and the teachers.

**Grande:** Correct.

**Chairman Delzer:** In your opinion, if this bill was not passed and was looked at in 2 years, what do you suppose would be the outcome of this not passing?

**Grande:** In my opinion, if we do not pass something to make some change in the effect of how they have proposed this, all we've done is kicked the ball down the road.

**Chairman Delzer:** You mentioned they did not want to be perceived as coming in for enhancements and that's the reason they want to stop at 90. Is there anything in the bill that says they should not be asked for?

**Grande:** Actuarially, until a fund is over 100% funded, enhancements are not asked for.

**Chairman Delzer:** Last session we were not sitting in much better shape than we are now and it was asked for.

**Grande:** It was asked for out of the general fund and in negotiation, since there wasn't a strong feeling to take that money of the general fund, it was worked upon to do it in a .5, because the .5 would only cost that .5 that year. Now that .5 is going toward the shore up.

**Chairman Delzer:** they may come in and try to get a general fund appropriation for an enhancement, but not an enhancement out of the fund.

**Grande:** The retired teachers might, but that's not the position as far as I understand for the teachers association.

**Representative Williams:** If you would look at the 2012 employee contribution and the employer contributions, because it's 2 and 2 for a couple of years here, you can see in the second to last column, it's going to go down for a few years, and then when we get the full bump on both sides, it starts to go up. It's a slow process. Without a bill such as this, we're heading for disaster.

**Grande:** According to the actuaries, if you do nothing, it heads down a slope; referred to attachment **ONE**.

**Chairman Delzer:** That's on your smooth rate of 1%?

**Grande:** This is under the assumption of an 8% return.

**Chairman Delzer:** When you do the smoothing, you still have at least 2 years.

**Grande:** Correct. That is where you are seeing some of this being actualized and that's why you have to get the returns in and start moving it up.

**Chairman Delzer:** When they drop off and you're over 8%, that number would actually go up quicker. We are over the 8% this current year, right?

**Grande:** Yes; referenced graphs in attachment **ONE**.

**Chairman Delzer:** Further questions?

**Representative Kroeber:** Just a couple of points. 09 was the low point. In the 13<sup>th</sup> check, that .5 did not come from the general fund, but rather the TFFR itself and it was due to the 5/10 of an increase to the employer on that part of it. When you look at the funded ratio on line 8, that's all assumption of 8% increase.

**Representative Hawken:** I'm still somewhat distressed that we did what we did yesterday. Local control seems to change definition almost bill by bill. We need to come up with a definition and stick with it. We should not be telling them what they should do if we ended up doing this piece. I'm thinking we are tying hands of a body that isn't us.

**Chairman Delzer:** I appreciate what you're saying, but since this issue has been voted on by the floor, I would not accept a motion to change that.

**Representative Martinson:** You don't really have that choice. If someone makes a motion, you can't say I don't accept that motion and you can amend any bill you have down here as long as you have the votes. It's not your prerogative to say I don't accept a motion.

**Chairman Delzer:** I disagree, but that is the ruling I would make. I am the chairman of the committee. When the situation has been voted on by the whole floor, I would not offer the amendment. The bill has been voted on, on the floor.

Job Recording Number: 14403

**Representative Nelson:** I move for a Do Pass on HB 1134

**Representative Klein:** second

**Chairman Delzer:** Further discussion?

**Representative Dahl:** wasn't there a motion you were going to look into for fairness of everyone on the committee on this bill?

**Chairman Delzer:** if someone wishes to make a motion, we can have a challenge to the chair. I will look into this and if I am wrong, I will apologize to the committee.

Clerk called roll call vote for HB 1134, resulting in 21 yes, 0 no, and 0 absent, thus motion carried and committee recommends a Do Pass. Chairman Delzer assigned **Representative Grande** as a carrier to the bill. Hearing closed on HB 1134.

Date: 2/10  
 Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1134

House Appropriations Committee

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

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Nelson Seconded By Rep. Klein

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X		Representative Nelson	X	
Vice Chairman Kempenich	X		Representative Wieland	X	
Representative Pollert	X				
Representative Skarphol	X				
Representative Thoreson	X		Representative Glassheim	X	
Representative Bellew	X		Representative Kaldor	X	
Representative Brandenburg	X		Representative Kroeber	X	
Representative Dahl	X		Representative Metcalf	X	
Representative Dosch	X		Representative Williams	X	
Representative Hawken	X				
Representative Klein	X				
Representative Kreidt	X				
Representative Martinson	X				
Representative Monson	X				

Total (Yes) 21 No 0

Absent 0

Floor Assignment Rep. Grande

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



**REPORT OF STANDING COMMITTEE**

**HB 1134, as engrossed: Appropriations Committee (Rep. Delzer, Chairman)**  
recommends **DO PASS** (21 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed HB 1134 was placed on the Eleventh order on the calendar.

2011 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1134

## 2011 SENATE STANDING COMMITTEE MINUTES

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

HB 1134  
March 17, 2011  
15572

Conference Committee

Committee Clerk Signature



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

Relating to employee and employer contribution requirements, benefits, and a retiree reemployment under teachers' fund for retirement; and to provide an effective date.

### 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:** Percentages of returns and it seems to me that the market took a dive then also took a jump. How does that affect this? Do we still have the problem?

**Fay Kopp:** When we had our consultant look what type of returns that we would need over the long term. If we would average a 9% return over the long term in order to get back to the 90% funded level we would need 10% returns for the next 30 year period.

**Senator Berry:** What year was this fund established? What has been the annual average?

**Fay Kopp:** Chart 2 is the net performance. TFFR was established in 1913. For this purpose I have put the return for the last 20 years. Over the last 10 year period returns have been lower than that. We also see that is a volatile time as the market is going through challenges as we speak.

**Vice Chairman Sorvaag:** Is it the way your plan is designed because in the private sector the employees can increase their contributions. Why can't they do this?

**Fay Kopp:** Under IRS guidelines the models we have set allow for it to be tax deferred under certain circumstances. Under the one model it is not tax deferred if it is picked up in lieu of a salary increase. It's not typically a problem because it was only a handful of school districts that negotiated to do it this way. Where it is put in the code makes it hard to do on a tax deferred basis.

**Vice Chairman Sorvaag:** If we left the amendment as it is we could re-write your model to meet IRS code.

**Fay Kopp:** We can change the model but in order to be tax free we need to move it to a different area of code, which is what we have suggested in our amendment. Page 2 line 20 of the engrossed bill is the House amendment. What we said earlier is that it will work for everything except for the member contribution increases.

**Vice Chairman Sorvaag:** The only way it can happen is that the school has got to give a salary increase to pay it. You are just proposing an amendment to pay for it.

**Fay Kopp:** The payment would need to be made in lieu of a salary increase.

**Vice Chairman Sorvaag:** What you are saying is instead of giving a salary increase you are paying it.

**Fay Kopp:** It can also be done on a salary reduction.

**Senator Cook:** In chart 1 the trend that we see with the relationship between active members and retirees has more to do with actuarial soundness of this account than the recent meltdown.

**Fay Kopp:** Chart 1 on page 12 reflects that the active population has gone down while the retiree number has gone up. While it is true that it is a contributing factors but it was not the sole cause.

**Chairman Dever:** When we look at the same number for PERS there are 25,000 active and 8,000 retired.

**Fay Kopp:** Their active to retired ration is different than ours, there are similarities but there are differences. Teachers are waiting longer to retire because of the healthcare issue.

**Chairman Dever:** A lot of the employees don't take advantage of the minimum retirement age because of the cost of healthcare, is that similar in your area?

**Fay Kopp:** Yes. Some employees work until they are 65 but some retire at 55.

**Senator Nelson:** Most of the teachers stay in it longer so the rule of 85 is a nice artificial number but a lot of people don't retire when they can

**Senator Cook:** The only other question that I have deals with the legal issues. All of the changes that are being brought to the table can be challenged by anyone out there, is that correct?

**Fay Kopp:** Yes that is correct. A change of this size that adjusts the benefits of employees without corresponding benefits improvement.

**Senator Cook:** This is a class action lawsuit just waiting to happen. If we move forward and make these changes do I have a right to be concerned that it looks like a class action lawsuit?

**Fay Kopp:** The general believe that even though there is that threat the members have supported this legislation.

**Senator Cook:** If one wanted to remove any fear we can add \$25,000,000 to the fund and freeze salaries for 2 years.

**Fay Kopp:** There are other options in there. Certainly the legal threat is on that continuum, you can't change retirement benefits and you can change active member benefits. There is a belief that benefits could be change for non vested employees. The farther you go to people that are closest to retirement the greater the threat is.

**Senator Cook:** If those are the 2 choices that you have what is the benefit of having a class action lawsuit hanging over your head.

**Josh Askvig:** President North Dakota Education Association. See attached testimony #2.

**Chairman Dever:** What happens when a retiree dies?

**Josh Askvig:** The balance will go to the spouse or beneficiary.

**Dr. M. Douglas Johnson:** Executive Director-NDCEL. See attached testimony #3.

**Chairman Dever:** Are all considerations the same for administrators?

**Dr. M. Douglas Johnson:** Yes. We have an agreement from our association that this is the best way to do this.

**Senator Berry:** A few school districts opted out, can that only be done at the beginning or can it be done along the way.

**Dr. M. Douglas Johnson:** I don't think that it is an option.

**Bev Nelson:** School Boards Association. We want to show our appreciation, our concern at the beginning is that the school boards would need to put in and not get back. We support 1134 as originally in its form in the House. It became apparent to us that we didn't see a compelling amendment to this. We are supporting 1134 as it was introduced.

**Ken Tupa:** North Dakota Retired Teachers Association. See attached testimony #4.

There was no further discussion, no one else to testify in support, opposition or a neutral position and Chairman Dever closed the public hearing on HB 1134.

# 2011 SENATE STANDING COMMITTEE MINUTES

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

HB 1134  
March 17, 2011  
15599

Conference Committee

Committee Clerk Signature

*Kate Auel*

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

Relating to employer and employee contribution requirements, eligibility for normal unreduced retirement benefits, and a retiree reemployment under teachers' fund for retirement; and to provide an effective date,

## Minutes:

*No testimony attached.*

**Senator Schaible:** Why did the amendment come if everyone was against it?

**Senator Cook:** If you take that amendment out it will be answered at the first conference committee.

**Chairman Dever:** I suspect that when we see salaries thrown around and we are 49th in the country in salary without benefits.

**Senator Cook:** This issue that was raised in legal challenges is a class action lawsuit waiting to happen.

**Senator Berry:** The market stated all of this and until recently with what's going on. It has reached their levels of 2008. They should have had tremendous gains in the past 2 years. You lose those 2 years when they are in there. If you look at what is happening in Japan most folks feel that the S&P is going to be 1450 by the end of the year. Waiting to see how much of this will correct itself. Maybe we don't have to do as much.

**Senator Cook:** Just because the market has shifted back doesn't mean that this fund has shifted back.

**Senator Berry:** Most retirement funds as a while it should have gone back up. Finding out that impact and balance I think is relevant.

**Vice Chairman Sorvaag:** That is a big part of it, if we don't make the change in these benefits then none of this works. This slows that close they think that it can stabilize with this. There are

too many taking out for what you are putting in. If you don't change the benefit part you are still going to dig a hole.

**Senator Cook:** We need to find out and minimize the lawsuit.

**Senator Nelson:** If you look at what goes on, social security has been raised it creeps out to the month that you were born. There is a question to have Mary Kay come down here and give the latest update. It may just be that Wayne has in his office. I think that there have been a number of bills that are going to cost the state money.

**Chairman Dever:** I asked the Attorney General who was responsible.

**Senator Cook:** I don't look at Social Security as part of this.

**Chairman Dever:** Speaking of contracts when we increase the benefits do you increase the rate?

**Senator Berry:** Are you allowed to file lawsuits?

**Senator Cook:** Again the problem with that is you don't have enough money to keep it solvent.

**Senator Berry:** Do they ever sign away their ability to sue.

**Ike Umannah:** You cannot wave away the right to sue. If they accept the changes then they have accepted the contract. The second they have changed that contract then it has to be reaccepted.

There was no further discussion from the committee on HB 1134.

# 2011 SENATE STANDING COMMITTEE MINUTES

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

HB 1134  
March 24, 2011  
15984

Conference Committee

Committee Clerk Signature



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

Relating to employee and employer contribution requirements, eligibility for normal unreduced retirement benefits, a and retiree reemployment under the teachers' fund for retirement; and to provide an effective date

## Minutes:

*No testimony attached.*

Chairman Dever called the committee to order and opened the committee to discussion on HB 1134, the committee had been brought several amendments various people and had some questions as to the combination of factors that needed to be included.

**Josh Askvig:** North Dakota Educator Association. Fay Kopp's amendments fix it for those that are already paying their own. If you revert back to the original version of the bill that is not a problem and if you revert back to the original version of the bill that also fixes our concern about the amendment that the House added because the amendment the House added, even if you make Fay's TFFR purposed change keeps the intent of the House while protecting those that are already paying. Our proposal is that you just revert back to the original language which insures that everyone it treated the way they are treated now and that, at a local level they can decide if school districts are going to pick up the increase or not.

**Senator Cook:** If we leave on the one House amendment that has both sides paying or not paying then we need another amendment to take up tax policy issues, yes?

**Josh Askvig:** If you want to leave the House intent so it prohibits those that are paying both sides, Fay's amendment would fix the concerns for the one group.

**Senator Cook:** Do we need another amendment to fix that?

**Josh Askvig:** The only way you fix that is to remove the House amendments and go back to the original bill.

The committee decided to suspend action on HB 1134 until they could get further information from the Attorney General's office.



# 2011 SENATE STANDING COMMITTEE MINUTES

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

HB 1134  
March 25, 2011  
16023

Conference Committee

Committee Clerk Signature 

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

Relating to employee and employer contribution requirements, benefits, and a retiree reemployment under teachers' fund for retirement; and to provide an effective date.

**Minutes:**

**Fay Kopp:** In lieu of making those changes I believe my testimony said it was equal to a .54% savings. That is how much more they would have to go up if the changes were not made.

**Chairman Dever:** That would be .54% in the first biennium on both sides?

**Fay Kopp:** Who would pay it and when would be the issue. Depending on the timing of it may need to be a little less. To a degree so are member contributions. It is part of the overall changes that can be made. In our review that the only things that you could cleanly do without legal increase employer contribution or increase benefits for new employees but with what happened in 2008 and 2009 we needed to change the way we did member contributions.

**Vice Chairman Sorvaag:** If at some point we set these in and they accept does that legally obligate them to agree to the changes?

**Fay Kopp:** I cannot respond to when the legal obligation begins or ends.

**Chairman Dever:** At this point you have done a good job of creating a situation of buy in with all associations representing people who would be affected by this. This is the same risk we shared with the interim committee, at what point they can make a claim.

**Chairman Dever:** My conversation was with the Deputy Attorney General and he said that there shouldn't be a problem with that.

**Fay Kopp:** There would be much less risk but again not totally void of risk. Someone could make the claim that by increasing the benefits that you have to pay more for the benefits.

**Chairman Dever:** Is the .54% increase true for both sides?

**Fay Kopp:** I have to look over my notes but I know for sure on the contribution side. What is the total number of contributions that need to be increased...we wanted to minimize the contributions may be. Reducing our long term liabilities, we didn't want to put that entire burden on to new hires.

**Chairman Dever:** The larger concern is the grandfathering provision.

**Fay Kopp:** Generally speaking that is correct; it is sort of an arbitrary number. What happens if we change benefits for new hires only?

**Vice Chairman Sorvaag:** What you are saying is that we should have something in here for new hires so they know we can change their plan.

**Fay Kopp:** The legislature can do that but member benefits can be changed for new hires.

**Vice Chairman Sorvaag:** So what you are saying is that we need something in here that would inform new hires that they know we have a right to change their plan.

**Chairman Dever:** But the effect of removing that is to restore the additional .54%

**Greg Burns:** NDEA. If there is a legal challenge only the .54% would be subject to attack. The other thing for your consideration is that the TFFR board considers the change in everyone's work life, it was acknowledge of that to mitigate the harm for people who are planning otherwise. Some of it was set because of promissory stopple, people have made career decisions based on what they were told was correct. Our attorneys may not be obligated to come forward with a suit like this. We don't want to be put in the position that a member of ours is 2nd guessing our decisions. There is changing case law on this, if you look at it one way a defined benefit is just like healthcare, you get what you put in. Our members were very clear that they do not want new employees to have additional burdens; we believe that people new to the profession should have the same benefits as people who have been in for a while. The whole body of work is not up to challenge.

**Senator Cook:** I can't help but go back to the time we raised the multiplier to 2.2% one thing that I wish we would have done is discuss as to the feasibility of having a sliding multiplier.

**Greg Burns:** 2% is a median for the rest of the country and the real driver of the benefit is the multiplier, most likely the best thing for the plan. There is a benefit, defined benefit, core benefit, accortomount but we don't see it as an essential part. We think that 2% is reasonable and it's hard to understand this but the best friend of a defined benefit plan is time. There are a number of ways to deal with this. I don't think that the NDEA would be helpful in bringing this

forward; it is our belief that there are things that are happening in terms of what is required to keep the benefit.

**Senator Cook:** I think that I remember Josh Askvig saying that they won't be involved in the court challenge.

**Greg Burns:** I have never heard an attorney speak in 100% terms.

**Chairman Dever:** I wonder if the lawsuit would result in monetary damages or restoration of the benefit.

**Senator Nelson:** I would like to see line 20 and 21 on page 2 taken out.

**Senator Berry:** Why do you want those taken out?

**Senator Nelson:** It takes away the negotiations from the teachers and the board.

**Vice Chairman Sorvaag:** The reason it's in there is that 50% of the school districts are.

**Chairman Dever:** My understanding is that the only amendment was brought in the House.

# 2011 SENATE STANDING COMMITTEE MINUTES

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

HB 1134  
March 28, 2011  
16070

Conference Committee

Committee Clerk Signature 

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

Relating to employee and employer contribution requirements, eligibility for normal unreduced retirement benefits, a and retiree reemployment under the teachers' fund for retirement; and to provide an effective date

## Minutes:

*No testimony attached.*

The committee was called to order, roll was taken and all but one member was present. The committee took to the time to go though the last page of Fay Kopp's testimony which contained the amendment that the committee was considering.

Senator Nelson: Explain then by moving these amendments how it would affect the bill.

Chairman Dever: The affect of it would be to make those contributions tax deferred.

Bev Nelson: I do believe that Fay Kopp's amendments dealt with that if you kept the House amendments that it would make it non-negotiable. Her amendments would fix the tax situation but just for one category of employees.

A motion to adopt the amendment that was provided by Fay Kopp was made by Vice Chairman Sorvaag with a second by Senator Berry, roll was taken and the motion passed 6-0-1. With the amended bill before them Vice Chairman Sorvaag made a motion to for a do pass as amended with a re referral to appropriations, roll was taken, the motion passed 5-1-1 with Senator Cook carrying the bill to the floor.

Date: 3/28/11  
Roll Call Vote # 3

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1134

Senate GNA 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 Sorvaag Seconded By Barry

Senators	Yes	No	Senators	Yes	No
Chairman Dever	X		Senator Marcellais	X	
Vice Chairman Sorvaag	X		Senator Nelson		X
Senator Barry	X				
Senator Cook					
Senator Schaible	X				

Total (Yes) 5 No 1

Absent \_\_\_\_\_

Floor Assignment Cord

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

Date: 3/28/11  
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 134

Senate GVA 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 Sorvaag Seconded By Barry

Senators	Yes	No	Senators	Yes	No
Chairman Dever	X		Senator Marcellais	✓	
Vice Chairman Sorvaag	X		Senator Nelson		X
Senator Barry	X				
Senator Cook					
Senator Schaible	X				

Total (Yes) 5 No 1

Absent Cook

Floor Assignment Sorvaag

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

**REPORT OF STANDING COMMITTEE**

**HB 1134, as engrossed: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE REREFERRED to the Appropriations Committee (5 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1134 was placed on the Sixth order on the calendar.**

Page 2, line 20, remove the overstrike over "Eaeh"

Page 2, line 20, remove "Except for the member contribution increases beginning after June 30, 2012."

Page 2, line 21, remove "each"

Page 3, line 2, after "or" insert ", except for the member contribution increases beginning after June 30, 2012."

Renumber accordingly

2011 SENATE APPROPRIATIONS

HB 1134



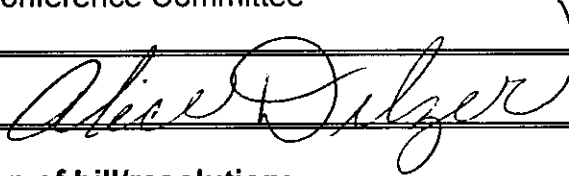
# 2011 SENATE STANDING COMMITTEE MINUTES

## Senate Appropriations Committee Harvest Room, State Capitol

HB 1134  
03-30-11  
(inaudible)

Conference Committee

Committee Clerk Signature



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

A BILL relating to definitions of members tiers under the teachers fund for retirement; relating to employee and employer contribution requirements. (PERS)

### Minutes:

See attached testimony

**Chairman Holmberg** called the committee back to order in reference to HB 1134 at 3:40 pm Lori Laschkewitsch, OMB and Brady Larson, Legislative Council were also present.

**Fay Kopp, Deputy Director, Retirement Officer RIO and TFFR** As fiduciaries of the TFFR trust fund, the TFFR Board is proposing changes included in HB 134 which are designed to keep TFFR financially strong and sustainable for past, present, and future ND educators. What the bill does increases the sections of the bill that have fiscal impacts is section 2, 6 and 7 which is described in her written testimony. There is confusion and concern as a result of the amendments. The House amended section 2 of the bill to require that the new employee contribution increases 7 1/12 and 7 1.14 must be paid by the employee and cannot be negotiated to be paid by the employer. While there are no actuarial implications to this proposed amendment, there were unintentional Tax related ramifications since the language was placed in the statutes in such a way that it impacted the tax deferred treatment of employee contributions based on current TFFR employer payment plan models. We provided an amendment that would address the federal and state income tax deferral issues for Model 1 (salary reduction) employees. If the Senate retained the House amendment the TFFR Board asked that the bill be further amended to relocate the House amendment. This amendment was adopted by the Senate. Under the Engrossed HB 1134, with Senate GVA amendments.- further discussion followed regarding Model 1 schools and Model 2 (all) schools, which is on page 3 of written testimony. Engrossed HB 1134 does not allow the employee contribution increases in 2012 and 2014 to be paid by the employer in lieu of a salary increase. For this reason, any future salary increases granted to the employee will increase the FICA tax paid by both the employer and the employee Her testimony on page 4 describes Section 6 and 7 and then the Actuarial Analysis that was conducted showing that without any changes TFFR funding levels are expected to be exhausted within 30 years even if TFFR earns 8% each year in the future. The fiscal note reflects employer contribution increases only. See attachment #1, (page 7 of testimony) for the TFFR Funding Improvement list. This concluded her testimony.

**Chairman Holmberg:** During the interim meeting we discussed what can and cannot be done in regards to current folk under the system, is this bill that we have, does this increase the exposure of law suit that we had discussions about discussed in the interim meeting?

**Fay Kopp:** It is the same. There are potential legal ramifications.

**Senator Christmann** had questions on how long she had been with the office, concerning the money that was once available and if PERS had to alter their plan or just change the amount of money and If there had been some legal problems involved.

**Fay Kopp:** Certainly that is a legal question. You can always make the contract better, if they truly are reduced they may feel there is a right to make that legal challenge. Certainly in the 80's and 90's it appeared there was more money available but with the market meltdown we experienced, additional money is needed now. The legal analysis that was done by the attorney general's office has done some work with the legal aspects concerning this issue. Once you've been hurt with the market, it is hard to know what the outcome would be. In answer to your first question I have been with the fund for about 20 years.

**Josh Askvig, NDEA** testified in support of HB 1134. Testimony attached # 2 ND Retirement and Investment Office West Fargo School District which shows the current model #2 at 7.75% to Model 2 at 9.75% or a similar raise in base pay and the effect on school district payroll and the increase. Testimony attached # 3 is the Change Effect on Individual Payroll. We support the bill, but we are concerned why we would pay the local taxes. We hope you support the bill.

**V. Chair Bowman:** When times were really good, they increased the benefits, what's to stop them from decreasing the benefits when times get tough?

**Josh Askvig:** The bill as it's drafted does decrease benefits. The minimum working age was changed as well as some changes regarding disability. I think that is included in the bill. No one is going to complain when they increase their benefit. They voted last April to approve this plan. We like this bill.

**V. Chair Bowman:** The bottom line is it's secure.

**Josh:** Yes, that's why the changes are made as a whole.

**Chairman Holmberg:** Anyone else on 1134. Hearing none, we will close the hearing on HB 1134.

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee  
Harvest Room, State Capitol

HB 1134  
04-05-2011  
Job # 16351

Conference Committee

Committee Clerk Signature



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

A ROLL CALL VOTE FOR A DO PASS RE: PERS (TEACHER'S RETIREMENT FUND)

## Minutes:

You may make reference to "attached testimony."

**Chairman Holmberg** called the committee to order in reference to HB 1134. Lori Laschkewitsch, OMB and Sheila M. Sandness, Legislative Council were also present.

**Chairman Holmberg:** When recorder is started the Chairman is discussing a portion of the bill that has to do with not being able to negotiate the new 2% but they supported the bill and they supported the increase in their assessment and I am suggesting that we don't even consider what NDEA mentioned because we know there is a floor amendment and we will be all voting on it. If someone moves that we just pass this and send it back to the committee on the floor and we will handle it on the floor.

**V. Chair Bowman moved a Do Pass. Seconded by Senator Fischer.**

**A ROLL CALL VOTE WAS TAKEN FOR A DO PASS ON HB 1134. YEA: 13; NAY: 0; ABSENT: 0. MOTION CARRIED.**

Senator Sorvaag from GVA will carry the bill. The hearing was closed on HB 1134.

Date: 4-5-11

Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1134

Senate APPROPRIATIONS 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 Bowman Seconded By Fischer

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	/		Senator Warner	/	
Senator Bowman	/		Senator O'Connell	/	
Senator Grindberg	/		Senator Robinson	/	
Senator Christmann	/				
Senator Wardner	/				
Senator Kilzer	/				
Senator Fischer	/				
Senator Krebsbach	/				
Senator Erbele	/				
Senator Wanzek	/				

Total (Yes) 13 No 0

Absent 0

Floor Assignment EVA Sowaag

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

**REPORT OF STANDING COMMITTEE**

**HB 1134, as engrossed and amended: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO PASS (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1134, as amended, was placed on the Fourteenth order on the calendar.**

2011 HOUSE GOVERNMENT AND VETERANS AFFAIRS

CONFERENCE COMMITTEE

HB 1134

# 2011 HOUSE STANDING COMMITTEE MINUTES

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

HB 1134  
April 14, 2011  
16589

Conference Committee

Committee Clerk Signature	<i>Carmen Hart</i>
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## Explanation or reason for introduction of bill/resolution:

Definitions of member tiers under the TFFR, employee and employer contribution requirements, eligibility for normal unreduced retirement benefits eligibility for early reduced retirement benefits, eligibility for disability benefits, and retiree reemployment under the TFFR

## Minutes:

**Chairman Bette Grande** opened the conference committee on HB 1134. There is a quorum. I will ask the senate to explain their amendments.

**Senator Ronald Sorvaag:** We just took off one sentence of the bill. It was a sentence that was in the bill as it came over from us which was sitting in Subsection 2 of Section 2. It basically was stated except for member contribution increases beginning after June 30, 2012. In other words the terminology that said they would have to pay their own shares of the increases. In the senate we moved that amendment at one time over a few paragraphs to deal with some of the tax consequences, but then with a floor amendment that was removed out of the bill.

**Rep. Bill Amerman:** What are we going to work off of?

**Chairman Bette Grande:** We will work off of the final version 4000. The house had put that amendment in and felt quite strongly on it. As you can see by the vote on the floor, we preferred that version. At this point in explanation of that, the house had put that on for the reasoning of clarification. Throughout the interim this bill was discussed and in testimony it was stated by all involved meaning the administrators, the school board, and the teachers' union, there was overwhelming support for this fix to take place in this defined benefit program. In so, the members accepted the contribution increases contemplated in the bill as a part of the solution. Further in their testimony it was stated by the associations the same type of support because the agreement was made that portion was going to be paid as per employer and employee. Further in their testimony it stated that the members of NDEA voted overwhelmingly to support this solution and that the members' willingness to accept a contribution increase would result in the reduction of their take home pay. It goes on to talk about how they were in agreement with this solution. The house felt it to be a good place to have this where we would codify that and at this point, we would stand by that.

**Senator Carolyn Nelson:** I served on that committee also and the version that came out of that committee is the version you have sitting before you which is essentially also the 1000 version. That is the version that was accepted by the teachers, principals, school boards, TFFR board, and the employee benefits committee on an 8-0 favorable recommendation. It did not have the you cannot negotiate section in it. We have been inundated with we don't mind paying the amount. That is not the problem. The taxation and the lack of being able to negotiate whether or not that will be a taxed amount or an untaxed amount is not in their best interests. That is why we went back to, with the floor amendment, the way it was passed during the employee benefits discussions last year.

**Chairman Bette Grande:** With that, the understanding that, again, the statement that this would be negotiated thus meaning we are not willing to pay that portion and that was not what the agreement was. This was just in the codification of this is what was negotiated. That was what was agreed to, and we are just stating this is what the agreement was and that is how you would proceed. As far as the tax issue, that was taken care of when (1) you moved that to that lower part of that section and (2) the modifications that would take place by rule through TFFR. The income and federal taxation goes away. The only issue is the 2% of salary portion that they would have to pay in and then pay FICA on that portion. It is a very small portion and in real world, we pay FICA on our salary. Everybody does. That is nothing new. That is something that had been negotiated away, yes, in those other aspects. This is a different day on a different issue. This issue was that we have a problem with the benefit program that needs to be fixed. All agreed to the fix. That fix comes at a price for everyone. If this gets negotiated away, the taxpayers pick up all 4%. That is not what the agreement was. That is not what the school boards agreed to.

**Senator Carolyn Nelson:** That is exactly what the negotiations process is for. If currently you have 40% in one kind of a model and a fixed 40% in another kind of model and then you have some others in a mixed model, you have a variety of things going on. To me to be able to negotiate all but a minute part of your contract is kind of a weird situation to be in. You either negotiate the contract or you don't. I think we elect school board members on the local level to negotiate with the teachers. I have been part of that process as a school board member and I have also been the mother of the lead negotiator for the teachers so I have seen it from both sides. You need to have everything on the table, not just all but this one piece that you are not allowed to do because somebody else told us so.

**Chairman Bette Grande:** In exactly what you are saying, weird situation this is. This benefit fix is one of those very unique situations that requires a unique way to be handled. I don't think we are going to reach any farther discussion.

The meeting was adjourned.



# 2011 HOUSE STANDING COMMITTEE MINUTES

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

HB 1134  
April 15, 2011  
16672

Conference Committee

Committee Clerk Signature	<i>Carmen Hart</i>
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## Explanation or reason for introduction of bill/resolution:

Definitions of member tiers under the TFFR, employee and employer contribution requirements, eligibility for normal unreduced retirement benefits eligibility for early reduced retirement benefits, eligibility for disability benefits, and retiree reemployment under the TFFR

## Minutes:

**Chairman Bette Grande** opened the conference committee on HB 1134. There was a quorum.

**Senator Ronald Sorvaag** made a motion that the **house accede to the senate amendments.**

**Senator Carolyn Nelson** seconded the motion.

**4 YEAS, 2 NAYS. MOTION FAILS.**

There was no further discussion or motions. The meeting was adjourned.

# 2011 HOUSE STANDING COMMITTEE MINUTES

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

HB 1134  
April 16, 2011  
16693

Conference Committee

Committee Clerk Signature

*Carmen Hart*

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

Definitions of member tiers under the TFFR, employee and employer contribution requirements, eligibility for normal unreduced retirement benefits eligibility for early reduced retirement benefits, eligibility for disability benefits, and retiree reemployment under the TFFR

## Minutes:

**Chairman Bette Grande** opened the conference committee on HB 1134. As I met briefly with Senator Sorvaag, I was not aware that Carolyn wasn't going to be here, and I hate to get too far into this as she has been a part of this for the whole two years. I would hate to progress too far without her present. Out of respect for that, we won't make motions and things. I did want to have the opportunity to continue then with some discussion.

**Senator Ronald Sorvaag:** I apologize. I should have notified you that she would be gone today and Senator Marcellais is filling in just for today. She will be back on the committee again, and she has been a major part of it.

**Chairman Bette Grande:** Senator Nelson and I have dealt with this so much together that I would just feel it improper for me to really proceed without her presence.

**Rep. Roscoe Streyle:** I just have a few points that this is a cost more than taxes, etc. The house passed our amendment overwhelmingly with 61, and the senate's amendment passed by 1 vote. I feel the house sent a pretty clear message where their stance was. The senate was barely \_ by. I will give just a quick example on it. If you have \$40,000 salary x 2% is \$800. The payroll taxes, the FICA taxes, 7.65%, we are talking about \$61.20 in taxes. To sit and quibble over that and making it clear that you agree to pay, all this is saying is you will pay as you agreed and not allow that 2% to be negotiated away which I don't feel is onerous at all. They are sticking by their word basically. Once it went to the senate, they are trying to strip that away. That is just my take on it.

**Senator Donald Schaible:** I am just a little bit confused on this negotiation thing. It originally started out that each would pay half. The only way it is deteriorated is by a negotiated right which is where it is at. Now we are taking that out of the school board realm or out of the negotiation realm. I am curious why it is such an issue that, first of all, delving into a negotiation or to a school board right that they have a right to do that and the

second thing is it must be a local issue where they have done this. There again, if it is a pertinent issue to that school district to pay both sides, it is an issue that they have determined to do. It seems to understand why it is such a heartache when both sides have agreed to that or agreed not to do it. Maybe some highlights on that.

**Chairman Bette Grande:** It is really kind of on the principle of just dealing with the issue of hitting the point of needing to do some type of a shoring up of this particular defined benefit plan and focusing only on that issue where that is what this bill is about. How do we shore up a defined benefit plan that took this drastic of a dip? Just focusing on that realm of things, the groups involved worked on many different forms of this bill long before we ever were involved as a legislative body, with their board of directors, school board association, teachers' union, and administrators. All the players asked what is the best way to solve this issue? What can we do? In that discussion they came out with three major options that eventually came to the legislative process in the interim. There was a 4-0, employer, employee; a 2-2, employer, employee; and a 0-4, employer, employee. As testimony came through, it always seemed to come down to the agreements that everybody seemed to be most comfortable with a 2 and 2. The 2 and 2 clearly states employer, employee. At this point that is not in discussion as far as the employee benefits committee is concerned. Our concern is that the agreement is, as legislators, in our minds we are saying employer and employee. The legislators agreed that it should come from the two pockets so that it would be understood that everyone is going to participate in the process. If we do not state the necessity to not negotiate that, we have lost the intent of what the legislators were trying to do. Legislators were saying, here in code, employer, you do this; employee, you do this. That is what this amendment says. Here is what the intent was behind the legislature, and we want everyone to be at the table to be a part of the fix, fixing the fund's problem. This is just to give you a background of what my perspective is on that and how that is and why it came about.

The meeting was adjourned.

# 2011 HOUSE STANDING COMMITTEE MINUTES

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

HB 1134  
April 18, 2011  
16713

Conference Committee

Committee Clerk Signature	<i>Carmen Hart</i>
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## Explanation or reason for introduction of bill/resolution:

Definitions of member tiers under the TFFR, employee and employer contribution requirements, eligibility for normal unreduced retirement benefits eligibility for early reduced retirement benefits, eligibility for disability benefits, and retiree reemployment under the TFFR

## Minutes:

**Chairman Bette Grande** opened the conference committee on HB 1134. Does the senate have anything they would like to start with today?

**Senator Ronald Sorvaag:** I don't think so.

**Chairman Bette Grande:** As I thought this through over the weekend, a couple of things have come to my mind. A lot of it really plays out from the interim when we had the Hay Group come through and studying of the benefits and salaries. As I listened to these final reports, we are talking about public employees versus the teachers' employment. It falls one in the same in how things are run right now. What I found very telling was the amount of salary that was listed as below the norm and, yet, the benefit side was listed as pretty equal to that same type of thing going up. As I sat and listened to it, something kind of played out in my head and that was we traded off in 86 or 87 with the public employees when we were short funds. We said in lieu of salary, we are going to pick up your benefit package. Ever since then, the state has been stuck behind the eight ball in how do we catch up on getting the salaries where we wanted them to be. Then I started looking at that and it dawned on me as I looked at some of the handouts that Ms. Kopp had put together and it showed how in lieu of salary for the teachers, all of sudden we had low teacher salaries. Yet, we had the benefits there. At the end game, the teachers are being shorted their benefit because they didn't get the salary that they would get paid out on benefit. To me there is something wrong with this picture. Last week a member of the legislature stands up on the floor and says now you realize that we are still in the 48<sup>th</sup> or 49<sup>th</sup> percentile for salary. Why is that? We are not giving them salaries. We are giving them in a benefit, and it is not being realized on either side. To negotiate away the salary for the benefit, I found detrimental to both sides. I think there is a great flaw in where we have negotiated away this. I have toyed with different ways to look at this. Anybody else have thoughts on it? I find it ironic we worry about and we are realizing that the salaries are behind. We are not going to give them the salary, because we are going to give them a benefit of which

might look good that first day and it plays out for a little while, but at the end game, it is not a good thing. The only time anybody saves anything is in, like the email I just read before coming down here, we don't have to pay FICA tax. Is that what we are suppose to be negotiating on when we are talking about teacher salaries and benefits or public employees' salaries and benefits? Is anyone finding this as odd as I am? I will offer a couple suggestions.

**Rep. Roscoe Streyle:** Kind of a follow up on that like on Saturday, on my example, \$40,000, 2% equals \$800 in additional payments. FICA tax, 7.65 is \$61.20. That is \$5 a month. Some of the arguments are well, we can't negotiate. You are still able to negotiate 7.75% of the 9.75% which is 75% of the retirement package. This, in no way, is taking away even a vast majority of negotiating power. My thought is, like I stated on Saturday, if you said you were going to do it, why is it a big deal to actually put it in code and say you will do it? What is going to happen in a year or two down the road, they are going to come back and say we are underpaid even more now, so we need a catch up salary and forget about the 2% that was negotiated away. A lot of people don't look at health benefits as salary. It, of course, isn't salary but it basically is. It is part of your total compensation which is the same thing as paying them. That is why I don't support being able to negotiate. If they are at the table and say, yes, we want to be part of the solution. All this is saying is yes, you will be part of the solution.

**Senator Donald Schaible:** Serving as a head negotiator for 15 years, it is kind of interesting to hear all things that are affected in negotiations. The reality is that school boards are going to pay it regardless. Granted, the state gives the school boards the money. The thing is we go into negotiations and part of the beauty of that is when you can negotiate it on a local level, you find out what is a priority for your local area. Certain areas will be medical benefits. Some areas will be retirement. Some issues are just strictly salary. It is based on the age and the experience of the teacher, but the thing is at a local level when you have that flexibility to decide what is best for your local unit, it is much easier to do that. As a school district, you figure out what you can afford to give for salaries and benefits. Eighty five percent of your budget is based on salaries and benefits in the amount of increase that you are going to do. The thing is where you are going to divide it up. Whether you put it on the teacher salary and they pay it, or you just pay it, it still is coming out of the school district's money that they have to spend for that. When you have the power to negotiate it, you can fine tune to the special needs of each district and to the priority issues of the teachers or the boards. By telling school districts that you will do things, you erode that, not only the flexibility but the power to enhance the true spirit of negotiation to use those to find out what are or are not priorities. They are totally different with your neighbors or the districts across the state. You want school districts to negotiate but then you keep limiting the rules and responsibility at which they do that.

**Chairman Bette Grande:** One of the misnomers would be that I want them to negotiate at the school board level. With having said that, the local units want the responsibility to be able to negotiate this. Right? Then I think each local unit should be held responsible for their comparison at the national level. You have some school districts that negotiate down these lower salaries through different ways of doing it and the state is accused of not paying the teachers well because of this type of thing. I don't think that is fair to the state. The state currently is being held responsible for this fund that is not doing well. If the

school districts are going to take on that and have it their responsibility because they chose to negotiate the way they did, that is fine. I will have the amendments drafted for that too, because I am not having any problem with dissolving TFFR, distributing the funds out to each of the local school districts, and let them negotiate and run it. That would be fine with me too, and remove the state's obligation to that. When the state says this is the policy we have set, employer, employee, and everything we do and everything we say gets negotiated away yet we have to hold the final purse strings, something is wrong with the picture. When it is the state that now all of a sudden is being told you guys fix the property tax problem and then put the money into the school districts, the state is going to have to take and be the ones that hold on to more of this responsibility. If we are going to be held responsible, we should be the ones that help run it. That is the problem with coming to the state and saying take care of our property tax issue because now we need to have some more say in to how we are going to take care of the property tax issue. Let's remove the state from all responsibility of it and let the school districts do it. You want full collective bargaining then you take on all the aspects of it. Don't ask the state to run the program. Don't ask the state to set a policy of employer, employee. Don't ask the state to pay for the actuaries. Give it back to everyone of the school districts and let them run it. I don't have a problem with that. It was in 74 or 77 when they came to us and asked the state to take on the obligation. We have to get out of the business. It is either an all or none. You don't get to pick and choose. That is my frustration at this, because we get blamed when a school district doesn't do it right. I have a real problem with the low teacher salary coming back to being blamed at the state level, because that is negotiated at the local level. That is my issue with negotiation. Now if this committee wishes to entertain it, I do have the repealer of collective bargaining if we want to talk about it today. Which one is it going to be? That is where we are at.

**Rep. Bill Amerman:** That was quite a statement, and I don't know if I kept up with everything you are saying. All states get compared on whatever level be it teachers' salaries or whatever subject might come up. Because of the makeup of congress and the federal government, the cutbacks, and so and so forth, the state is going to take on more responsibility in a lot of programs. Nobody knows better what goes down than the school districts. My understanding that the bill before us came out of the employee benefits committee with an 8-0 do pass without the amendment that was proposed. That is made up of a bipartisan committee. I would think that if they thought that 2% shouldn't be a negotiated item that would have been taken care of on that level. I don't know if those amendments would go very well that you have in that red packet. To blame the school districts for the poor rating that our state has is not quite fair. I think everybody has to take responsibility at our level and possibly at that level too. I think the bill as it stands before us today is a good bill. We have very responsible people in all our school districts, and everyone is different be it on a reservation, be it in a big urban area, or be it in a small community. They have to deal with that and deal with their constituents at that level.

**Chairman Bette Grande:** Just for clarification. If we broke it out by school districts, there are some of us whose school districts on their own would be in the top 20 percentile payment in the nation for their teachers. It is those that negotiated away bring all of us down and make the state look poor.

**Senator Carolyn Nelson:** If I was just looking at my local school district, it is a Model 1 school district that ten years ago decided they would go each and each. Health benefits are not on the table because there is a separate group that talks about that. That is brought in, and the way I understand it is not really part of the package. Looking at the chart that you gave me the other day, 43% of the employers and 60% of the teachers are under that Model 1 program which is the employer and employee at 9.75. It is the other 40% of the employees and the other 60% of the employers that are being discussed here basically. You are right. If my school district were included, we would probably be up there in the top 20. We are not just talking about School District 1 which originally was from the Red River west. That was the definition of the Fargo school district. Perhaps it should have been kept that way. That is not what we are discussing here.

**Senator Ronald Sorvaag:** I think we have talked about all we need to talk about today.

**Chairman Bette Grande:** Alright, it sounds good to me.

The meeting was adjourned.

# 2011 HOUSE STANDING COMMITTEE MINUTES

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

HB 1134  
April 19, 2011  
16760

Conference Committee

Committee Clerk Signature

*Carmen Hart*

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

Definitions of member tiers under the TFFR, employee and employer contribution requirements, eligibility for normal unreduced retirement benefits eligibility for early reduced retirement benefits, eligibility for disability benefits, and retiree reemployment under the TFFR

## Minutes:

**Chairman Bette Grande** opened the conference committee on HB 1134. We had the opportunity for the chair to speak yesterday. Is there anybody else who has something they would like to add?

**Senator Ronald Sorvaag:** I'll be brief. No, I really don't. I think we are all sitting hard to see, as all these processes are about, if there is somewhere that we can come together on this. I don't think we have reached that point. Our meetings, even though they are a day apart, seem pretty close together to get too much done. I think we are sincerely looking at this, too, to see if there is something that can be done to move this bill forward which I think is the intent of all parties here to see if we can come up with a resolution on our differences to move this bill forward. From the senate side at this time we haven't reached that point to do any action or make any motions today. I think that is really about the extent of where we are at.

**Chairman Bette Grande:** I agree. I would like to continue to work towards some type of a direction on this. This is not a bill that after investing many months in, my time too, that I want to see go away. My fear is that it will go away if we don't proceed properly. I do want to continue down that path.

**Senator Ronald Sorvaag:** That is our intent too. We do realize that a lot of people have worked for a long time. There is no bill that is perfect, but we all have things we like in here or don't like in here or whatever. Yes, we would like the opportunity that we keep working on this.

**Chairman Bette Grande:** Having said that, if anybody else doesn't have anything to add, we will close the hearing.



# 2011 HOUSE STANDING COMMITTEE MINUTES

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

HB 1134  
April 20, 2011  
16796

Conference Committee

Committee Clerk Signature

*Carmen Hart*

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

Definitions of member tiers under the TFFR, employee and employer contribution requirements, eligibility for normal unreduced retirement benefits eligibility for early reduced retirement benefits, eligibility for disability benefits, and retiree reemployment under the TFFR

## Minutes:

**Chairman Bette Grande** opened the conference committee on HB 1134.

**Senator Carolyn Nelson** presented a proposed amendment. **Attachment 1.** This is basically the same thing as you have except on Page 2 we are back to having that Section 2 in there again. You will notice that part that says the employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or, except for member contribution increases beginning June 30, 2012, that increase an administrator's or teacher's negotiating unit's base salary, when combined with member contribution increases, by more than seven percent, by an offset against future salary increases. What we are looking for here is kind of a half way between what we were hearing the house say and what we wanted. If that base salary goes over seven percent for the unit, it is not negotiable. If it is under that, it is. There is a sunset of 2015 on it where it reverts back to the way we do things now.

**Chairman Bette Grande:** Did you say this was based only under the teachers' aspect or is this under the administrators also?

**Senator Carolyn Nelson:** It includes both. They are in two different sections of the code. Seven percent was based on two percent for the pension, two percent that most all districts have something that happens on the scale or the ladder or whatever schedule they have within their district that is going to move one way or the other regardless of anything else, and then an anticipated three percent increase in salary.

**Chairman Bette Grande:** As I am looking at this, is it divided by section where we are discussing just the teacher section and then we have another section that is administrators, or is this engrossed altogether?

**Senator Carolyn Nelson:** I understand it is engrossed altogether, but it talks about the administrators' or the teachers' negotiating unit's base salary. Those would be separated out at the local level. I would move proposed amendment 2006.

**Chairman Bette Grande:** What I would like to do is to resist that until we have had an opportunity to look through it.

**Senator Ronald Sorvaag:** Senator Nelson, it is just that line and Section 10 that has been changed?

**Senator Carolyn Nelson:** Yes, that's what we asked for. Quite frankly, the first version we asked for wasn't what we asked for so we sent it back. That is why we jump to 2006.

**Chairman Bette Grande:** I can assume that Sections 7 and 8 is our current language of what we had passed and was studied and is conducive to what TFFR's language is. My main thing is Section 3.

**Rep. Roscoe Streyle:** What is the reason for the expiration date on it?

**Senator Carolyn Nelson:** The reason for the expiration date is that by 2015 the last of the amounts that the teachers would be paying in extra would expire and they would be back to an annual at that new rate. After that happens if they want to go back to the way they are doing it now, they can. In my particular district this won't affect them a bit because we are at Model 1 now. This would affect the Model 2 and 3 schools. A prime example of a Model 2 school would be West Fargo.

**Chairman Bette Grande:** With the expiration date, it has been put in that they have reached the threshold of the seven percent and so they have fallen under the split, the pay-pay piece. At 2015 if they are still above seven percent, they no longer have to do the split? That increased payment is going to go on for 40 years according to the actuary. All of a sudden we are going to revert back?

**Senator Carolyn Nelson:** The way I understand it is that once we get that four percent up at two, two, and two business going up there, it is not going to continue to be additional two each time. It will be leveling off at that two that is existing at 2015. At that point school districts can go back and look and see.

**Chairman Bette Grande:** That four becomes negotiable, though, after 2015?

**Senator Carolyn Nelson:** We can look at it again, too. For now this takes us up through the increases.

**Chairman Bette Grande:** Correct. Let's say, we have hit 2016 and we are at the negotiating table and I am at a seven percent increase, did the four percent go back on the table for negotiation?

**Senator Carolyn Nelson:** I would say, yes. You go back to the existing Subsection 2. We asked if we needed two sections in here, one effective for that period and then one

going back, and we were told by Jeff that it would revert back to the way we are doing things now after 2015. There is nothing saying that they couldn't continue the way they are going if they wanted to. This gets us through the period of two, two, and two.

**Rep. Roscoe Streyle:** Wouldn't this complicate the issue more with the school board instead of saying you pay x, you pay x, done? You have to factor in the salary increases and the percentage, etc. To me, it seems more burdensome for the school board.

**Senator Carolyn Nelson:** There is a burden on everybody in this thing. This is by the base unit. This is not by teachers. If you are looking at the base salary units for let's say, the West Fargo school district, if it is at 6.9, we are at one thing. If we are at 7.1, we are at somewhere else. It is over the entire group of teachers. Whenever there is a change, there is going to be a difficulty and a strain put on somebody to get it up to the system that we want. Is it something that both sides can agree on? Right now they have three different systems they are working on. They have Model 1, Model 2, and Model 3. There are already differentiations there.

**Chairman Bette Grande:** Personally, I need to chew on this for awhile.

**Senator Ronald Sorvaag:** I would request the same.

The meeting was adjourned.

# 2011 HOUSE STANDING COMMITTEE MINUTES

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

HB 1134  
April 20, 2011  
16806

Conference Committee

Committee Clerk Signature	
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## Explanation or reason for introduction of bill/resolution:

Definitions of member tiers under the TFFR, employee and employer contribution requirements, eligibility for normal unreduced retirement benefits eligibility for early reduced retirement benefits, eligibility for disability benefits, and retiree reemployment under the TFFR

## Minutes:

**Chairman Bette Grande** opened the conference committee on HB 1134. We have run into a glitch on the amendments we are working on, and I want to have the interested parties have an opportunity to look at them. While they are doing that we will just go on hold. The meeting is adjourned.

# 2011 HOUSE STANDING COMMITTEE MINUTES

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

HB 1134  
April 21, 2011  
16817

Conference Committee

Committee Clerk Signature	<i>Carmen Hart</i>
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## Explanation or reason for introduction of bill/resolution:

Definitions of member tiers under the TFFR, employee and employer contribution requirements, eligibility for normal unreduced retirement benefits eligibility for early reduced retirement benefits, eligibility for disability benefits, and retiree reemployment under the TFFR

## Minutes:

**Chairman Bette Grande** opened the conference committee on HB 1134. We ended yesterday in discussion on 2006.

**Senator Carolyn Nelson:** We found overnight that there may be problems with IRS the way things are written. They can get very picky and not nice with us so I will not be presenting those amendments.

**Chairman Bette Grande:** Does anybody else in the committee have any amendments they wish to offer?

**Senator Ronald Sorvaag:** I don't think from our side we have anything right now. I don't know what to discuss.

**Chairman Bette Grande:** The only thing would be is if you wanted to recede from your amendment.

**Senator Ronald Sorvaag:** That won't be happening right now. I was waiting for your motion.

**Chairman Bette Grande:** I don't hear that one coming off over here either. We will adjourn the meeting.

# 2011 HOUSE STANDING COMMITTEE MINUTES

## House Government and Veterans Affairs Committee

Fort Union Room, State Capitol

HB 1134

April 22, 2011

16853

Conference Committee

Committee Clerk Signature

*Carmen Hail*

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

Definitions of member tiers under the TFFR, employee and employer contribution requirements, eligibility for normal unreduced retirement benefits eligibility for early reduced retirement benefits, eligibility for disability benefits, and retiree reemployment under the TFFR

### Minutes:

**Chairman Bette Grande** opened the conference committee on HB 1134. We have met a number of times. We have tried to come to various conclusions, different directions, tried some various ideas, and none of those seem to work. We are here on the one amendment that was removed in the senate and that being the 2 and 2. Two percent is to be paid from the employer and two percent by the employee. That was what the plan was. That is where it should stand. On the house side that is an important side of the issue. We need to know that commitment is there from all sides, not just one side. This is a very costly thing. This is going to cost the taxpayers right to the school boards on this issue. There has to be a buy in. There has to be an understanding that this is for everybody to partake in. You don't negotiate your obligations. Without that amendment we have negotiated away. We are allowing the negotiation away of an obligation that was made. When we put something in law and we say that we want the employer to pay two percent and we want the employee to pay two percent, we as the policymakers of the state who hold the obligation of the teachers' fund for retirement because it is in code, we expect the citizens to know that the law will be followed and adhered to when it leaves the capitol. Out of fairness, I truly believe that needs to be stated and it needs to be a part of this bill.

**Rep. Roscoe Streyle:** I move that the **senate recede from their amendments.**

**Chairman Bette Grande** seconded the motion.

**2 YEAS, 4 NAYS. SENATE RECEDE FROM SENATE AMENDMENTS. MOTION FAILS.**

**Senator Ronald Sorvaag:** I know Rep. Grande, the chairman, has worked hard a long time on this bill, and I don't disagree with all that said, but as things came out of our chamber I guess that is where I lean at this time and, hopefully, this discussion does carry down to the school districts what we were hoping to see done here or like to be done here and they do take a serious look at how they negotiate these in the future because there is

quite a commitment. We are talking \$45 million a year. If they end up paying both sides, that is a lot of public money. At this time as a representative of the senate, I am comfortable with what we had sent out of there, and I am going to make a motion that the **house accede to the senate amendment.**

**Senator Donald Schaible** seconded the motion. Just a comment. Not that I agree with everything that happened, but the concessions the teachers have made about working longer and committing more time to this effort was kind of an agreement which was the reason I was agreeing to put more money into the fund. That was a concession we could live with. The negotiation thing is more of a principle than a money issue. It is a big issue, but I still think it is a local negotiated issue. I would have to agree with our motion.

**Chairman Bette Grande:** I understand what you are saying, but I also understand it is critically important that when we take steps to do something different here and work to shore up these funds with taxpayers' dollars, there should be a buy in and an obligation that is made. I am not seeing that. I am very disappointed with that attitude especially when through the course of the hearings, there was always the saying that they understood there would be a part. When it comes down to this negotiation, I want it duly noted that when school boards and school teachers' unions agree to hold salaries down in lieu of a salary increase, it be duly noted to the taxpayers that it was their fault that the salaries are low in this state. It is not lack of our obligation. It is that they negotiated away their salaries. We offered it. They negotiated it away, and I want that duly noted.

**HOUSE ACCEDE TO SENATE AMENDMENTS. 5 YEAS, 1 NAY.**

The meeting was adjourned.

# 2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: GOVERNMENT AND VETERAN AFFAIRS

Bill/Resolution No. 1134 as (re) engrossed

Date: 4-15-11

Roll Call Vote #: \_\_\_\_\_

- Action Taken**
- HOUSE accede to Senate amendments
  - HOUSE accede to Senate amendments and further amend
  - SENATE recede from Senate amendments
  - SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) \_\_\_\_\_

- Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar

Motion Made by: Sorvaag Seconded by: Nelson

Representatives	H	J	S	Yes	No		Senators	H	J	S	Yes	No
<u>Grande</u>	✓	✓	✓		✓		<u>Sorvaag</u>	✓	✓	✓	✓	
<u>Streyke</u>	✓	✓	✓		✓		<u>Schaible</u>	✓	✓	✓	✓	
<u>Ammerman</u>	✓	✓	✓	✓			<u>Nelson</u>	✓	✓	✓	✓	

Vote Count      Yes: 4      No: 2      Absent: 0

House Carrier \_\_\_\_\_ Senate Carrier \_\_\_\_\_

LC Number \_\_\_\_\_ of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

motion fails



# 2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: GOVERNMENT AND VETERAN AFFAIRS

Bill/Resolution No. 1134 as (re) engrossed

Date: 4-22-11

Roll Call Vote #: 1

- Action Taken**
- HOUSE accede to Senate amendments
  - HOUSE accede to Senate amendments and further amend
  - SENATE recede from Senate amendments
  - SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) \_\_\_\_\_

- Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar

Motion Made by: Streyle Seconded by: Grande

Representatives				Yes	No		Senators			Yes	No
Chairman Grande	4-22	✓		✓			Sorvaag	4-22	✓		✓
Streyle		✓		✓			Schaible		✓		✓
Amerman		✓			✓		Nelson		✓		✓

Vote Count      Yes: 2      No: 4      Absent: \_\_\_\_\_

House Carrier \_\_\_\_\_ Senate Carrier \_\_\_\_\_

LC Number \_\_\_\_\_ of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Motion Fails

# 2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: GOVERNMENT AND VETERAN AFFAIRS

Bill/Resolution No. 1134 as (re) engrossed

Date: 4-22-11

Roll Call Vote #: 2

**Action Taken**

- HOUSE accede to Senate amendments
- HOUSE accede to Senate amendments and further amend
- SENATE recede from Senate amendments
- SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) 1510 - 1514

- Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar

Motion Made by: Sorvaag Seconded by: Schaible

Representatives				Yes	No		Senators				Yes	No
<u>Granda</u>	<u>4-22</u>	<u>✓</u>		<u>✓</u>			<u>Sorvaag</u>	<u>4-22</u>	<u>✓</u>		<u>✓</u>	
<u>Streite</u>	<u>4-22</u>	<u>✓</u>		<u>✓</u>			<u>Schaible</u>	<u>4-22</u>	<u>✓</u>		<u>✓</u>	
<u>Hamerman</u>	<u>4-22</u>	<u>✓</u>		<u>✓</u>			<u>Nelson</u>	<u>4-22</u>	<u>✓</u>		<u>✓</u>	

Vote Count Yes: 5 No: 1 Absent: \_\_\_\_\_

House Carrier \_\_\_\_\_ Senate Carrier \_\_\_\_\_

LC Number \_\_\_\_\_ of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

**REPORT OF CONFERENCE COMMITTEE**

**HB 1134, as engrossed:** Your conference committee (Sens. Sorvaag, Schaible, Nelson and Reps. Grande, Streyle, Amerman) recommends that the **HOUSE ACCEDE** to the Senate amendments as printed on HJ pages 1510-1514 and place HB 1134 on the Seventh order.

Engrossed HB 1134 was placed on the Seventh order of business on the calendar.

2011 TESTIMONY

HB 1134

Attachment 1  
HB 1134

## HB 1134

### House Government and Veteran Affairs Committee

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

As fiduciaries of the TFFR trust fund, the TFFR Board is proposing changes included in HB 1134 which are designed to keep TFFR financially strong and sustainable for past, present, and future ND educators. I will briefly highlight TFFR's funding challenge and comprehensive study of funding improvement options as background for TFFR's legislative proposal.

#### TFFR's Funding Challenge

TFFR investments have generally been very strong over time due to the Fund's long term investment strategy, professionally managed portfolio, and well diversified assets.

Unfortunately, like other investors, both large and small, TFFR experienced significant investment losses in 2008-09 as a result of the global recession.

Obviously, a major loss of assets coupled with increased liabilities (longer life expectancies, salary increases, and benefit changes) has a substantial impact on TFFR's long-term funding outlook. When investment earnings decline, funding levels also decline. Prior to the market meltdown, TFFR's funded level was about 80%. As of the July 1, 2010 actuarial valuation report, TFFR's funded level was about 70% (based on actuarial value) or about 55% (based on market value). See January 13, 2011 TFFR Overview presentation for additional details.

Assuming variable investment returns for the 2010-11 fiscal year, plus 8% returns in the future, Chart 1 shows projected TFFR funding levels if no changes are made. As you can see, with 8% return this year, and 8% returns every year in the future, TFFR funding levels are projected to decline to less than 50% within the next few years, and will steadily deteriorate in the future.

NDTFFR has the cash flow needed to pay current pension benefits when they are due (currently about \$127 million each year). However, looking long term, there is a shortfall in the funding of NDTFFR benefits. If no changes are made, NDTFFR will eventually be unable to pay benefits.

TFFR's challenge then is to stop this downward trend, stabilize funding, and over the long-term, improve funding levels.

## TFFR Funding Improvement Study

In 2009, the TFFR Board took the prudent and proactive step of establishing a TFFR Funding Improvement Study Group. TFFR Board and RIO staff members, along with representatives from the ND Education Association (NDEA), ND Council of Educational Leaders (NDCEL), ND School Boards Association (NDSBA), and ND Retired Teachers Association (NDRTA) spent more than a year studying options to offset investment losses and address declining funding levels.

The Group focused on developing proposals which would reflect the following core principles:

- Restore the financial health of the TFFR plan.
- Maintain adequate retirement security for ND educators.
- Share responsibility for funding improvement with employees and employers.
- Phase changes over time.
- Protect benefits of those employees closest to retirement.

Options considered include: (1) investment performance over 8% assumed return; (2) increasing contributions; (3) reducing benefits; (4) state general fund; (5) and a combined approach. The Study Group discussed in depth the advantages and disadvantages of various alternatives; analyzed actuarial, legal, financial, and policy issues; and seriously considered the impact on members, employers, and the State.

The Board was encouraged and aided by the feedback received from stakeholder groups helping to shape legislative recommendations. As a result, the TFFR Board submitted three bills to the interim Legislative Employee Benefits Programs Committee (LEBPC) for interim legislative review. The Committee studied the bills, received technical and actuarial analysis, took public comment, and gave recommendations on the bills. The interim legislative committee gave the TFFR funding improvement bill a favorable recommendation.

## **HB 1134 – TFFR FUNDING IMPROVEMENT**

In general, changes included in HB 1134 are designed to improve TFFR funding levels over the long-term by increasing employee, employer, and re-employed retiree contributions. It also reduces future liabilities by raising the retirement age for unreduced benefits and increasing the early retirement reduction factor for reduced benefits for nonretired employees who are more than 10 years away from retirement under special grandfathering criteria. A Summary of HB 1134 provisions is attached.

I will review each section of the bill, but would like to begin with Section 2, since sections 1, 3, and 4 are closely related and should be reviewed together.

**SECTION 2. NDCC 15-39.1-09 Membership in fund and assessments**

Actuarial analysis shows that the current statutory contribution rates of 7.75% of salary for employees and 8.75% for employers/school districts are insufficient to amortize TFFR's unfunded liability over 30 years.

HB 1134 would increase contribution rates for all employees and employers a total of 8%, shared equally between employees (4%) and employers (4%). The rate increases would be phased in over two bienniums as follows:

	<b>Current 7/1/10</b>	<b>Proposed 7/1/12</b>	<b>Proposed 7/1/14</b>
Employee	7.75%	9.75%	11.75%
Employer	<u>8.75%</u>	<u>10.75%</u>	<u>12.75%</u>
Total	16.50%	20.50%	24.50%

Under this proposal, the higher contributions are not intended to be permanent. The higher employee and employer contribution rates would be effective until TFFR reaches 90% funded level on an actuarial basis at which time the contribution rates would be reduced to 7.75% each. These were the rates in effect prior to 7/1/07. It should be noted, however, that actuarial projections show the higher contributions would be in effect for at least the next 30 years.

In dollar terms, employee and employer contribution increases are estimated to increase TFFR revenues about \$40-45 million each year after both rate increases are fully phased in (\$20+ million employee and \$20+ million employer). Contribution amounts are estimated at \$5 million a year for every 1% increase in TFFR contribution rates and based on current total employee salaries; total contribution amounts will differ based on actual total employee salaries for any given year. (Chart 4 – Projected Contribution Amounts.)

Since TFFR retirement benefits are part of a teacher's total compensation package (salary and benefits), TFFR contribution rate increases will likely reduce funding for future salary increases and other benefits. Additionally, for those employers who pick up all or a portion of the employee's retirement contributions, it will be need to be considered as part of the salary negotiations process.

**SECTION 1. NDCC 15-39.1-04 (14 and 15) Definitions:**

TFFR currently has two tiers of participating members. Tier 1 employees are those who were members of the system prior to 6/30/08. Tier 2 employees are those who began TFFR participation after 6/30/08. The differences in the two tiers relate to their eligibility for and calculation of retirement benefits.

- Tier 1 employees can retire when they reach the Rule of 85, 3 year vesting, and 3 year final average salary calculation.
- Tier 2 employees can retire when they reach the Rule of 90, 5 year vesting, and 5 year final average salary calculation.

Both membership tiers use the multiplier of 2.0% X years of service credit X final average salary in calculating retirement benefits.

Section 1 creates two new definitions for grandfathered and non-grandfathered Tier 1 members. The intent is to “grandfather” or protect those Tier 1 members who are within 10 years of retirement eligibility and allow them to remain under current retirement eligibility provisions. Approximately 3,500 employees (or 35%) would be grandfathered, and would therefore not be affected by unreduced and reduced retirement benefit eligibility changes described in sections 3 and 4. Non-grandfathered Tier 1 members, Tier 2 employees, and future employees would be affected by such changes.

To identify which employees are within 10 years of retirement eligibility, grandfathering criteria would be established as follows:

A Tier 1 grandfathered member is one who, as of 6/30/13, is vested (3 years of service credit) and:

- a. Is at least 55 years of age; or
- b. Has a combined total of years of service and age which is 65 or greater.

A Tier 1 non-grandfathered member is one who does not qualify as a Tier 1 grandfathered member (i.e. is not vested, is younger than age 55, and has less than Rule of 65 on 6/30/13).

In determining eligibility for grandfathering provisions, the employee’s actual age and service credit (including any purchased service credit made before 6/30/13) would be calculated to the nearest thousandth (0.000) according to information on file at TFFR.

Examples:

- 1) Tier 1 employee is age 57 with 4 years of service credit.  
Yes, employee is grandfathered since vested and over age 55.
- 2) Tier 1 employee is age 45 with 20 years of service credit.  
 $45 + 20 = 65$  Yes, employee is grandfathered since total is 65 or over.
- 3) Tier 1 employee is age 40 with 15 years of service credit.  
 $40 + 15 = 55$  No, employee is not grandfathered since total is less than 65.



### **SECTION 3. NDCC 15-39.1-10. Eligibility for normal unreduced retirement benefits.**

Under current law, all vested employees can retire with full unreduced benefits at age 65, or earlier if they reach the Rule of 85 (Tier 1) or Rule of 90 (Tier 2). There are no minimum retirement ages. The changes in HB 1134 refer to whether employees can retire earlier than age 65 based on their age and service.

HB 1134 provides for a minimum retirement age of 60 for non-grandfathered employees. However, the bill allows Tier 1 grandfathered employees (those within 10 years of retirement) to remain under current provisions (i.e. Rule of 85) to qualify for unreduced retirement benefits. Non-grandfathered Tier 1 employees, Tier 2 employees, and all future employees would be required to work longer in order to qualify for unreduced retirement benefits.

Effective 7/1/13, non-grandfathered employees would need to work until a minimum of 60 years of age, and could then retire with unreduced benefits if they have the Rule of 90. If, however, they do not have the Rule of 90, they would need to continue working, or defer drawing benefits until they reach the Rule of 90/minimum age 60, or until age 65.

Note that under this proposal, the employee must work until minimum age 60 to receive unreduced benefits, even if they reach the Rule of 90 at an earlier age.

#### Examples:

- 1) Grandfathered Tier 1 employee, age 50 @ 25 yrs service credit on 6/30/13.  
Current: Elig Rule 85 @ age 55 + 30 yrs (R85) in 2018  
Proposed: Elig Rule 85 @ age 55 + 30 yrs (R85) in 2018 No change
  
- 2) Non-grandfathered Tier 1 employee, age 40 @ 15 yrs service credit on 6/30/13.  
Current: Elig Rule 85 @ age 55 + 30 yrs (R85) in 2028  
Proposed: Elig Age 60 + 35 yrs (R95) in 2033 + 5 yr diff  
(\*Reached R90 @ age 58 + 33 = R91)
  
- 3) Non-grandfathered Tier 2 employee, age 32 @ 6 years service credit on 6/30/13.  
Current: Elig Rule 90 @ age 58 + 32 years (R 90) in 2039  
Proposed: Elig Age 60 +34 yrs (R94) in 2041 + 2 yr diff
  
- 4) Non-grandfathered Tier 1 employees at various age/service combinations after 6/30/13.  
  
Age 60 + 30 years service or more  
Age 61 + 29 years service  
Age 62 + 28 years service  
Age 63 + 27 years service  
Age 64 + 26 years service  
Age 65 + vested (3 years service or more)

Note: The TFFR Board looked at other alternatives with regard to changing member benefits for future members only OR future members and current nonvested members, however, these produced very small savings. This legislation, by grandfathering members eligible for or near eligibility for retirement, attempts to minimize the impact on members who are making active plans for their retirement, while still producing meaningful savings.

**SECTION 4. NDCC 15-39.1-12. Early reduced retirement benefits.**

Current statutes also allow a vested member to be eligible to retire before normal retirement age and receive reduced retirement benefits if the employee is age 55 or older. Early retirement benefits are reduced by 6% per year from the earlier of age 65 or the Rule of 85 (Tier 1) or Rule of 90 (Tier 2).

HB 1134 does not change the minimum age 55 eligibility requirement for receiving reduced benefits, but it does increase the 6% per year reduction to 8% per year reduction from the proposed unreduced retirement ages outlined in Section 3. That is, effective 7/1/13, a non-grandfathered member's benefits would be reduced by 8% from the earlier of age 65 OR the later of either age 60 or Rule of 90. The 8% per year reduction approximates a full actuarial reduction while retaining a simplified formula.

Example: Non-grandfathered Tier 1 employee, age 55 @ 19 years of service, FAMS \$3,000

Current: Age 65-55 = 10 x 6% = 60% reduction	
\$3,000 x 19 yrs x 2% = 1140 x 40% = \$456 per month at age 55	
Proposed Age 65-55 = 10 x 8% = 80% reduction	
\$3,000 x 19 yrs x 2% = 1140 x 20% = \$228 per month at age 55	
Difference	-\$228 month

**SECTION 5. NDCC 15-39.1-18. Disability retirements.**

Under current law, members are eligible for disability benefits if they have at least one year of service and qualify for total disability as determined by the Board. If approved, the amount of the disability benefit is calculated based on a minimum of 20 years of service credit, for a minimum disability benefit of 40% of final average salary. On average, about 7 members each year are determined eligible for disability benefits.

HB 1134 increases the vesting requirement from 1 year to 5 years, and changes the benefit calculation to using actual service credit earned instead of the 20 year minimum. This change would be effective 7/1/13 for all nonretired Tier 1 and Tier 2 employees.

Example: Teacher age 40 @ 15 years service credit, FAMS \$3,000

Current:	\$3,000 X 20 X 2.0% = \$1,200 mo.	
Proposed:	\$3,000 X 15 X 2.0% = \$ 900 mo.	
Difference		-\$300 month

**SECTION 6. NDCC 15-39.1-19.1 Retired teachers return to active service - Annuities discontinued on resumption of teaching over annual hour limit**

**SECTION 7. NDCC 15-39.1-19.2 Retired teachers return to active service – Critical shortage areas and disciplines.**

Current law allows public school teachers and administrators to return to work after retirement and continue receiving their TFFR benefits under certain employment limitations. The limits apply to TFFR covered employment, but do not apply to non contracted substitute teaching, teaching in a public college, university, or private school, employment outside of education, or employment outside of ND.

Under the general rule, the maximum annual hour limit is based on length of contract duties: 9 month contract = 700 hours; 10 month contract = 800 hours; 11 month contract = 900 hours; 12 month contract = 1,000 hours. If the retiree exceeds the annual hour limit, their monthly retirement is suspended and they are then treated like an active employee with their benefit possibly recalculated upon subsequent retirement if they meet certain conditions outlined in state law.

Under the critical shortage area exemption, retirees can return to TFFR covered employment in an approved critical shortage area and exceed the annual hour limitation (work full time) without losing retirement benefits. A one-year waiting period is required. Critical shortage areas are determined each year by the Education Standards and Practices Board (ESPB). For the 2010-11 school year, ESPB has designated all areas except for elementary education and physical education as critical shortage areas.

Current law requires the employer to pay employer contributions on the salary paid to the re-employed retiree.

During the 2009-10 year, there were 305 re-employed retirees. Of the total, 278 worked part time under the annual hour limit, 20 worked full time under critical shortage area exemption, and 7 worked full time under the benefit suspension and recalculation option. So far in the 2010-11 school year, there are 287 re-employed retirees.

HB 1134 would require all re-employed retirees to pay employee contributions on the salary earned from the school district beginning 7/1/12. This is estimated to bring in approximately \$600,000 of additional contributions per year based on current contribution rates. The re-employed retiree's pension benefit would not increase as a result of the additional contributions being paid (unless their benefit was suspended because they exceeded the annual hour limit). However, the employee contributions would be included in the retiree's guaranteed account value.

**SECTION 8. EFFECTIVE DATES**

This section provides for effective dates for the various changes made by the bill. The effective dates for the employee and employer contribution rate increases (section 2) are included in the bill's language and become effective 7/1/12 and 7/1/14. Requiring re-employed retiree contributions (sections 6 and 7) would become effective 7/1/12. The changes relating to unreduced retirement, reduced retirement, and disability benefits (sections 3, 4, and 5) would become effective 7/1/13.

**FISCAL NOTE**

This bill increases employer contributions from 8.75% to 10.75% beginning 7/1/12 and from 10.75% to 12.75% beginning 7/1/14 which amounts to an additional \$10.6 million for 2011-13 biennium and \$33.2 million for 2013-15 biennium. Notice that the rate increases start the 2<sup>nd</sup> year of each biennium.

This totals \$43.8 million increase in employer contributions each biennium after increases are totally phased in until TFFR reaches 90% funded level. Estimates are based on assumptions and calculations from TFFR's actuarial consultant in letter dated 10/22/10. Fiscal impact may be more or less depending on actual salary paid to active members. Here is the breakdown by school districts, counties, and general fund:

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$75,260		\$235,720	
Appropriations			\$75,260		\$235,720	

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
			\$8,480		\$10,516,260	\$26,560		\$32,937,720

208 school districts, special education units, vocational centers, and other public education entities employ the majority of TFFR participating members (99.21%) and would be required to pay the increased employer contributions of \$10,516,260 for 2011-13 biennium and \$32,937,720 for the 2013-15 biennium totaling \$43,453,980 for both bienniums after increases are phased in.

9 counties currently employ 9 county superintendents (0.08%) who are TFFR participating members and would be required to pay the increased employer contributions of approximately \$8,480 for the 2011-13 biennium and \$26,560 for the 2013-15 biennium totaling \$35,040 for both bienniums after increases are phased in.

4 state entities currently employ about 74 TFFR participating members (0.71%) and would be required to pay the increased employer contributions of approximately \$75,260 for the 2011-13

biennium and \$235,720 for the 2013-15 biennium totaling \$310,980 for both bienniums after increases are phased in:

<u>Bienniums</u>	<u>2011-13</u>	<u>2013-15</u>
ND Center for Distance Education	\$22,578	\$70,716
ND Youth Correctional Center	\$22,578	\$70,716
ND School for the Deaf	\$15,052	\$47,144
ND School for the Blind	\$15,052	\$47,144

**ACTUARIAL ANALYSIS**

TFFR’s actuarial consultant, GRS, conducted an actuarial analysis and technical review of this bill which is described in more detail in their letter dated October 22, 2010.

Chart 3 shows the actuarial impact of the changes outlined in HB 1134. As you can see, without any changes, TFFR funding levels are expected to be exhausted within 30 years even if TFFR earns 8% each year in the future. With HB 1134 changes, plus 8% returns in the future, TFFR’s funded level is projected to reach about 80% in 30 years and would return TFFR to its funding level before the 2008-09 market melt down.

While a 100% funding policy is optimal for many reasons (cost is less if contributions are made sooner rather than later, inter-generational equity, GASB rules, etc.), the Board recognizes it will take time to reach the 100% funding target. Future investment returns of greater or less than 8% will also change the timing and look of TFFR’s funding picture.

The increase in the employee and employer contributions (8.0%) to the plan has the most significant effect on the projected improvement in the plan’s funded status under HB 1134 as you can see from the following chart. The combination of all these items included in the bill, when fully phased in, is equivalent to a total of 8.66% of payroll.

	<u>Effect</u>
Increase member contribution rate	4.00%
Increase employer contribution rate	4.00%
Require re-employed retiree member contributions	0.12%
Change retirement eligibility and early retirement reduction factor	0.49%
Change disability provisions	<u>0.05%</u>
Total	8.66%

**LEGAL ISSUES**

HB 1134 does raise some potential legal issues. TFFR’s legal counsel from the ND Attorney General’s Office (AGO) has examined the issue regarding the legality of pension benefit changes. General conclusions are: (1) State cannot change pension benefits of retired members. (2) State can change benefits of new employees. (3) State can change benefits or contributions of active and inactive members, but any time the benefits or contributions of active and inactive members are detrimentally changed, a potential legal challenge is created. It is difficult to predict the outcome of any challenge, but the risks associated with any detrimental change to member benefits could vary depending upon the level of change or the burden placed upon the members and whether there is a corresponding advantageous change.

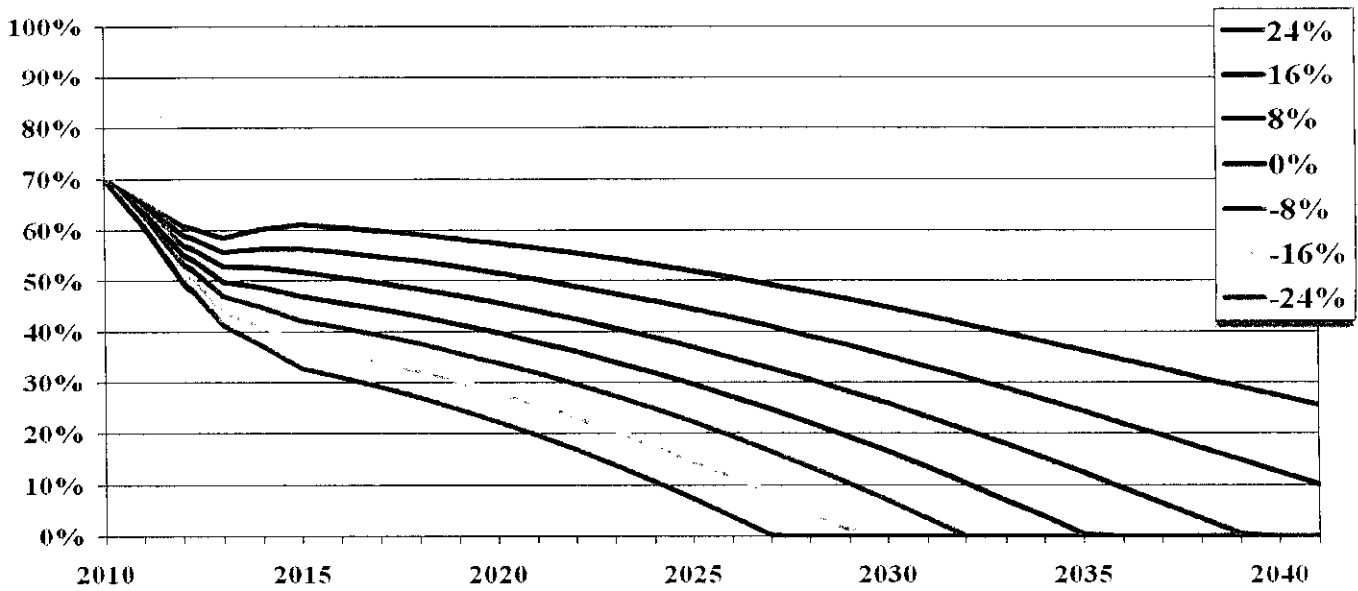
## SUMMARY

The TFFR Board believes that in addition to future positive investment growth, additional revenue and benefit changes are needed to contribute to TFFR's funding solution. HB 1134 reflects shared responsibility from both employees and employers.

The interim Legislative Employee Benefits Programs Committee voted unanimously to give this bill a favorable recommendation. The TFFR Board respectfully requests that your Committee give a "do pass" recommendation to TFFR's long-term funding improvement plan.

Chart 1

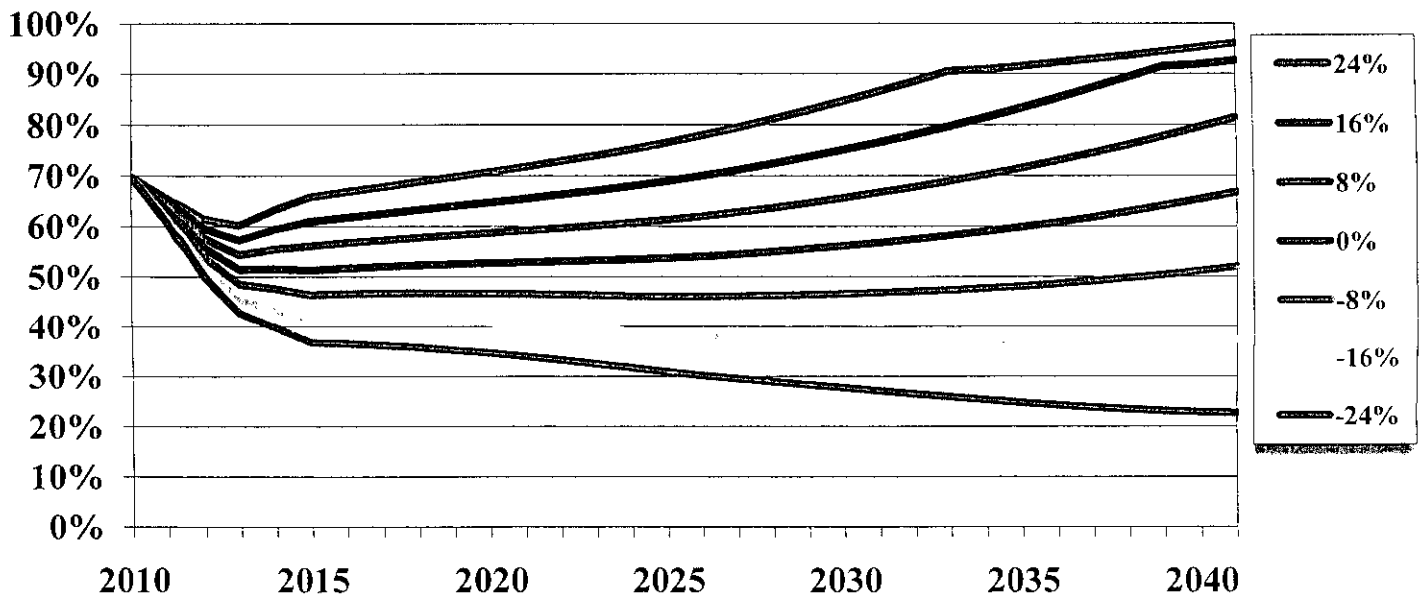
## Projected TFFR Funded Ratio (AVA) Current Plan – No Changes



Note: Projections assume variable market returns for FY 2011, and 8% returns in 2012 and all years thereafter.

Chart 2

## Projected TFFR Funded Ratio (AVA) HB 1134 Changes



Note: Projections assume variable market returns for FY 2011, and 8% returns in 2012 and all years thereafter.

Chart 3

## Comparison of Projected TFFR Funded Ratios (AVA) HB 1134 – Contribution Increases and Benefit Changes

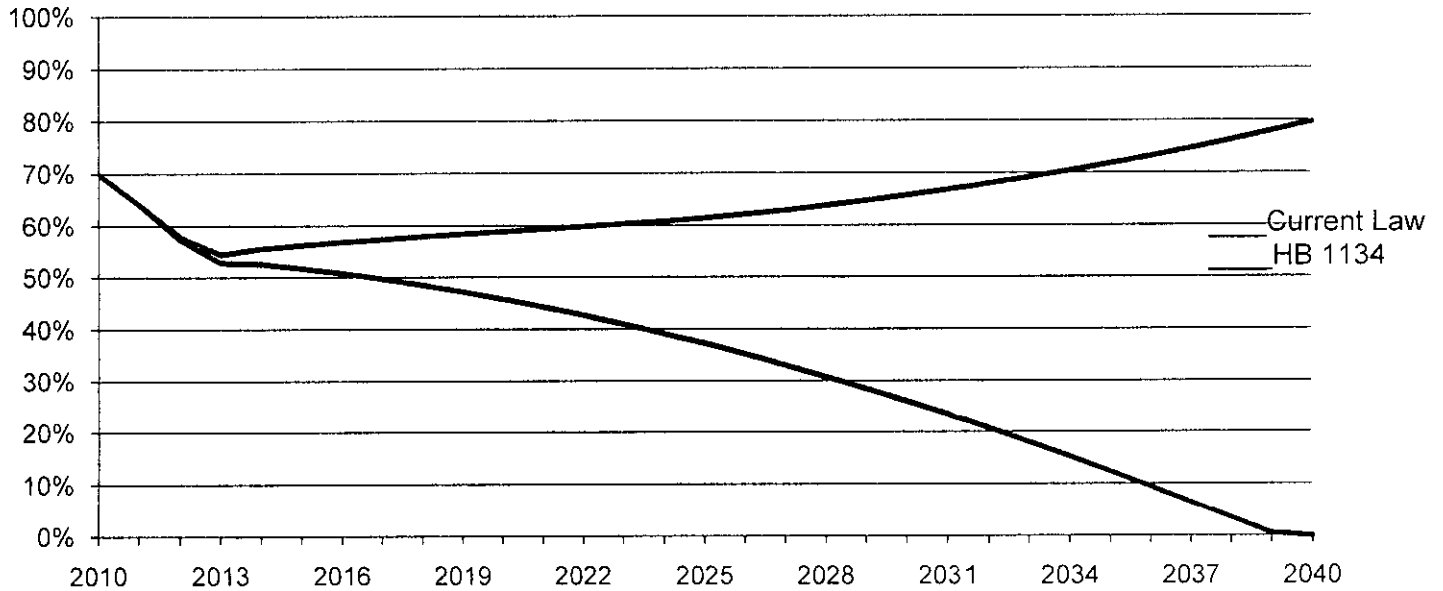


Chart 4

### North Dakota Teacher's Fund for Retirement

#### Comparison of Projected Contributions under Current Law and HB 1134

Fiscal Year Beginning July 1, (1)	Projected Payroll (2)	Current Law Provisions			Bill 54			Total Increase (8)-(5)
		Employer Contributions (3)	Employee Contributions (4)	Total Contributions (3) + (4) (5)	Employer Contributions (6)	Employee Contributions (7)	Total Contributions (6) + (7) (8)	
2010	\$ 493.5	\$ 43.9	\$ 38.2	\$ 82.1	\$ 43.9	\$ 38.2	\$ 82.1	\$ 0.0
2011	505.5	44.9	39.2	84.1	44.9	39.2	84.1	0.0
2012	519.2	46.1	40.2	86.3	56.7	51.4	108.1	21.8
2013	533.9	47.4	41.4	88.8	58.3	52.9	111.2	22.4
2014	549.9	48.9	42.6	91.5	71.2	65.6	136.8	45.3
2015	566.7	50.4	43.9	94.3	73.4	67.6	141.0	46.7

Amounts shown in millions

Projections are based on July 1, 2010 actuarial valuation

Projections assume 8.00% net investment return in FY 2011 and all future years

Contribution rates under current law for all years: employee 7.75%, employer 8.75%

Contribution rates under bill 54:

- Fiscal years beginning July 1, 2012 and July 1, 2013: employee 9.75%, employer 10.75%
- Fiscal years beginning July 1, 2014 and thereafter: employee 11.75%, employer 12.75%





## ND Teachers' Fund for Retirement Summary of 2011 Legislative Proposals



address declining TFFR funding levels resulting from the 2008-09 financial market downturn, the TFFR Board, with input from member and employer interest group representatives, has developed a legislative proposal to improve TFFR's funded status. The proposal is based on the following core principles:

- Restore the financial health of the TFFR plan for past, present, and future ND educators.
- Maintain adequate retirement security.
- Share responsibility for funding improvement with employees and employers.
- Phase changes over time.
- Protect benefits of those employees closest to retirement.

### **HB 1134 - TFFR Funding Improvement** (TFFR Board)

- **Increase employee (teacher) contributions 4% over 2 bienniums**  
Current 7.75%      Proposed 9.75% on 7/1/12 and 11.75% on 7/1/14  
(Return to 7.75% when TFFR reaches 90% funded level)
- **Increase employer (school district) contributions 4% over 2 bienniums**  
Current 8.75%      Proposed 10.75% on 7/1/12 and 12.75% on 7/1/14  
(Return to 7.75% when TFFR reaches 90% funded level)
- **Require re-employed retirees to pay employee contribution rates beginning 7/1/12**
- **Modify disability benefits** for all employees by changing eligibility from 1 year to 5 years of service credit and replacing 20 year minimum with actual service in benefit calculation.
- **Modify eligibility for unreduced retirement benefits and reduction factor for reduced retirement benefits for certain employees described below:**  
**Grandfathered Tier 1 Employees who are within 10 years of retirement eligibility would not be affected by unreduced and reduced retirement changes.**
  - Tier 1 employees who are vested (3 years of service credit) and at least age 55 OR have the Rule of 65 or greater (age + service) on 6/30/13 would be grandfathered under current retirement eligibility provisions (i.e. Rule of 85).**Non-grandfathered Tier 1 Employees and all Tier 2 Employees** would be affected and would have the following benefit changes as of 7/1/13:
  - Unreduced retirement: Eligibility age would increase from Rule of 85 (Tier 1) or Rule of 90 (Tier 2) to Minimum Age 60 and the Rule of 90+, OR Minimum Age 65 for those employees who do not reach the Rule of 90.
  - Reduced retirement: Reduction factor would increase from 6% to 8% per year from the earlier of Age 60/Rule of 90 or Age 65.
- **Estimated Impact - TFFR funded level projected to reach 80% over 30 years.**



## North Dakota Education Association

Attachment 2  
HB 1134

### Headquarters Office:

410 E. Thayer Avenue, Bismarck, ND 58501-4049  
701-223-0450 • 800-369-6332 • fax: 701-224-8535

### Eastern Office:

4357 13th Avenue SW, Suite 200, Fargo, ND 58103-3381  
701-281-7235 • 800-304-6332 • fax: 701-281-7236

### House Government and Veterans Affairs Committee TESTIMONY IN SUPPORT OF HB1134 January 14, 2011

Josh Askvig – 701-223-0450 – [josh.askvig@ndea.org](mailto:josh.askvig@ndea.org)

Madame Chair, members of the House Government and Veterans Affairs Committee, for the record my name is Josh Askvig from the North Dakota Education Association (NDEA). On behalf of our 8,800 members including current public school teachers, retired teachers, students going into the profession of education (some of whom are here today), and also education support professionals (teacher aides, clerical staff, custodial staff, bus drivers, etc...), I rise today in support of HB1134.

Before I get into the reasons for our support I want to go on record stating our appreciation to the TFFR Board and staff, under the leadership of TFFR Board President and Minot teacher Mike Guessner and Deputy Executive Director Fay Kopp. As some of you know, HB1134 is the result of a very inclusive and exhaustive process facilitated by the TFFR Board and its staff, for which they should be highly commended. The way TFFR conducted this activity should be a model for all agencies in state government.

Madame Chair, members of the House Government and Veterans Affairs Committee, the NDEA believes that retirement should be a reward for a life's work. In order for it to be rewarding, your retirement funds must be safe and secure to retire. One should not have to fret about if they will have enough to get through the remaining days of his/her life, but should enjoy retirement with family and friends. That is why providing retirement security is the right thing to do. The best way to provide retirement security is to ensure that ALL North Dakotans have strong defined benefit retirement plans. Defined benefit (DB) plans are much better for employees, employers, and the state in which they reside than defined

contribution (DC) plans. DB plans provide a consistent and stable stream of retirement income until death, while DC plans only provide income until the individual's funds run out.

Keeping this principle in mind, as the NDEA studied the TFFR funding shortfall we judged all efforts to fix this problem on four criteria: 1) we want to preserve the defined benefit for current and future members; 2) we want to avoid drastic benefit changes; 3) we wanted to minimize member contribution increases; and 4) we want to maintain the two percent multiplier. **HB 1134 meets these objectives!**

The Representative Assembly, the ultimate governing body of the NDEA, voted in overwhelming support of the TFFR approach to fixing the funding problem at its Representative Assembly in April 2010. Members accepted the contribution increase contemplated in this bill as their part of a solution to this problem. They further accepted that a decrease in the benefit, which is manifested in the raising of the unreduced retirement age, is also necessary for them to be a part of the solution to this problem. NDEA members support the "grandfathering" language as the only fair means of giving vested members of TFFR within ten years of the current unreduced retirement age an opportunity to prepare for a change in their retirement plans.

NDEA members could have taken the easy road and voted for no change for currently vested members, passing the solution to this problem on to future generations of teachers who would never know the benefits that current members are prepared to sacrifice to keep for them. However, they realize that in spite of significant efforts in recent years by the Legislative Assembly, North Dakota teacher salaries are likely to remain in the bottom 10 percent of the nation for years to come. They believe that one of the ways to compensate for those low salaries is to have a viable, sustainable defined benefit retirement plan. HB1134 helps to assure that benefit will be there for current and future generations of North Dakota teachers.

This defined benefit plan is good not only for teachers, but it is good for local North Dakota economies as well. As you can see on the attached handout from the National Institute on Retirement Security (NIRS), a non-partisan, not-for-profit organization established to contribute to informed policymaking by fostering a deep understanding of the value of retirement security, estimates that in 2006, for every dollar that was invested in PERS and TFFR, the state got back \$9.33 in economic activity. That's because our retirees tend to stay in this state when they retire. Having a safe and secure retirement when they stay here, they continue to own houses, purchase automobiles, refrigerators and other consumer goods that stimulate business growth, especially in our smaller communities. NIRS also estimates that each dollar paid out in the state pension plans generated \$1.24 of economic activity in the state. A solid defined benefit retirement plan enables our retired teachers to be six times less likely than those who do not have a defined benefit retirement to require public assistance in their retirement, according to NIRS.

The members of the NDEA voted overwhelmingly to support the solution to the TFFR funding problem as found in HB1134. Our members willingness to accept a contribution increase, which results in a reduction in take-home pay, as well as a willingness to accept a benefit reduction in the form of increasing the age for an unreduced retirement is indicative of their desire to preserve the current TFFR defined benefit retirement program. Additionally, the Interim Legislative Employee Benefits and Programs Committee voted unanimously to give this legislation a FAVORABLE recommendation to the 62<sup>nd</sup> Legislative Assembly.

Again, the NDEA supports HB1134 and urges the committee to give it a DO PASS recommendation.

Thank you for your time today and I would be happy to answer any questions.

# NORTH DAKOTA

## Pensionomics:

Measuring the Economic Impact of State and Local Pension Plans

### Key Findings

Benefits paid by state and local pension plans support a significant amount of economic activity in the state of North Dakota.

Pension benefits received by retirees are spent in the local community. This spending ripples through the economy, as one person's spending becomes another person's income, creating a multiplier effect.

Expenditures stemming from state and local pensions supported...

- 1,584 jobs that paid \$71.4 million in wages and salaries
- \$203.8 million in total economic output
- \$27.0 million in federal, state, and local tax revenues

... in the state of North Dakota.

Each dollar paid out in pension benefits supported \$1.24 in total economic activity in North Dakota.

Each dollar "invested" by North Dakota taxpayers in these plans supported \$9.33 in total economic activity in the state.

### Overview

Expenditures made by retirees of state and local government provide a steady economic stimulus to North Dakota communities and the state economy. In 2006, 13,017 residents of North Dakota received a total of \$164.22 million in pension benefits from state and local pension plans, with \$153.20 million paid from plans within the state and the remainder originating from plans in other states.

The average pension benefit received was \$1,051 per month or \$12,616 per year. These modest benefits provide retired teachers, public safety personnel and others who served the public during their working careers income to meet basic needs in retirement.

### Impact on Jobs and Incomes

Retiree expenditures stemming from state and local pension plan benefits supported 1,584 jobs in the state. The total income to state residents supported by pension expenditures was \$71.4 million.

Of this, the greatest share, \$38.0 million, was comprised of employee compensation (wages and salaries). Proprietors' income (self-employment income) represented \$5.6 million, and other property income (including payments from interest, rent, royalties, profits and dividends) totaled \$27.7 million.

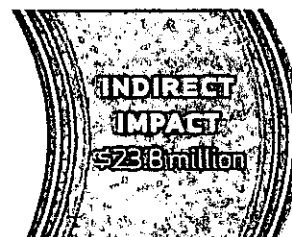
### Economic Impact

State and local pension funds in North Dakota and other states paid a total of \$164.22 million in benefits to North Dakota residents in 2006. Retirees' expenditures from these benefits supported a total of \$203.8 million in total economic output in the state, and \$79.6 million in value added in the state.

\$157.3 million in direct economic impacts were supported by retirees' expenditures on goods and services from businesses in the state. An additional \$23.8 million in indirect economic impact resulted when these businesses purchased additional goods and services, generating additional income in the local economy. \$22.7 million in induced impacts occurred when employees hired by businesses as a result of the direct and indirect impacts made expenditures, supporting even more additional income.

Total Economic Impact \$203.8 million

**DIRECT  
IMPACT**  
\$157.3  
million



**INDUCED  
IMPACT**  
\$22.7  
million

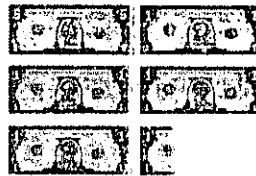
## Economic Multipliers

### Taxpayer Contribution Factor\*



**\$1.00**

Contributed by taxpayers to North Dakota pensions over 30 years



**\$9.33**

total output

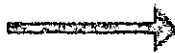
Each \$1 in taxpayer contributions to North Dakota's state and local pension plans supported \$9.33 in total output in the state. This reflects the fact that taxpayer contributions are a minor source of financing for retirement benefits - investment earnings and employee contributions finance the lion's share.

### Pension Benefit Multiplier



**\$1.00**

pension benefits paid to retirees in North Dakota



**\$1.24**

total output

Each \$1 in state and local pension benefits paid to North Dakota residents ultimately supported \$1.24 in total output in the state. This "multiplier" incorporates the direct, indirect, and induced impacts of retiree spending, as it ripples through the state economy.

\* Caution should be used in interpreting this number, because the Census data used reflect the taxable status of contributions only, because employee contributions may be reported as taxpayer contributions, the multiplier here may be underestimated.

## Impact on Tax Revenues

State and local pension payments made to North Dakota residents supported a total of \$27.0 million in revenue to federal, state and local governments. Taxes paid by retirees and beneficiaries directly out of pension payments totaled \$6.9 million. Taxes attributable to direct, indirect and induced expenditures accounted for \$20.1 million in tax revenue.

Federal Tax	16.88 million
State/Local Tax	10.11 million
Other Corporate Taxes	0.04 million
<b>Total</b>	<b>\$27.02 million</b>

## Economic Impacts by Industry Sector

The economic impact of state and local pension benefits was broadly felt across various industry sectors in the state. The ten industry sectors with the largest employment impacts are presented in the table below.

Industry	Employment Impact (# Jobs)	Value Added Impact (\$ millions)	Income Impact (\$ millions)	Output Impact (\$ millions)
Health Care and Social Assistance	384	\$16.0	\$15.8	\$27.5
Retail Trade	361	12.6	10.0	19.8
Accommodation and Food Services	201	3.8	3.4	8.8
Other Services (Except Public Administration)	149	2.9	2.7	6.0
Finance and Insurance	66	5.5	5.3	10.3
Real Estate and Rental and Leasing	63	3.8	3.2	5.8
Professional, Scientific, and Technical Services	45	2.2	2.1	4.3
Wholesale Trade	44	4.1	3.2	6.1
Arts, Entertainment, and Recreation	40	0.7	0.7	1.5
Administrative and Waste Services*	40	1.1	2.4	2.0

The North American Industry Classification System is used to identify the industry. \* Administrative and Waste Management and Remediation Services.

Attachment #3  
HB 113

Testimony

House Bill 1134 – Erica Cermak, North Dakota Retired Teachers Association

House Government and Veterans Affairs Committee

Representative Grande, Chairman

January 14, 2011

Madame Chair and members of the Committee, my name is Erica Cermak and I am here representing the North Dakota Retired Teachers Association (NDRTA). NDRTA is a state association and includes 14 local unit associations in communities throughout ND. As of July 1, 2010, there were 6672 retired educators in ND receiving a retirement annuity from TFFR. I am here to testify in support of House Bill 1134.

NDRTA serves retired educators by advocating to 1) strengthen and maintain the existing defined benefit retirement plan and 2) advocate for annuity adjustments for retired educators if the financial environment allows.

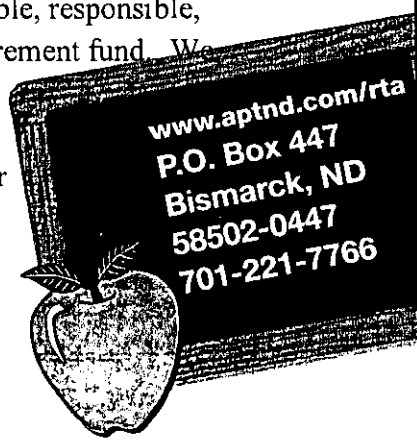
Throughout the interim, NDRTA was involved in the discussions to develop options to improve the funded level of TFFR. This past summer and fall we visited many of our 14 local units and discussed the options being considered by TFFR to improve the financial health of the retirement fund.

Overwhelmingly, our members commented on these areas – 1) They are very appreciative for the current defined benefit plan and their retirement annuity; 2) They are very thankful for the supplemental payment approved by the Legislature in 2009; 3) They understand the current economic environment and the need to make changes to improve the status of the retirement fund; 4) They understand the fund has the resources to pay current annuities and that it is necessary to make these changes so that retirement obligations will continue to be met well into the future and; 5) Likelihood of near-term annuity adjustments or supplemental payments from investment margin is slim.

We believe the bill before this committee provides a reasonable, responsible, and achievable solution for the long term viability of the retirement fund. We ask this committee for favorable consideration of HB 1134.

Thank you Madame Chair and members of the committee for the opportunity to testify before you this morning. I'd be happy to answer any questions.

North Dakota Retired Teachers Association



HB 1134

Grande, Bette B.

---

**From:** Rod Mord [rdmord1@yahoo.com]  
**Sent:** Tuesday, January 11, 2011 6:39 PM  
**To:** Amerman, Bill D.; Boehning, Randy G.; Froseth, Glen A.; Grande, Bette B.; Guggisberg, Ron L.; Meier, Lisa M.; Paur, Gary A.; Rohr, Karen M.; Sanford, Mark S.; Steiner, Vicky L.; Winrich, Lonny B.  
**Subject:** HB1134

To the Representatives who serve on the House Government and Veterans Affairs Committee,

We are writing to encourage you to **support** HB1134. We are unable to attend the public hearing for the bill on Friday morning, but are requesting you **support** HB1134 and preserve a defined benefit for current and future members.

Thank you for your service,

[Redacted] and Dawn Mord

1723 S 35<sup>th</sup> Street

Grand Forks, ND 58201



PROPOSED AMENDMENTS TO HOUSE BILL NO. 1134

Page 1, line 3, replace the first "subsection" with "subsections"

Page 1, line 3, after the first "1" insert "and 2"

Page 1, line 21, replace "Subsection" with "Subsections"

Page 1, line 21, after "1" insert "and 2"

Page 1, line 22, replace "is" with "are"

Page 2, after line 19, insert:

- "2. ~~Each~~Except for the member contribution increases beginning after June 30, 2012, each employer, at its option, may pay the teacher contributions required by subsection 1 for all compensation earned after June 30, 1983. The amount paid must be paid by the employer in lieu of contributions by the employee. If an employer decides not to pay the contributions, the amount that would have been paid will continue to be deducted from compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining income tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the employer, they may not be included as gross income of the teacher in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The employer shall pay these teacher contributions from the same source of funds used in paying compensation to the teachers. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases. If teacher contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as teacher contributions made prior to the date the contributions were assumed by the employer. The option given employers by this subsection must be exercised in accordance with rules adopted by the board."

Renumber accordingly

# NDLA, H GVA

**From:** Grande, Bette B.  
**Sent:** Tuesday, January 18, 2011 8:51 AM  
**To:** NDLA, H GVA  
**Subject:** FW: HB 1134 - Additional TFFR information

For the record.

Bette Grande  
ND House of Representatives  
District 41, Fargo, ND  
[bgrande@nd.gov](mailto:bgrande@nd.gov)  
Finance and taxation committee  
Chairman of Government and Veterans Affairs committee

---

**From:** Kopp, Fay L.  
**Sent:** Monday, January 17, 2011 1:12 PM  
**To:** -Grp-NDLA House Government & Veterans Affairs  
**Cc:** Geissinger, John W.  
**Subject:** HB 1134 - Additional TFFR information



1977 Transfer to  
TFFR.pdf

Chairman Grande, and Members of the House GVA Committee:

At your Committee meeting on HB 1134 on January, 14, you asked our office to provide additional TFFR information. In a separate email, John Geissinger has provided you with investment related information. This email contains responses to other TFFR related requests:

**1) Background memo relating to 1977 transfer of \$14.5 million from the State's General Fund to TFFR.**

Please note that in addition to the general fund transfer as a one-time payment toward TFFR's unfunded liability, the 1977 Legislature increased the cost to the members and the school districts to 5% of salary (each), and removed the school district cap (maximum amount paid).

**2) Comments on proposed changes to TFFR disability vesting and calculation of benefits.**

As indicated in my testimony, the TFFR Board and Funding Improvement Study Group conducted a top-to-bottom analysis of possible changes that when combined together would produce meaningful savings to the plan (retirement eligibility changes saved about 0.49%). While the proposed changes to disability provisions produce only a small amount of savings (additional 0.05%), the TFFR Board believes it is an area that could be modified to be more consistent with other benefits provided by the plan. For example, Tier 2 members must be vested (5 years) in order to be eligible for retirement benefits. The change proposed by the Board to require 5 year vesting (instead of 1 year vesting) for disability benefits would be the same. Also, using a disabled member's actual years of service credit (instead of 20 year minimum) in the calculation of disability benefits would also be the same as the calculation for regular retirement benefits. As noted, on average, about 7 members each year are approved for TFFR disability benefits. While some of these employees may have less than 20 years of service, the majority

of disabled applicants are typically longer service employees, and so the proposed reduction in disability benefits would likely not affect them much. Finally, since some school districts also provide disability insurance for their employees (which likely offsets the TFFR disability benefit), it is possible, that the disabled member's combined benefits from both sources may not be reduced.

**3) Breakdown of employer contribution increase by employer/school district.**

Our staff is working on this request for additional detailed information, and I will send it to you as soon as it is completed. As mentioned at the hearing, this breakdown will be based on the salary of employees in each school district as of 2009-10 school year. It will probably not match school district estimates which are likely to be more accurate and based on more up-to-date information. Most school districts calculate their own budget estimates which is why TFFR does not do so on a detailed basis, but focuses on the impact from all employers in our forecasts.

Please contact me if you have any questions, or would like additional information. Thank you.

Fay Kopp  
Deputy Executive Director  
ND Retirement & Investment Office  
Phone: 701-328-9895  
Fax: 701-328-9897  
[www.nd.gov/rio](http://www.nd.gov/rio)  
<mailto:fkopp@nd.gov>

## THE 14.5 MILLION DOLLAR TRANSFER

The 1977 Legislative Assembly transferred \$14.5 million from the General Fund to the Teachers' Fund for Retirement to "bail out" the Fund. Why was this transfer necessary? This question has been asked by many over the last three to four years. The answer given is ". . . loss of money in the equity market." But is that the correct answer to the question? My research has found that the real reason for the transfer was lost in time.

I am sure that investment in the equity market in the early 1970's had some effect on the need for the transfer. I am also sure that investment in low interest-bearing North Dakota municipal bonds in the 1960's had an effect, but in my opinion a very slight effect. The real reason for the need to transfer that amount of money was because of the increasing unfunded liability and decreasing solvency of the Fund. That condition was brought about by a series of benefit increases that were given the members without funding the cost. Benefit increases result in increased cost to a retirement plan. If these rising costs are not funded by increasing contribution rates, appropriation of general fund dollars, or paid from actuarial margins created by positive plan growth, then an unfunded liability is created or increased. This is exactly what happened to the Teachers' Fund for Retirement between 1965 and 1977.

At the conclusion of fiscal year 1965, the Teachers' Insurance and Retirement Fund (old fund) had an unfunded liability (accrued liability that has not been paid in the past) of \$8,834,963. At the end of that same year, the fund was 82.4% solvent (amount of liability covered by the assets). By the end of fiscal year 1975, the Teachers' Fund for Retirement (current fund) had an unfunded liability of \$68,296,000 and was 39% solvent. The following table graphically shows the road to the need for the general fund monies.

<u>Year</u>	<u>Unfunded Liability</u>	<u>Percent of Solvency</u>
1965 *	\$ 8,834,963	82.4%
1969 *	\$43,512,891	38%
1974 *	\$73,902,376	35%
1975 **	\$68,296,000	39%

\* From Legislative Council background memorandum on the Teachers' Fund for Retirement, July 1975.

\*\* From report on the Teachers' Fund for Retirement, by Martin E. Segal Co., October 1976.

What happened? Why did the unfunded liability get out of control? The answer is simple. Increases were made to benefits without funding the cost of those increases. The increases included the repealing of the code governing the Teachers' Insurance and Retirement Fund and the creation of a new fund, the Teachers' Fund for Retirement. The following review makes clear how the unfunded liability increased out of control and a need to "bail out" the fund was created by the legislature and the proponents of benefit increases.

## 1965

Legislature enacted minimum annuity at \$60 per month to all retired teachers. Retired members under this minimum were given a monthly raise to that amount. The cost to the members and the school districts remained the same:

<u>Member</u>	<u>School District</u>
4% first 8 years - maximum \$120	Match to maximum \$50
5% next 8 years - maximum \$180	4% to maximum \$120
6% thereafter - maximum \$200	4% to maximum \$120

## 1967

Legislature raised the minimum annuity for all retired members age 70 and over to \$100 per month. Required monthly increases were given to eligible members. New retirees could not receive less than \$60 per month if they had 25 years in the Fund.

The cost to members and school districts was not changed.

## 1969

The Legislature lowered the age from 70 to 65 for the \$100 minimum annuity. The minimum and maximum annuity amounts for new retirees was raised 25%. The legislature also passed legislation that allowed payment of interest on refunds and members with ten years of credit in North Dakota were allowed to receive a reduced annuity at age 55.

Member costs were changed to 3% of salary to a maximum of \$225 and the school district cost was changed to 2% of the teachers salary to a maximum of \$150.

An actuarial valuation report written by George Stennes and Associates and dated June 30, 1969, stated:

- Interest assumption on investments - 4½% compounded annually.
- Interest earned for year - 5.25%
- Asset growth of only \$730,000 for the entire year (increase in benefits were paid from income not margins -- My comment.)
- "The estimated contribution falls short of even the minimum payment . . . However, an increase in the contributions amounting to about 1.2% of the covered payroll . . . would bring the contribution up to the level needed for 40-year funding."

## 1971

Legislature repealed 15-39, N.D.C.C. and enacted 15-39.1, N.D.C.C. creating the Teachers' Fund for Retirement. Retirement age increased to age 65 and benefits for new retirees were increased by using the

following benefit formula:

Average monthly salary of 1970-71 x 1% x years taught prior to 1970-71 plus 1.5% of average monthly salary for total salary received after July 1, 1971.

The cost to the members was changed to 4% of salary and to the school districts to 4% of the teachers salary to a maximum of \$500.

Members who were vested in the old law retained those rights if their claim was greater than under the new law.

### 1973

The legislature passed HB 1290 which increased benefits for all retired members who retired prior to July 1, 1971. These members were allowed to choose one of the following options:

- Have benefits recalculated under the 1971 Formula by making a one-time payment.
- Have retirement annuity increased by 20%.
- If the member had 17 or more years of credit in the Fund, a minimum benefit of \$140 per month was paid.

No changes were made to the cost for the members or the school districts.

An actuarial valuation report written by Brown and Flott and dated June 30, 1974 stated:

- Interest assumption on investments - 5% compounded annually.
- Interest earned for year - 6.4%
- The value of the increases under HB 1290 amounted to \$11,428,355. The retired members making an election paid \$110,852 in one-time payments. This left \$11,371,503 unfunded.
- Recommended an additional \$1.8 million in additional support needed each year to pay the unfunded liability in 40 years.

A loop hole in the law was discovered allowing members to retire under the old law (15-39.1-03, rights under prior chapter preserved) and making the election of one of the options listed above.

### 1975

The legislature passed a bill that allowed college teachers under the Fund retiring after July 1, 1971 to come under the 1971 law. They had previously been frozen under the 1967 law. By making a one-time payment, they would be eligible to a benefit based on the following formula:

$1/12$  last salary x 1% x years of service credit less a TIAA-CREF offset.

The legislature also allowed beneficiaries and continuing annuitants of deceased members to elect one of the first two options allowed by HB 1290 in 1973.

There was no change in the cost to members or the school districts.

An actuarial valuation written by Brown and Flott and dated June 30, 1975 stated:

- Interest assumption - 5% compounded annually.
- Interest earned for year - 6.66%
- \$1.3 million additional money would be needed each year to pay the unfunded liability in 40 years.

An actuarial valuation written by Brown and Flott and dated June 30, 1976, stated:

- Interest assumption - 5% compounded annually.
- Interest earned for year - 6.29%
- \$1.3 million additional support still needed each year to pay the unfunded liability.

The legislature also passed a resolution for a study of the Teachers' Fund for Retirement to determine the actuarial soundness of the Fund. The Martin E. Segal Co. was retained to conduct the study during the 1975-77 interim.

### 1977

The legislative study report on the Teachers' Fund for Retirement written by Martin E. Segal Co. showed that the Fund had an unfunded liability of \$68,296,000 and a solvency rate of 39%. The Martin E. Segal Co. gave five recommendations to the Legislative Council (see attached) for payment of the unfunded liability.

Legislation passed by the 1977 Legislative Assembly established a minimum benefit formula for all Fund members, transferred \$14.5 million from the General Fund to the Trust as a one-time payment toward the unfunded liability, and increased the cost to the members and the school districts in order to pay the balance of the unfunded liability in forty years. The cost to the members was set at 5% of salary and for the school districts a matching amount. The maximum amount paid by the school districts was removed.

A note of interest is that both houses of the Legislature voted overwhelmingly to transfer the \$14.5 million to the Fund. The vote was: State Senate 49 yes, 0 no; State House 95 yes, 4 no. It was also interesting to note that legislative committee minutes show that committee members rejected the recommendations of the Fund valuation reports and accepted information from constituents and assumed that the Fund was sound and could tolerate benefit increases without jeopardizing the solvency of the Fund.

In my opinion the evidence is quite clear. The transfer of the \$14.5 million was necessary to offset the increasing unfunded liability and decreasing solvency of the Fund caused by benefit increases to members from 1965 to 1975. Benefit increases that were not funded by increased costs or offset by margins in the Trust.

SCOTT ENGMANN  
Executive Secretary

June 1984



METHODS AVAILABLE TO REMEDY \$600 MILLION UNFUNDED LIABILITY

TEACHERS' FUND FOR RETIREMENT

STATE	SCHOOL DISTRICTS	TEACHERS
<p>(LEGISLATIVE COUNCIL)</p> <p>(1) \$14.5 millions</p> <p>One-time appropriation from General Fund</p>	<p>1% of Payroll</p> <p>40 years</p>	<p>1% of Payroll</p> <p>40 years</p>
<p>(2) \$14.5 Millions (see above) <u>plus</u></p> <p>\$750,000 per year, 40 years</p> <p>All from the General Fund</p>	<p>1% of Payroll</p> <p>40 years</p>	
<p>(3) \$2,783,000 per year, 40 years</p> <p>From the General Fund</p>	<p>NOTE: These calculations include an amount sufficient to fund the minimum benefit floor (based upon \$6.00 and \$7.50 times number of years taught) proposed in HB 1074.</p>	
<p>(4) \$14.5 millions one-time appropriation <u>plus</u></p> <p>\$1,630,000 per year, 40 years</p> <p>All from the General Fund</p>		
<p>(5) \$38.5 millions one-time appropriation</p> <p>From the General Fund</p>		

Teachers' Fund for Retirement

Average Yield on Investments

June 30, 1965 - 1976

1965	. . . . .	3.4%
1966	. . . . .	2.3%
1967	. . . . .	3.75%
1968	. . . . .	4.89%
1969	. . . . .	5.25%
1970	. . . . .	5.82%
1971	. . . . .	5.8%
1972	. . . . .	5.3%
1973	. . . . .	6.4%
1974	. . . . .	6.45% (Equities 4.8%; fixed income 7.23%)
1975	. . . . .	6.66% (Equities 3.44%; fixed income 7.427%)
1976	. . . . .	6.29%

# NDLA, H GVA

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**From:** Grande, Bette B.  
**Sent:** Tuesday, January 18, 2011 8:53 AM  
**To:** NDLA, H GVA  
**Subject:** FW: HB1134 Follow-Up from NDRIO  
**Attachments:** Memo dated 9\_23\_10 from LeRoy Gilbertson.docx; Memo dated 12\_22\_10 from John Geissinger.docx; Callan Investment Return Assumptions June 2010.pdf; TFFR Asset Allocation.pptx

For the record

Bette Grande  
ND House of Representatives  
District 41, Fargo, ND  
bgrande@nd.gov  
Finance and taxation committee  
Chairman of Government and Veterans Affairs committee

**From:** Geissinger, John W.  
**Sent:** Monday, January 17, 2011 10:24 AM  
**To:** -Grp-NDLA House Government & Veterans Affairs  
Kopp, Fay L.  
**Subject:** HB1134 Follow-Up from NDRIO

Members of the House GVA,

During the testimony for HB1134 on Friday, January 14, 2011 questions were raised regarding the 8% investment return assumption utilized in the TFFR Actuarial Study. Chairman Grande asked both LeRoy Gilbertson (interim Chief Investment Officer) and myself last year to address the validity of this assumption, and I have attached both responses. In addition, I have attached a research paper written by Callan Associates published in June 2010 entitled "Investment Return Assumptions for Public Funds".

It is important to recognize that recent events impact our perceptions much more than more distant events. As a result, it is quite natural to question, in light of the 2008-09 experience, whether a diversified portfolio can return 8% going forward. (The 8% nominal return is derived by assuming a 3% inflation rate and a 5% real rate of return.) Predicting the future is always a hazardous game, so it is helpful to review history to gain some perspective. The Callan Associates research paper analyses the assumptions of inflation and real rates of return, and they conclude the assumptions utilized for both these variables is consistent with history. In addition, I analyzed the data supplied by Callan to look at the nominal experience since 1929, and calculated the following results:

Rolling 10 year periods:

	Equity return	Bond return	60% Equity/40% Bond
Average	11.3%	5.6%	9.5%

Minimum	-3.86%	1.1%	1.5%
Maximum	21.2%	14.7%	16.6%

Rolling 30 year periods:

	Equity Return	Bond Return	60% Equity/40% Bond
Average	11.8%	5.4%	9.6%
Minimum	8.3%	2.1%	7.3%
Maximum	15.1%	9.2%	12.8%

The average rolling returns over a 10 and 30 year period for a portfolio composed of 60% equity and 40% Fixed Income are similar at approximately 9.5%. The variability of returns is, of course, greater over the 10 year periods than over the longer 30 year timeframes.

I have also included a chart of the TFFR Asset Allocation as of June 30, 2010. The Fund continues to be managed in a diversified manner.

The other question raised during testimony was how much of the real estate portfolio is invested in North Dakota? While the Fund does not own any direct real estate in the state, the State of North Dakota is the target for other investment opportunities:

#### **State Investment Board Investments in North Dakota**

##### **InvestAmerica (Lewis and Clark funds I and II)**

The SIB is invested directly in Lewis and Clark Private Equities, LP and L&C Private Equities II, LP managed by the InvestAmerica family of funds and supported by its North Dakota office established in 1995. Total capital committed to these two funds is \$22.5 million. These funds have invested in a number of ND and upper Midwest regional companies. Investments in particular companies are offered pro rata to each of the Funds that InvestAmerica manages. The following investments with a North Dakota presence have been made from the InvestAmerica Family of Funds that include Lewis and Clark and L&C II.

1. A North Dakota based specialty baking company. The company produced specialty items such as cakes and breads sold through high end retail outlets.
2. An agricultural based Software Company. The investment originated when the company was located in Southern Minnesota. As the company grew, the research and development department was moved to North Dakota. The company was recently acquired by a large national Ag Products company and the research and development team has remained in North Dakota.
3. A specialty employment company that provides employers with a total media access package (print, radio, TV and internet) to advertise for employees. The company's initial market was eastern North Dakota and that market remains the company's most successful market. They have now developed a presence in four other Midwest markets and are gaining momentum as an internet based job search engine.
4. A Wyoming based manufacturer of remote power generation equipment. As this company grew, they expanded into Western North Dakota to serve the rapidly growing oil and gas exploration industry.

5. A highly specialized North Dakota company that provides agricultural and climate modification services throughout the world. This small company that originated in a small Western North Dakota town has grown into an international multimillion dollar company.
6. A strong North Dakota based regional construction company. This Western North Dakota based company provides specialized construction services throughout the Midwest.
7. A growing regional snack food manufacturer located in Western Minnesota that sources many Ag products from North Dakota producers.

Important to the future of venture capital in North Dakota, InvestAmerica has operated a North Dakota office since 1995 and is continually looking to develop investments in the North Dakota region.

### **Bank of North Dakota (BND)**

The SIB also participates in the BND Match Loan program. Businesses that are either starting or expanding their operations within North Dakota are eligible to receive loans from BND with very competitive rates that are tied to Treasury rates. BND determines the credit worthiness of the business and makes the final decision on whether or not to grant the loan. Once approved, the SIB provides the funding for the loan in exchange for certificates of deposits that match the rate and duration of the loan. These CDs are backed by the full faith and credit of the bank and the State of ND. BND assumes all the risk of the loans and charges an extra 25 basis points to the borrower above the rate on the CDs. The SIB has committed \$200 million in revolving capital to this program with \$120 million currently invested.

The SIB utilizes BND to manage fixed income portfolios for both the pension and insurance trust. The portfolios are actively managed index funds benchmarked against the Barclays Government/Credit index. This relationship has been in place since the 1980s. The total assets under management in the two accounts total \$163.7 million. The SIB pays an investment management fee of 6 basis points or \$98,000 to BND annually.

I hope this additional information is helpful as you begin your deliberations on this important legislation.

Respectfully submitted,

John Geissinger

Dear Representative Grande:

The following are the responses I give to the questions being asked of you.

Is an 8% actuarial return realistic?

- The Pension Trust had a return of 8.32% over the past 25 years. There is no reason to doubt that they cannot return 8% over the next 25 years. Actuarial return assumptions are long-term in nature and are based, in part, on capital market projections which are obtained from multiple sources. These projections take into consideration long-term historical performance of the various asset classes as well as future long-term expectations in the capital markets.
- Currently, the majority of industry experts believe that an 8% return, over the long-term, is achievable.
- To base changes to an assumption rate on short term returns in the capital markets is not prudent. Just as it would not be prudent to set the assumption rate based on the 14.2% the Pension Trust achieved the last fiscal year, it would not be prudent to adjust the rates based on one or two down years in the capital markets.
- The majority of pension funds across the nation have an 8% actuarial assumption rate.
- The models are not cast in stone. If over the next several years the 8% return, on average, is not being achieved, adjustments can be made.

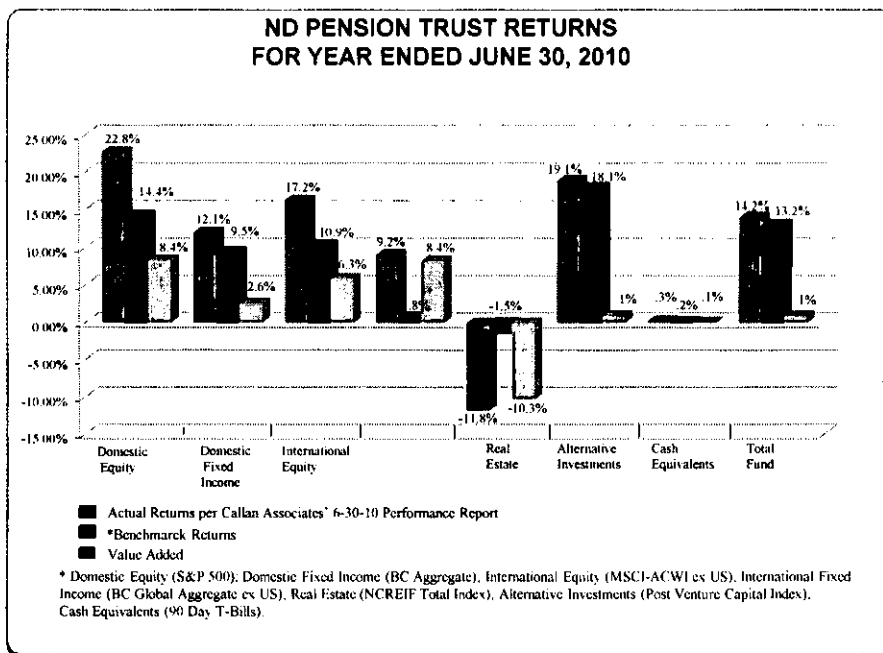
Are the investment fees to high?

- I don't know where your constituent got the 2.5% fee but that is incorrect. For the fiscal year ended June 30, 2009, the SIB paid investment fees to professional investment firms for management, consulting and custodial bank services totaling 62 basis points (0.62% of total ending market value). Over the past 25 years, investment expenses for the total SIB program have averaged approximately 44 basis points (.44%) per year.
- Over the past 25 years, the asset allocations of the funds under the management of the SIB have become more diversified and incorporated asset classes with higher return expectations. These asset classes also have higher management fees. The expectation in selecting investment managers is that their returns will add value to the portfolio net of fees.
- By way of comparison, the average fee for a mix of public mutual funds with 60% equities and 40% fixed income is approximately 120 bps (1.20%).
- The SIB hired Callan Associates to conduct a fee analysis for all of the fees paid to investment managers. The conclusions were that the fee arrangements with the individual managers are reasonable, the total Pension Trust fees are higher than average and the total Insurance Trust fees are average.
- The fees the SIB pays as compared to say Vanguard is comparing apples to oranges. Vanguard funds by and large are pure index funds with very low fees. The SIB does not have index funds and utilizes what are known as active managers. These managers have higher fees but also produce higher returns than index funds.

- The attached graph for the past one year returns for the SIB Pension Trust demonstrates that value has been added to the portfolio even though the fees are higher than the fees Vanguard, as an example, would charge.

The first column is for the domestic equities. You can see the one year returns was 22.8% (blue column). If we would have utilized index funds like Vanguard, the return would have been 14.4% (red column). You can see we added value of approximately 8.4% (green column). With the exceptions of real estate, this is true for every asset class.

As you can see going all the way to the right, the pension trust earned 14.2% versus 13.2% if the monies were invested in index funds. A gain of 1%. Index funds (such as Vanguard) are appropriate for individual investors but as you can see, the SIB has been able to do better than index funds.



- For your information, the contracts for the money managers are not bid out on a two-year basis. The fees are negotiated when the manager is hired and are reviewed periodically by the RIO staff.

If you have any additional questions, please do not hesitate to contact us.

Thank you.

LeRoy

Representative Grande,

It was a pleasure meeting you during the Governors Inauguration. I can appreciate the fact you have been getting a lot of questions regarding the 8% return assumption, particularly due to the recent financial market crisis of 2008-09. LeRoy Gilbertson has previously provided his response to the question of, why 8%? (Memo attached) As I have been thinking of additional information to add to his response, I realize there is an additional perspective that may aid in responding to this question. To adequately address the question of the specific number used for the return assumption, it is important to understand why this assumption is made in the first place, and how it impacts the management of a defined benefit pension plan. Forgive me if I am rehashing basics, but let me review how a defined benefit plan works.

In its most simplistic form, a defined benefit plan provides a periodic payment (monthly, quarterly, annually, etc) to an individual for as long as the individual survives after obtaining a stated age. (Of course, there are all sorts of bells and whistles to determine how much that payment will be, when they can start receiving it, etc.)


How much needs to be set aside during this individual's working lifetime to be able to make these payments? Let's look at one worker to see how this amount could be determined. Sally is a recent college graduate, aged 22, and has started working for the Bismarck School District as a high school chemistry teacher. It has been agreed she will receive a monthly payment equal to 2% of her final monthly salary for each year she has worked for the school district, and these payments will commence when she turns 60. How much needs to be saved (contributed by Sally and/or the school district) each year in order to make these future payments? The immediate answer is: it depends. The answer depends upon:

1. How long will she work for the school district?
2. What will be her final salary?
3. Will she live to age 60?
4. How long will she live after she reaches age 60?
5. What will the investment return be on our annual savings?

We don't know the answer to any of these questions, but to develop a savings plan, we need to make assumptions for each of these questions. One thing I know for certain is that for any one individual the assumption will be wrong. They will either work longer or shorter than assumed, their final salary will be higher or lower, they may or may not live to 60, and also live longer or shorter than assumed. Finally, the actual realized investment return will either be higher or lower than the assumption for any one worker.

Given this uncertainty of actual experience, how can a defined benefit plan succeed? Defined benefit plans are able to accomplish their objectives through the pooling of risks-mortality, inflation, and investment risks. One person who lives longer than average will be offset by another person who lives shorter than average. If the pool is large enough the variation of individual experiences will average out. Therefore, the question is not whether an 8% nominal (inflation plus real) investment return will be achieved over the lifetime of each and every worker, but rather is 8% a reasonable assumption for the average realized return over a large pool of individuals over different time periods? A historical review of investment returns and inflation continues to support, even when accounting for the financial collapse of 2008, that an 8% return assumption is appropriate, and it is just as likely that realized returns will be either above or below this number over time.





The other question that arises is, what happens when actual experience deviates from the assumptions in the short run? In order to achieve a degree of certainty over the annual costs (required savings or contributions) of managing a defined benefit plan, the actuarial and accounting profession allow smoothing of short term deviations over a period of time so we don't get whipsawed in the amount of required funding each year. If the plan suffers from adverse experience-increased longevity, higher than expected salary increases, or below average investment performance-the required contributions are gradually increased over time. The opposite occurs if there is favorable experience. Over time, the actual cost of a defined benefit plan will equal the actual experience of the pool of covered workers through this smoothing mechanism, regardless of the plan assumptions.

I hope you find this useful. As always, feel free to contact me for any additional information.

John Geissinger





CALLAN  
INVESTMENTS  
INSTITUTE  
RESEARCH

JUNE 2010

# Investment Return Assumptions for Public Funds

## The Historical Record

- The return assumptions that public defined benefit plans use to calculate both future funded status and current contributions have been a topic of heated debate in recent months.
- To examine the question of whether typical public plan return assumptions are overly optimistic, Callan compares industry average assumptions to historical trends over 10- and 30-year time horizons.
- In our study, Callan emphasizes the need to consider the full set of actuarial assumptions, including nominal return, real return, and salary and price inflations, when debating the appropriateness of overall investment return assumptions.
- Our analysis confirms that real return assumptions for public plans are in line with historical experience.

## Introduction

Extreme market volatility experienced from 2007 through 2009 has left many public defined benefit plans underfunded. An underfunded public plan affects many constituents—including the retirees whose benefits are paid by the fund, public policy makers, investors of municipal bonds and the voters whose taxes help to fund the plans—and this issue has attracted considerable attention. A debate now rages around whether or not public plan sponsors are using overly optimistic investment return assumptions for their retirement plans. The return assumptions are critical, as they are a major factor in deciding the size of annual plan sponsor contributions. In this paper, Callan leaves aside the debate regarding future capital market performance in order to directly address how return assumptions compare to the historical record.

Authored by Callan Associates Inc.

If you have any questions or comments, please email [institute@callan.com](mailto:institute@callan.com).

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#### **About Callan Associates**

Founded in 1973, Callan Associates Inc. is one of the largest independently owned investment consulting firms in the country. Headquartered in San Francisco, Calif., the firm provides research, education, decision support and advice to a broad array of institutional investors through five distinct lines of business: Fund Sponsor Consulting, Independent Adviser Group, Institutional Consulting Group, Callan Investments Institute and the Trust Advisory Group. Callan employs more than 170 people and maintains four regional offices located in Denver, Chicago, Atlanta and Florham Park, N.J.

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#### **About the Callan Investments Institute**

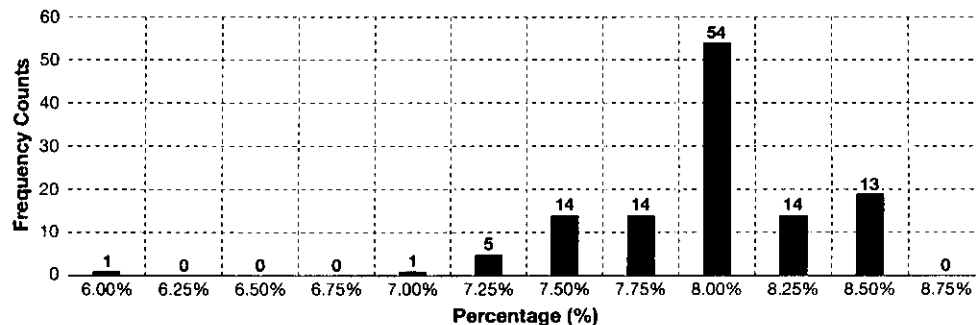
The Callan Investments Institute, established in 1980, is a source of continuing education for those in the institutional investment community. The Institute conducts conferences and workshops and provides published research, surveys and newsletters. The Institute strives to present the most timely and relevant research and education available so our clients and our associates stay abreast of important trends in the investments industry.

## Average Industry Assumption

Plan sponsors pay for promised pension benefits by contributing money to a trust and investing the assets. Actuaries are hired by pension and other defined benefit plans to estimate the market (present) value of long-term plan assets and liabilities. They commonly allow public plans to use long-range funding estimates which presume that higher returns from investing in riskier assets will cover part of the cost of the future benefits these plans must pay.<sup>1</sup> By taking into account future investment returns, plan sponsors have been permitted to make smaller contributions along the way.

Exhibit 1 shows the distribution of investment return assumptions for large public retirement plans as reported in the 2010 NASRA survey.<sup>2</sup> Return assumptions generally range from 6% to 8.5%, with the most common investment return assumption—also the average—at 8.0% annually.<sup>3</sup> More than 25% of large public plans surveyed have assumptions higher than the average.

Exhibit 1 Histogram of Nominal Return Assumptions<sup>4</sup>



- Higher is meant to be a relative term, meaning higher than default-free Treasury bond yields available in the marketplace. Yields represent more than 90% of the return for long-term bond investors. The 30-year Treasury yield was about 4.5% during May 2010.
- The 2010 National Association of State Retirement Administrators (NASRA) survey includes data from 125 public plans and is based on valuation assumptions taken from prior periods, primarily 2007 through 2009 actuarial valuation reports.
- The investment return assumptions are not all net of expenses, as the convention varies from fund to fund. For example, some funds have an explicit expense assumption that is recognized in the valuation process as part of the annual funding costs, while other funds have an implicit expense component deducted from gross returns.
- For our purposes, we will assume actuarial return assumptions are geometric returns because they represent long-term return expectations.

In examining investment returns, we consider the set of assumptions and the relationships between the components because actuaries use more than one return assumption in the valuation process.

While the assumption for the nominal investment return is important, for most plans price and salary inflations are equally important actuarial components. Salary inflation<sup>5</sup> is necessary because most public pension plans pay a benefit that is related to members' earnings close to retirement, and actuaries must incorporate future salary projections into the valuation process. Price inflation is

necessary because it is one component of salary inflation and many public plans automatically increase payments to retirees for inflation by linking them to the Consumer Price Index (CPI). This is called a cost of living adjustment, or "COLA." Thus, actuaries incorporate a projection of future COLAs into the valuation process. Exhibit 2 shows the range of underlying salary (or wage) inflation assumptions, which average 4.25%. Exhibit 3 reveals the range of underlying price inflation assumptions from the 2010 NASRA survey, the average of which is 3.50%.

Exhibit 2 Histogram of Salary Inflation Assumptions<sup>6</sup>

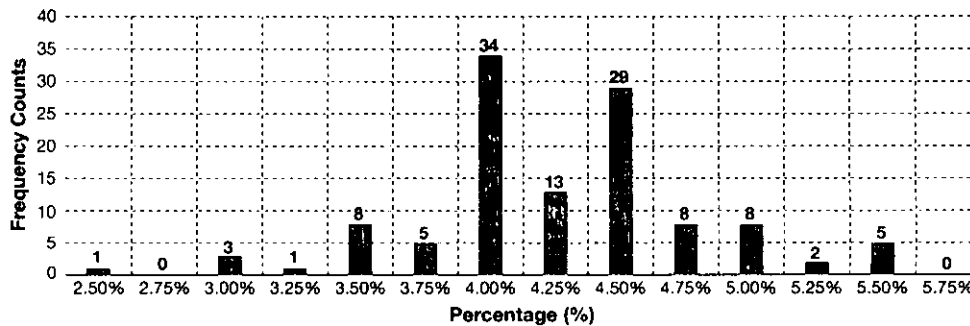
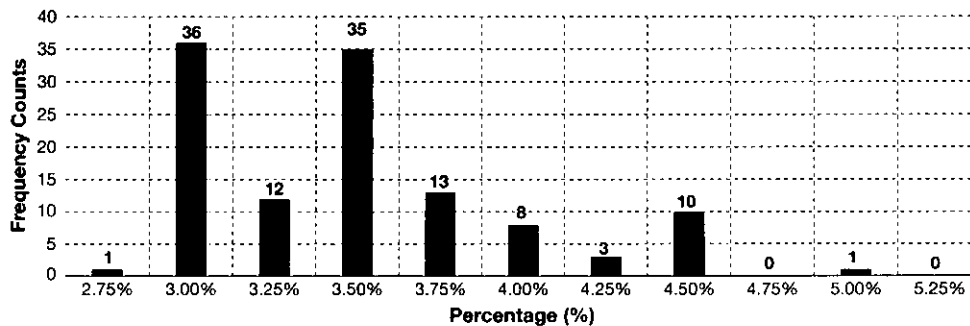


Exhibit 3 Histogram of Price Inflation Assumptions



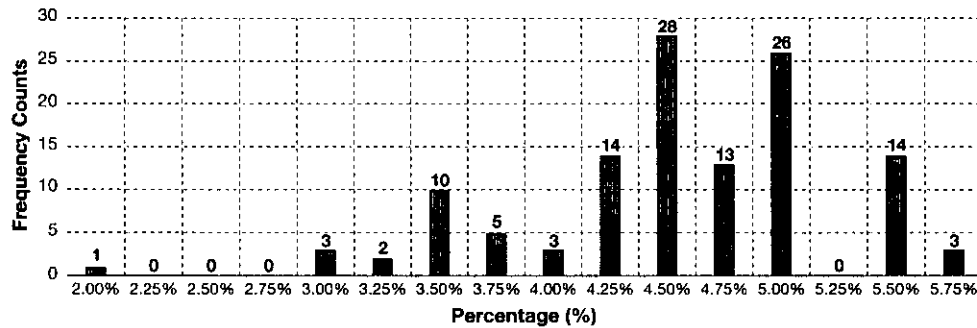
5 Actuaries define salary inflation as having three components: increases due to underlying price inflation, increases due to productivity gains and increases due to individual merit and promotion. The set of valuation assumptions usually defines each component separately. For our analysis, we have excluded individual merit and promotion.

6 The NASRA survey did not include information on salary (wage) inflation. We gathered the data by going to each public plan's website and extracting the information directly from the last valuation report. We were unable to obtain reliable data for five plans.

In developing nominal return assumptions, actuaries often focus on inflation and real returns.<sup>7</sup> In the actuary's set of assumptions, we can distinguish between the nominal investment return assumption and the implied or embedded real

return assumption, given the underlying price inflation assumption. Exhibit 4 displays the range of embedded real return assumptions from the 2010 NASRA survey, which average 4.50%.<sup>8</sup>

**Exhibit 4 Histogram of Real Return Assumptions**



Based on the NASRA survey results, following are the average set of actuarial assumptions:

- Nominal investment return assumption: 8.00%
- Real investment return assumption: 4.50%
- Salary inflation assumption: 4.25%
- Price inflation assumption: 3.50%

We next compare these assumptions to historical benchmarks to see what variability exists.

<sup>7</sup> We note that some actuaries express real returns as returns over wage inflation. However, to be consistent with financial literature, we express real returns as returns over price inflation.

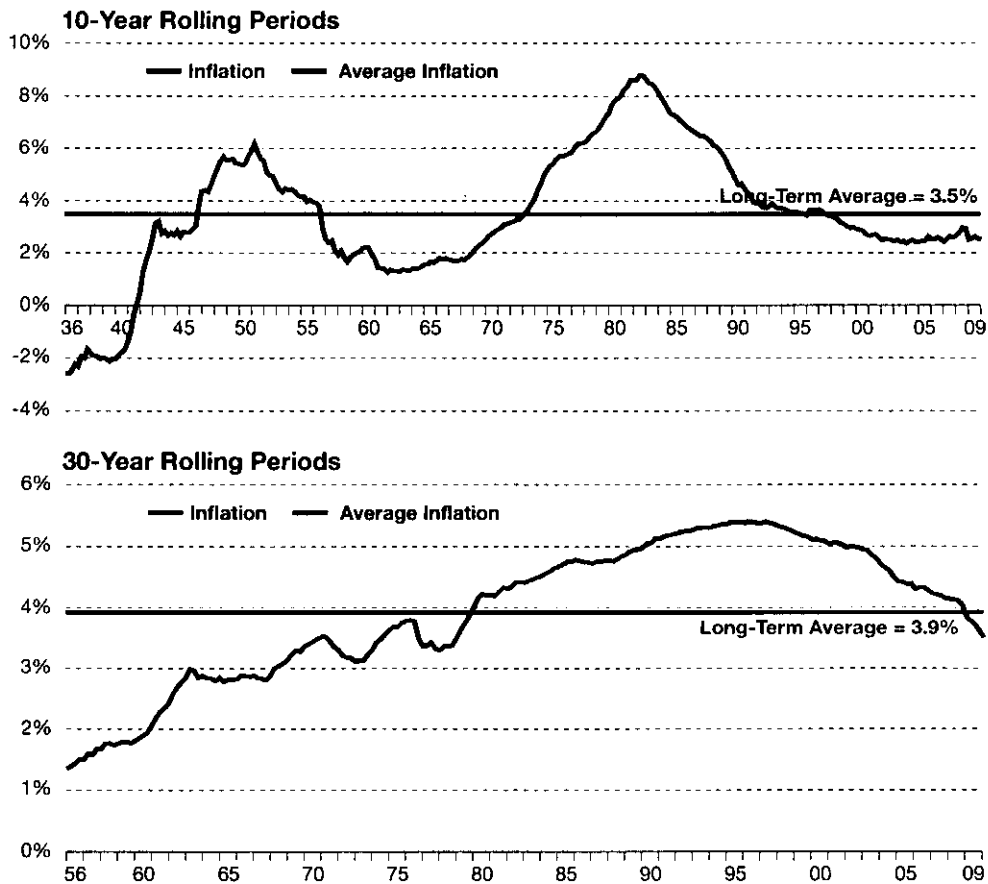
<sup>8</sup> For our analysis, and consistent with the view presented by NASRA, we have determined real returns by subtracting inflation from nominal returns, or calculating "arithmetic" real returns. Another method to determine real returns uses division instead of subtraction, a method we refer to as "geometric" real returns. The geometric return is, on average, 0.15% lower than the arithmetic return.

## Historical Analysis

Before analyzing these assumptions in a historical context, one question must be answered: over what time period should we test for reasonableness? Since actuaries price the cost of a pension plan over the working lifetime of an employee, a long-term horizon is appropriate. We selected 10-year and 30-year periods because the former is a common timeframe used by the investment consulting community and the latter is frequently used in the actuarial community.

Using the building block approach employed by actuaries and common in the investment community to create return projections,<sup>9</sup> we start with the underlying inflation assumption. Exhibit 5 shows rolling 10-year and 30-year periods of actual inflation going back to 1926, using long-term Ibbotson data for CPI.

Exhibit 5 Actual Inflation: 1926-2010



<sup>9</sup> The building block approach is a technique first developed by Ibbotson and Siegel. The return on any asset is the sum of the risk-free rate of return (cash equivalent) plus a risk premium. The risk-free rate of return is composed of inflation plus a short-term real return. Hence, the return on any asset is the sum of inflation, the short-term real return and the risk premium.

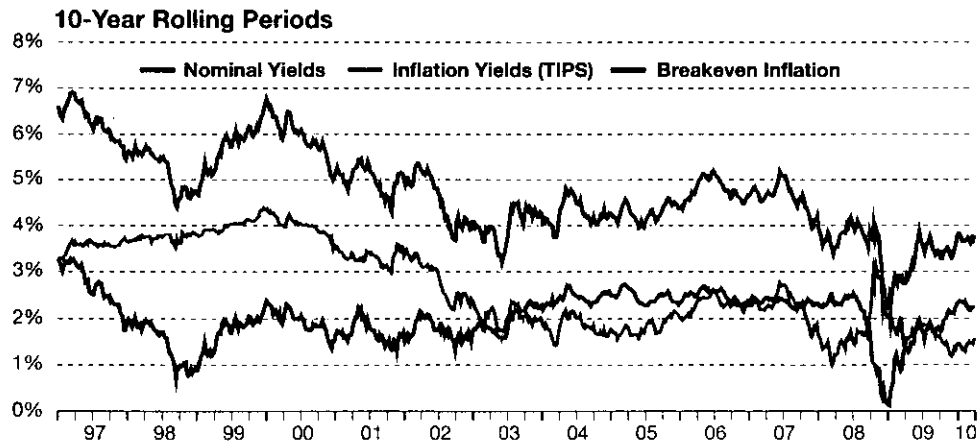
We draw two key observations from Exhibit 5:

1. The long-term average rate of price inflation in both the 10-year and 30-year perspectives is between 3.5% and 4%, which is consistent with the assumptions in the NASRA study.
2. The long-term average is skewed to a great degree by high inflation rates experienced in the 1970s and early 1980s. In the 10-year chart, inflation has actually been lower than the long-term average for roughly the past 15 years, and a similar trend is starting to appear in the 30-year chart.

We can read the bond market's prediction for inflation over the next 10 years by calculating the breakeven inflation rate, commonly defined as the difference between the yield on the Treasury's 10-year nominal bonds and 10-year inflation-linked bonds (TIPS). Many believe this breakeven rate provides an implicit consensus estimate for future inflation, presuming the market is accurately priced.<sup>10</sup> Exhibit 6 shows historical breakeven

rates since 1997, the first year TIPS were issued.<sup>11</sup> The March 31, 2010 breakeven rate suggests that the market's 10-year expectation for future inflation is close to 2.25%, at least 125 basis points lower than the long-term historical average and most actuaries' expectations. The breakeven rate as of April 2010 for the 30-year maturity is only marginally higher at 2.56%.

Exhibit 6 Breakeven Rates of Inflation (1997–2010)



<sup>10</sup> The reality is that liquidity, quality preferences and consensus inflation expectations all figure into the differences between nominal and implied real bonds.

<sup>11</sup> Analysis of the 30-year breakeven rate is not included, since there was an extended period in which the Treasury was not issuing new 30-year TIPS.



Comparing Exhibit 3 with Exhibit 5, actuaries appear to be using inflation expectations in the valuation process that are in line with the long-term average. However, one could also conclude that actuaries' inflation assumptions are somewhat conservative, given that the same exhibits reveal that actual inflation over the last 15 years has generally been lower than the average assumption. When actual inflation is less than expectations, salary increases (that determine future benefits) and COLAs are smaller than projected, so growth in plan liabilities is less than expected.<sup>12</sup> When liabilities grow more slowly than the actuary's expectations, subsequent valuations recognize "actuarial gains from experience."

Experienced gains and losses are important concepts, because gains generated from the liabilities can be used to offset losses or shortfalls stem-

ing from nominal investment returns. These concepts emphasize the importance that real return expectations play within the complete set of the actuary's economic assumptions.

Moving up to the next return building block, we turn our attention to historical real returns in the U.S. capital markets. To generate the return series, we started with two common benchmarks representing the broad markets for U.S. stocks and bonds for the past 35 years: the Russell 3000 Index and the Barclays Aggregate Bond Index. We then backfilled the return series to 1926 using Ibbotson's historical return data.<sup>13</sup> Exhibit 7 shows the rolling 10-year and 30-year real returns for these two return series, created by subtracting inflation from the long-term historical nominal return.<sup>14</sup>

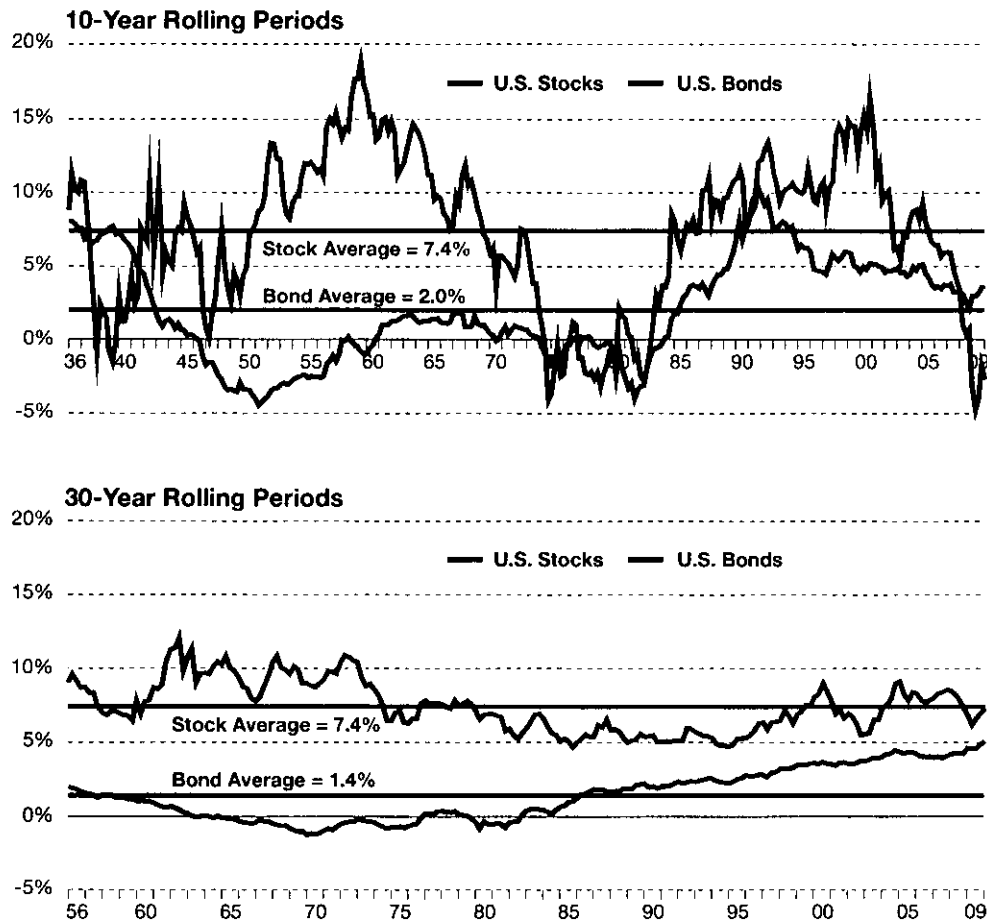
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12 Lower salary increases are also supported by economic data that show the growth in the real incomes of working Americans has been declining over the last decade, which means wages and salaries are not keeping pace with both price inflation and productivity gains.

13 U.S. stocks are represented as an 80% large cap/20% small cap blend of Ibbotson series. U.S. bonds are represented as a 70% intermediate government and 30% long-term corporate bonds blend of Ibbotson series.

14 Based on quarterly data.

Exhibit 7 Historical Real Returns for U.S. Stocks and Bonds

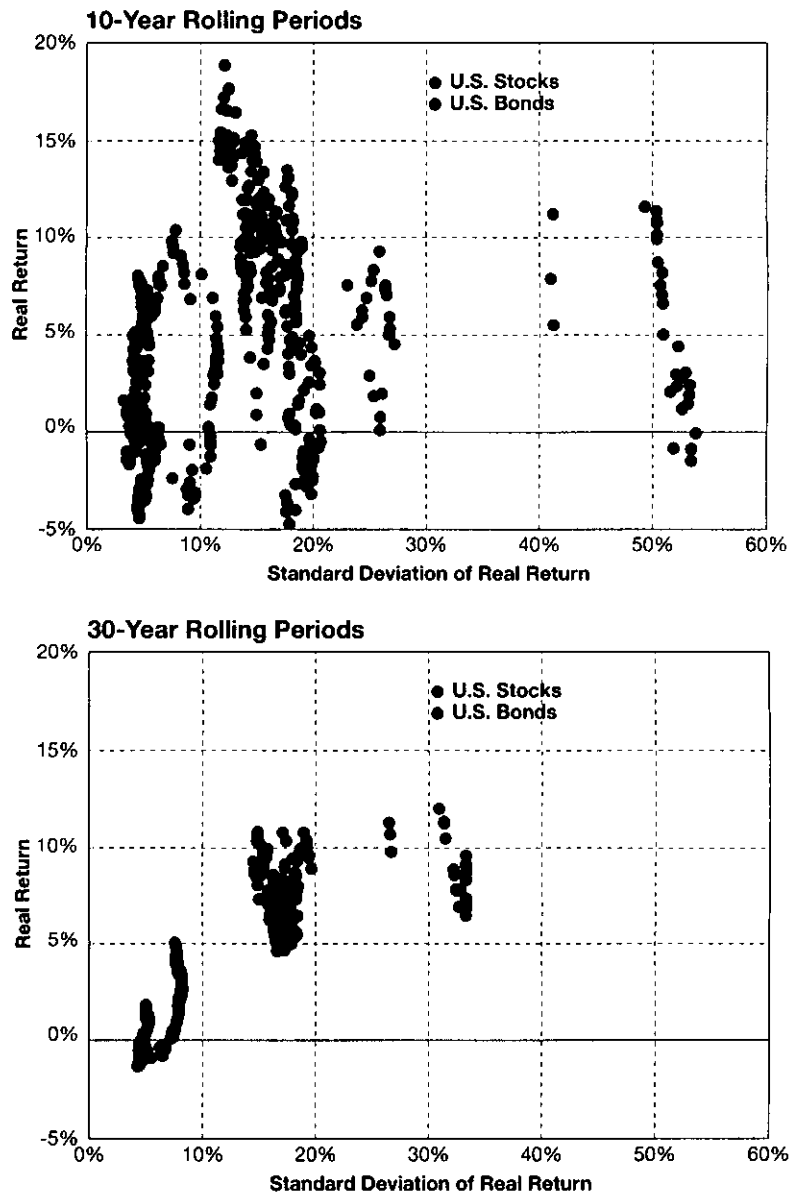


In Exhibit 7 we note that:

1. Over rolling 10-year periods, both stocks and bonds have historically exhibited periods with negative returns. When rolling periods are extended to 30 years, only U.S. bonds have exhibited negative real returns over certain periods.
2. U.S. stocks averaged a real return over 10-year and 30-year periods in excess of 7% annualized. U.S. bonds averaged a 2% real return over 10-year periods, but have a lower average of just 1.4% over 30-year periods.

Exhibit 8 shows a scatter chart of the return/risk characteristics for U.S. stocks and bonds over the two investment periods. Both charts confirm the return observations apparent in Exhibit 7, and further show that U.S. stocks have had periods of significant volatility relative to both its own history and to U.S. bonds.

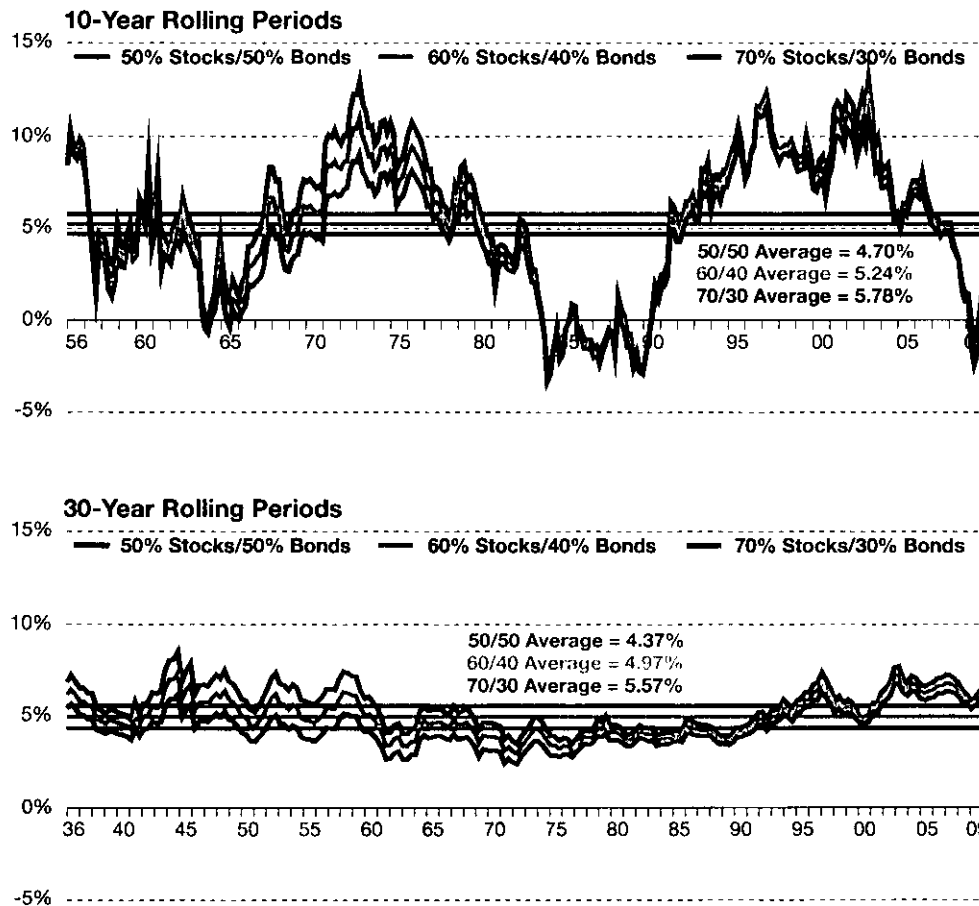
**Exhibit 8 Risk and Return for U.S. Stocks and Bonds**



In Exhibit 9 we blend the return series for U.S. stocks and bonds to show portfolio mixes ranging from 50% to 70% equity, which are common equity targets for the NASRA survey participants. To create the real return, we start with blended

portfolios of nominal returns and discount them for inflation. The straight lines represent the long-term averages of each series, with the corresponding values below.

Exhibit 9 Real Return for Blended Portfolios<sup>15</sup>



<sup>15</sup> The data in the charts are based on arithmetic calculations. The geometric returns are on average 5 basis points higher than the arithmetic returns for each of the blended portfolios.

When we compare these results to the return assumptions reported in the NASRA survey, we note that over rolling 10-year periods, real returns for portfolios with 50% to 70% equity show extended periods of both underperformance and outperformance relative to the NASRA average real return target of 4.5%, with long-term averages exceeding the target. Over longer, 30-year time horizons, these portfolios are much closer to the real return target. Long-term average real

returns for these portfolios have come close to or exceeded the 4.5% average target. Comparing Exhibit 4 (the frequency of real return assumptions) to the rolling 30-year returns depicted in Exhibit 9 suggests that most actuaries are using real return assumptions in line with historical experience, with the distribution marginally skewed toward the conservative end of the spectrum.<sup>16</sup>

## Conclusion

This study emphasizes the need to examine the full set of actuarial assumptions in the debate of whether investment return assumptions utilized by public defined benefit plans are overly optimistic. The actuaries' assumptions include a real return component, after taking into consideration price inflation, that is central to this debate. Second, the investment time frame utilized for evaluating the performance of a plan relative to its

assumptions is equally important. In this paper, we considered both 10-year and 30-year investment horizons to encompass standard time-frames used by the investment and actuarial communities. We examined the historical record for implicit real return assumptions for U.S. stocks and bonds and conclude that real return assumptions for public plans are in line with historical experience.

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<sup>16</sup> 55% of all plans had real return assumptions of 4.5% or less, while 45% of all plans had higher assumptions.

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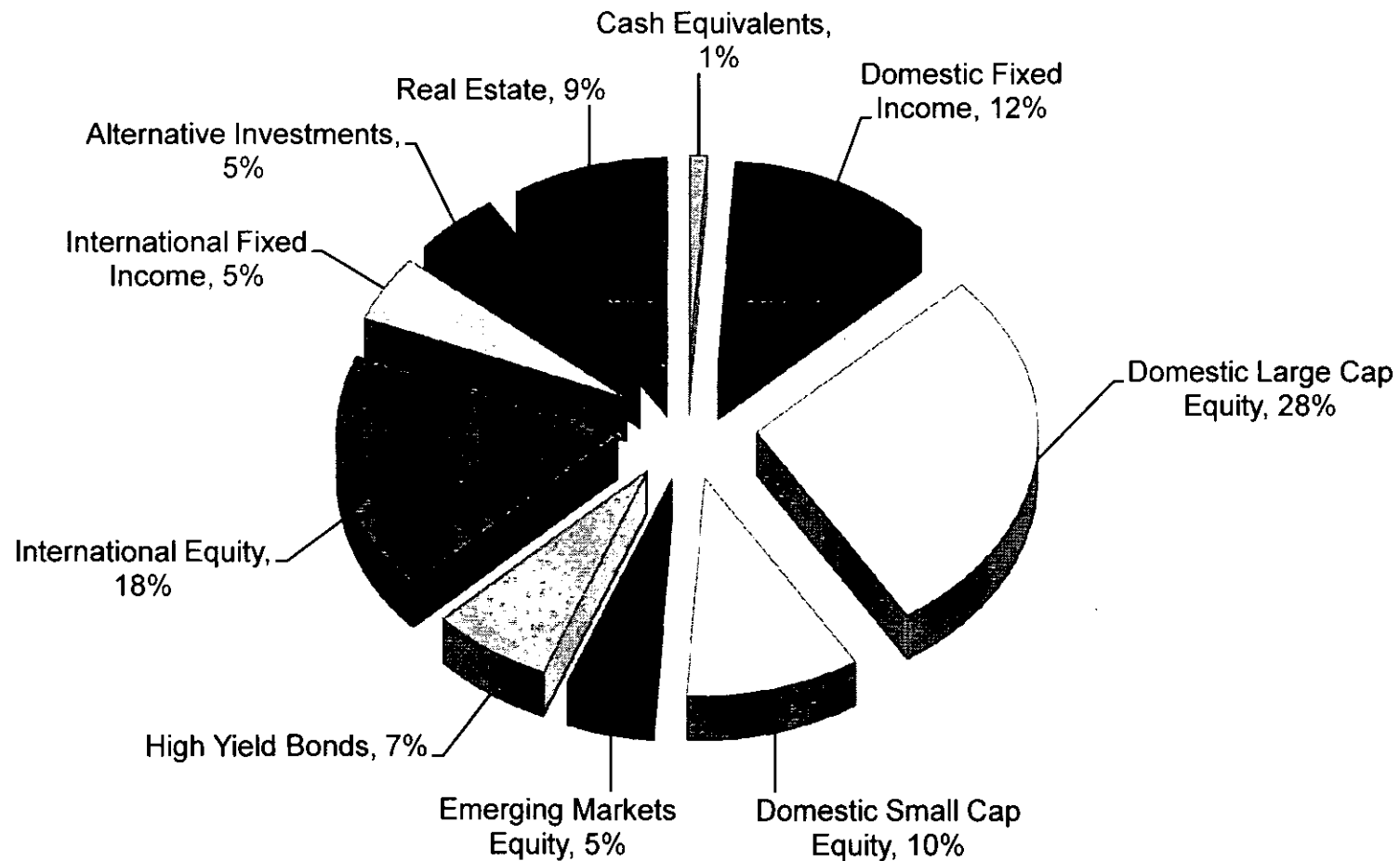
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# TFFR Asset Allocation





- Feb 10, 2011  
- Attachment ONE  
- Representative  
Grasde

## HB 1134

### House Government and Veteran Affairs Committee

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

As fiduciaries of the TFFR trust fund, the TFFR Board is proposing changes included in HB 1134 which are designed to keep TFFR financially strong and sustainable for past, present, and future ND educators. I will briefly highlight TFFR's funding challenge and comprehensive study of funding improvement options as background for TFFR's legislative proposal.

### TFFR's Funding Challenge

TFFR investments have generally been very strong over time due to the Fund's long term investment strategy, professionally managed portfolio, and well diversified assets. Unfortunately, like other investors, both large and small, TFFR experienced significant investment losses in 2008-09 as a result of the global recession.

Obviously, a major loss of assets coupled with increased liabilities (longer life expectancies, salary increases, and benefit changes) has a substantial impact on TFFR's long-term funding outlook. When investment earnings decline, funding levels also decline. Prior to the market meltdown, TFFR's funded level was about 80%. As of the July 1, 2010 actuarial valuation report, TFFR's funded level was about 70% (based on actuarial value) or about 55% (based on market value). See January 13, 2011 TFFR Overview presentation for additional details.

Assuming variable investment returns for the 2010-11 fiscal year, plus 8% returns in the future, Chart 1 shows projected TFFR funding levels if no changes are made. As you can see, with 8% return this year, and 8% returns every year in the future, TFFR funding levels are projected to decline to less than 50% within the next few years, and will steadily deteriorate in the future.

NDTFFR has the cash flow needed to pay current pension benefits when they are due (currently about \$127 million each year). However, looking long term, there is a shortfall in the funding of NDTFFR benefits. If no changes are made, NDTFFR will eventually be unable to pay benefits.

TFFR's challenge then is to stop this downward trend, stabilize funding, and over the long-term, improve funding levels.

## TFFR Funding Improvement Study

In 2009, the TFFR Board took the prudent and proactive step of establishing a TFFR Funding Improvement Study Group. TFFR Board and RIO staff members, along with representatives from the ND Education Association (NDEA), ND Council of Educational Leaders (NDCEL), ND School Boards Association (NDSBA), and ND Retired Teachers Association (NDRTA) spent more than a year studying options to offset investment losses and address declining funding levels.

The Group focused on developing proposals which would reflect the following core principles:

- Restore the financial health of the TFFR plan.
- Maintain adequate retirement security for ND educators.
- Share responsibility for funding improvement with employees and employers.
- Phase changes over time.
- Protect benefits of those employees closest to retirement.

Options considered include: (1) investment performance over 8% assumed return; (2) increasing contributions; (3) reducing benefits; (4) state general fund; (5) and a combined approach. The Study Group discussed in depth the advantages and disadvantages of various alternatives; analyzed actuarial, legal, financial, and policy issues; and seriously considered the impact on members, employers, and the State.

The Board was encouraged and aided by the feedback received from stakeholder groups helping to shape legislative recommendations. As a result, the TFFR Board submitted three bills to the interim Legislative Employee Benefits Programs Committee (LEBPC) for interim legislative review. The Committee studied the bills, received technical and actuarial analysis, took public comment, and gave recommendations on the bills. The interim legislative committee gave the TFFR funding improvement bill a favorable recommendation.

### **HB 1134 – TFFR FUNDING IMPROVEMENT**

In general, changes included in HB 1134 are designed to improve TFFR funding levels over the long-term by increasing employee, employer, and re-employed retiree contributions. It also reduces future liabilities by raising the retirement age for unreduced benefits and increasing the early retirement reduction factor for reduced benefits for nonretired employees who are more than 10 years away from retirement under special grandfathering criteria. A Summary of HB 1134 provisions is attached.

I will review each section of the bill, but would like to begin with Section 2, since sections 1, 3, and 4 are closely related and should be reviewed together.

**SECTION 2. NDCC 15-39.1-09 Membership in fund and assessments**

Actuarial analysis shows that the current statutory contribution rates of 7.75% of salary for employees and 8.75% for employers/school districts are insufficient to amortize TFFR's unfunded liability over 30 years.

HB 1134 would increase contribution rates for all employees and employers a total of 8%, shared equally between employees (4%) and employers (4%). The rate increases would be phased in over two bienniums as follows:

	<b>Current 7/1/10</b>	<b>Proposed 7/1/12</b>	<b>Proposed 7/1/14</b>
Employee	7.75%	9.75%	11.75%
Employer	<u>8.75%</u>	<u>10.75%</u>	<u>12.75%</u>
Total	16.50%	20.50%	24.50%

Under this proposal, the higher contributions are not intended to be permanent. The higher employee and employer contribution rates would be effective until TFFR reaches 90% funded level on an actuarial basis at which time the contribution rates would be reduced to 7.75% each. These were the rates in effect prior to 7/1/07. It should be noted, however, that actuarial projections show the higher contributions would be in effect for at least the next 30 years.

In dollar terms, employee and employer contribution increases are estimated to increase TFFR revenues about \$40-45 million each year after both rate increases are fully phased in (\$20+ million employee and \$20+ million employer). Contribution amounts are estimated at \$5 million a year for every 1% increase in TFFR contribution rates and based on current total employee salaries; total contribution amounts will differ based on actual total employee salaries for any given year. (Chart 4 – Projected Contribution Amounts.)

Since TFFR retirement benefits are part of a teacher's total compensation package (salary and benefits), TFFR contribution rate increases will likely reduce funding for future salary increases and other benefits. Additionally, for those employers who pick up all or a portion of the employee's retirement contributions, it will be need to be considered as part of the salary negotiations process.

**SECTION 1. NDCC 15-39.1-04 (14 and 15) Definitions:**

TFFR currently has two tiers of participating members. Tier 1 employees are those who were members of the system prior to 6/30/08. Tier 2 employees are those who began TFFR participation after 6/30/08. The differences in the two tiers relate to their eligibility for and calculation of retirement benefits.

- Tier 1 employees can retire when they reach the Rule of 85, 3 year vesting, and 3 year final average salary calculation.
- Tier 2 employees can retire when they reach the Rule of 90, 5 year vesting, and 5 year final average salary calculation.

Both membership tiers use the multiplier of 2.0% X years of service credit X final average salary in calculating retirement benefits.

Section 1 creates two new definitions for grandfathered and non-grandfathered Tier 1 members. The intent is to "grandfather" or protect those Tier 1 members who are within 10 years of retirement eligibility and allow them to remain under current retirement eligibility provisions. Approximately 3,500 employees (or 35%) would be grandfathered, and would therefore not be affected by unreduced and reduced retirement benefit eligibility changes described in sections 3 and 4. Non-grandfathered Tier 1 members, Tier 2 employees, and future employees would be affected by such changes.

To identify which employees are within 10 years of retirement eligibility, grandfathering criteria would be established as follows:

A Tier 1 grandfathered member is one who, as of 6/30/13, is vested (3 years of service credit) and:

- a. Is at least 55 years of age; or
- b. Has a combined total of years of service and age which is 65 or greater.

A Tier 1 non-grandfathered member is one who does not qualify as a Tier 1 grandfathered member (i.e. is not vested, is younger than age 55, and has less than Rule of 65 on 6/30/13).

In determining eligibility for grandfathering provisions, the employee's actual age and service credit (including any purchased service credit made before 6/30/13) would be calculated to the nearest thousandth (0.000) according to information on file at TFFR.

Examples:

- 1) Tier 1 employee is age 57 with 4 years of service credit.  
Yes, employee is grandfathered since vested and over age 55.
- 2) Tier 1 employee is age 45 with 20 years of service credit.  
 $45 + 20 = 65$  Yes, employee is grandfathered since total is 65 or over.
- 3) Tier 1 employee is age 40 with 15 years of service credit.  
 $40 + 15 = 55$  No, employee is not grandfathered since total is less than 65.

**SECTION 3. NDCC 15-39.1-10. Eligibility for normal unreduced retirement benefits.**

Under current law, all vested employees can retire with full unreduced benefits at age 65, or earlier if they reach the Rule of 85 (Tier 1) or Rule of 90 (Tier 2). There are no minimum retirement ages. The changes in HB 1134 refer to whether employees can retire earlier than age 65 based on their age and service.

HB 1134 provides for a minimum retirement age of 60 for non-grandfathered employees. However, the bill allows Tier 1 grandfathered employees (those within 10 years of retirement) to remain under current provisions (i.e. Rule of 85) to qualify for unreduced retirement benefits. Non-grandfathered Tier 1 employees, Tier 2 employees, and all future employees would be required to work longer in order to qualify for unreduced retirement benefits.

Effective 7/1/13, non-grandfathered employees would need to work until a minimum of 60 years of age, and could then retire with unreduced benefits if they have the Rule of 90. If, however, they do not have the Rule of 90, they would need to continue working, or defer drawing benefits until they reach the Rule of 90/minimum age 60, or until age 65.

Note that under this proposal, the employee must work until minimum age 60 to receive unreduced benefits, even if they reach the Rule of 90 at an earlier age.

**Examples:**

- 1) Grandfathered Tier 1 employee, age 50 @ 25 yrs service credit on 6/30/13.  
Current: Elig Rule 85 @ age 55 + 30 yrs (R85) in 2018  
Proposed: Elig Rule 85 @ age 55 + 30 yrs (R85) in 2018 No change
  
- 2) Non-grandfathered Tier 1 employee, age 40 @ 15 yrs service credit on 6/30/13.  
Current: Elig Rule 85 @ age 55 + 30 yrs (R85) in 2028  
Proposed: Elig Age 60 + 35 yrs (R95) in 2033 + 5 yr diff  
(\*Reached R90 @ age 58 + 33 = R91)
  
- 3) Non-grandfathered Tier 2 employee, age 32 @ 6 years service credit on 6/30/13.  
Current: Elig Rule 90 @ age 58 + 32 years (R 90) in 2039  
Proposed: Elig Age 60 +34 yrs (R94) in 2041 + 2 yr diff
  
- 4) Non-grandfathered Tier 1 employees at various age/service combinations after 6/30/13.  
Age 60 + 30 years service or more  
Age 61 + 29 years service  
Age 62 + 28 years service  
Age 63 + 27 years service  
Age 64 + 26 years service  
Age 65 + vested (3 years service or more)

Note: The TFFR Board looked at other alternatives with regard to changing member benefits for future members only OR future members and current nonvested members, however, these produced very small savings. This legislation, by grandfathering members eligible for or near eligibility for retirement, attempts to minimize the impact on members who are making active plans for their retirement, while still producing meaningful savings.

**SECTION 4. NDCC 15-39.1-12. Early reduced retirement benefits.**

Current statutes also allow a vested member to be eligible to retire before normal retirement age and receive reduced retirement benefits if the employee is age 55 or older. Early retirement benefits are reduced by 6% per year from the earlier of age 65 or the Rule of 85 (Tier 1) or Rule of 90 (Tier 2).

HB 1134 does not change the minimum age 55 eligibility requirement for receiving reduced benefits, but it does increase the 6% per year reduction to 8% per year reduction from the proposed unreduced retirement ages outlined in Section 3. That is, effective 7/1/13, a non-grandfathered member's benefits would be reduced by 8% from the earlier of age 65 OR the later of either age 60 or Rule of 90. The 8% per year reduction approximates a full actuarial reduction while retaining a simplified formula.

Example: Non-grandfathered Tier 1 employee, age 55 @ 19 years of service, FAMS \$3,000

Current: Age 65-55 = 10 x 6% = 60% reduction	
\$3,000 x 19 yrs x 2% = 1140 x 40% = \$456 per month at age 55	
Proposed Age 65-55 = 10 x 8% = 80% reduction	
\$3,000 x 19 yrs x 2% = 1140 x 20% = \$228 per month at age 55	
Difference	-\$228 month

**SECTION 5. NDCC 15-39.1-18. Disability retirements.**

Under current law, members are eligible for disability benefits if they have at least one year of service and qualify for total disability as determined by the Board. If approved, the amount of the disability benefit is calculated based on a minimum of 20 years of service credit, for a minimum disability benefit of 40% of final average salary. On average, about 7 members each year are determined eligible for disability benefits.

HB 1134 increases the vesting requirement from 1 year to 5 years, and changes the benefit calculation to using actual service credit earned instead of the 20 year minimum. This change would be effective 7/1/13 for all nonretired Tier 1 and Tier 2 employees.

Example: Teacher age 40 @ 15 years service credit, FAMS \$3,000

Current:	\$3,000 X 20 X 2.0% = \$1,200 mo.	
Proposed:	\$3,000 X 15 X 2.0% = \$ 900 mo.	
Difference		-\$300 month

**SECTION 6 . NDCC 15-39.1-19.1 Retired teachers return to active service - Annuities discontinued on resumption of teaching over annual hour limit**

**SECTION 7. NDCC 15-39.1-19.2 Retired teachers return to active service – Critical shortage areas and disciplines.**

Current law allows public school teachers and administrators to return to work after retirement and continue receiving their TFFR benefits under certain employment limitations. The limits apply to TFFR covered employment, but do not apply to non contracted substitute teaching, teaching in a public college, university, or private school, employment outside of education, or employment outside of ND.

Under the general rule, the maximum annual hour limit is based on length of contract duties: 9 month contract = 700 hours; 10 month contract = 800 hours; 11 month contract = 900 hours; 12 month contract = 1,000 hours. If the retiree exceeds the annual hour limit, their monthly retirement is suspended and they are then treated like an active employee with their benefit possibly recalculated upon subsequent retirement if they meet certain conditions outlined in state law.

Under the critical shortage area exemption, retirees can return to TFFR covered employment in an approved critical shortage area and exceed the annual hour limitation (work full time) without losing retirement benefits. A one-year waiting period is required. Critical shortage areas are determined each year by the Education Standards and Practices Board (ESPB). For the 2010-11 school year, ESPB has designated all areas except for elementary education and physical education as critical shortage areas.

Current law requires the employer to pay employer contributions on the salary paid to the re-employed retiree.

During the 2009-10 year, there were 305 re-employed retirees. Of the total, 278 worked part time under the annual hour limit, 20 worked full time under critical shortage area exemption, and 7 worked full time under the benefit suspension and recalculation option. So far in the 2010-11 school year, there are 287 re-employed retirees.

HB 1134 would require all re-employed retirees to pay employee contributions on the salary earned from the school district beginning 7/1/12. This is estimated to bring in approximately \$600,000 of additional contributions per year based on current contribution rates. The re-employed retiree's pension benefit would not increase as a result of the additional contributions being paid (unless their benefit was suspended because they exceeded the annual hour limit). However, the employee contributions would be included in the retiree's guaranteed account value.

**SECTION 8. EFFECTIVE DATES**

This section provides for effective dates for the various changes made by the bill. The effective dates for the employee and employer contribution rate increases (section 2) are included in the bill's language and become effective 7/1/12 and 7/1/14. Requiring re-employed retiree contributions (sections 6 and 7) would become effective 7/1/12. The changes relating to unreduced retirement, reduced retirement, and disability benefits (sections 3, 4, and 5) would become effective 7/1/13.

**FISCAL NOTE**

This bill increases employer contributions from 8.75% to 10.75% beginning 7/1/12 and from 10.75% to 12.75% beginning 7/1/14 which amounts to an additional \$10.6 million for 2011-13 biennium and \$33.2 million for 2013-15 biennium. Notice that the rate increases start the 2<sup>nd</sup> year of each biennium.

This totals \$43.8 million increase in employer contributions each biennium after increases are totally phased in until TFFR reaches 90% funded level. Estimates are based on assumptions and calculations from TFFR's actuarial consultant in letter dated 10/22/10. Fiscal impact may be more or less depending on actual salary paid to active members. Here is the breakdown by school districts, counties, and general fund:

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$75,260		\$235,720	
Appropriations			\$75,260		\$235,720	

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
			\$8,480		\$10,516,260	\$26,560		\$32,937,720

208 school districts, special education units, vocational centers, and other public education entities employ the majority of TFFR participating members (99.21%) and would be required to pay the increased employer contributions of \$10,516,260 for 2011-13 biennium and \$32,937,720 for the 2013-15 biennium totaling \$43,453,980 for both bienniums after increases are phased in.

9 counties currently employ 9 county superintendents (0.08%) who are TFFR participating members and would be required to pay the increased employer contributions of approximately \$8,480 for the 2011-13 biennium and \$26,560 for the 2013-15 biennium totaling \$35,040 for both bienniums after increases are phased in.

4 state entities currently employ about 74 TFFR participating members (0.71%) and would be required to pay the increased employer contributions of approximately \$75,260 for the 2011-13



biennium and \$235,720 for the 2013-15 biennium totaling \$310,980 for both bienniums after increases are phased in:

<u>Bienniums</u>	<u>2011-13</u>	<u>2013-15</u>
ND Center for Distance Education	\$22,578	\$70,716
ND Youth Correctional Center	\$22,578	\$70,716
ND School for the Deaf	\$15,052	\$47,144
ND School for the Blind	\$15,052	\$47,144

**ACTUARIAL ANALYSIS**

TFFR’s actuarial consultant, GRS, conducted an actuarial analysis and technical review of this bill which is described in more detail in their letter dated October 22, 2010.

Chart 3 shows the actuarial impact of the changes outlined in HB 1134. As you can see, without any changes, TFFR funding levels are expected to be exhausted within 30 years even if TFFR earns 8% each year in the future. With HB 1134 changes, plus 8% returns in the future, TFFR’s funded level is projected to reach about 80% in 30 years and would return TFFR to its funding level before the 2008-09 market melt down.

While a 100% funding policy is optimal for many reasons (cost is less if contributions are made sooner rather than later, inter-generational equity, GASB rules, etc.), the Board recognizes it will take time to reach the 100% funding target. Future investment returns of greater or less than 8% will also change the timing and look of TFFR’s funding picture.

The increase in the employee and employer contributions (8.0%) to the plan has the most significant effect on the projected improvement in the plan’s funded status under HB 1134 as you can see from the following chart. The combination of all these items included in the bill, when fully phased in, is equivalent to a total of 8.66% of payroll.

	<u>Effect</u>
Increase member contribution rate	4.00%
Increase employer contribution rate	4.00%
Require re-employed retiree member contributions	0.12%
Change retirement eligibility and early retirement reduction factor	0.49%
Change disability provisions	<u>0.05%</u>
Total	8.66%

**LEGAL ISSUES**

HB 1134 does raise some potential legal issues. TFFR’s legal counsel from the ND Attorney General’s Office (AGO) has examined the issue regarding the legality of pension benefit changes. General conclusions are: (1) State cannot change pension benefits of retired members. (2) State can change benefits of new employees. (3) State can change benefits or contributions of active and inactive members, but any time the benefits or contributions of active and inactive members are detrimentally changed, a potential legal challenge is created. It is difficult to predict the outcome of any challenge, but the risks associated with any detrimental change to member benefits could vary depending upon the level of change or the burden placed upon the members and whether there is a corresponding advantageous change.

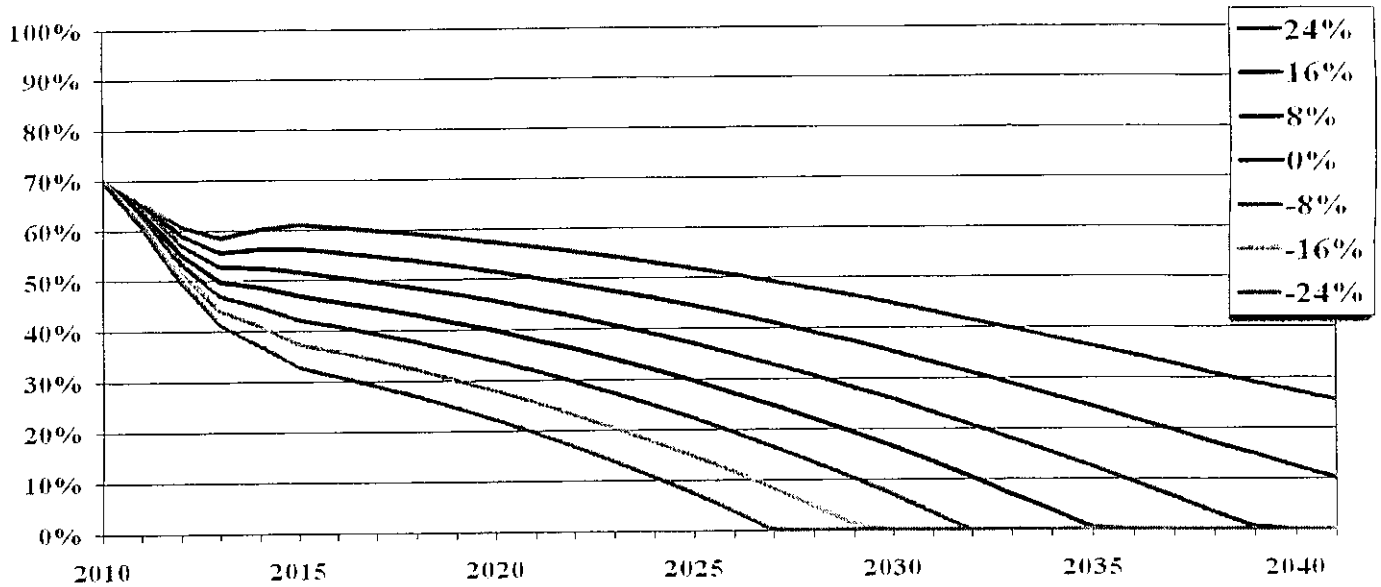
## SUMMARY

The TFFR Board believes that in addition to future positive investment growth, additional revenue and benefit changes are needed to contribute to TFFR's funding solution. HB 1134 reflects shared responsibility from both employees and employers.

The interim Legislative Employee Benefits Programs Committee voted unanimously to give this bill a favorable recommendation. The TFFR Board respectfully requests that your Committee give a "do pass" recommendation to TFFR's long-term funding improvement plan.

Chart 1

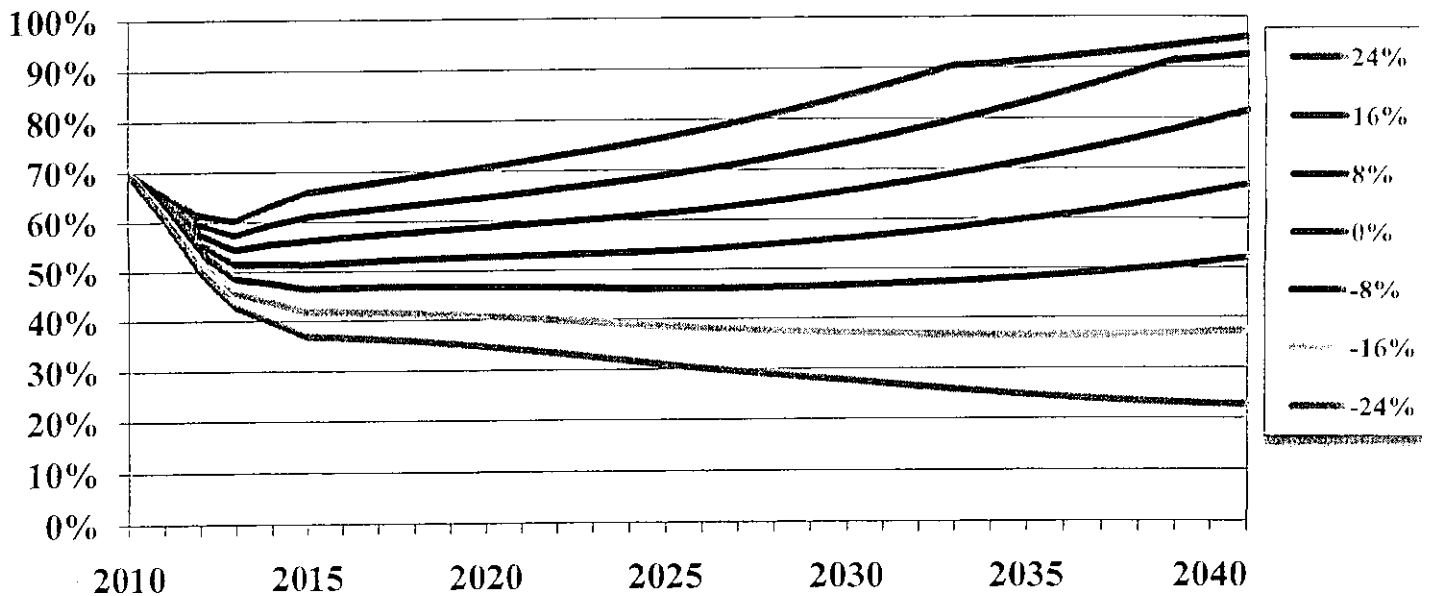
## Projected TFFR Funded Ratio (AVA) Current Plan – No Changes



Note: Projections assume variable market returns for FY 2011, and 8% returns in 2012 and all years thereafter.

Chart 2

## Projected TFFR Funded Ratio (AVA) HB 1134 Changes



Note: Projections assume variable market returns for FY 2011, and 8% returns in 2012 and all years thereafter.

Chart 3

## Comparison of Projected TFFR Funded Ratios (AVA) HB 1134 – Contribution Increases and Benefit Changes

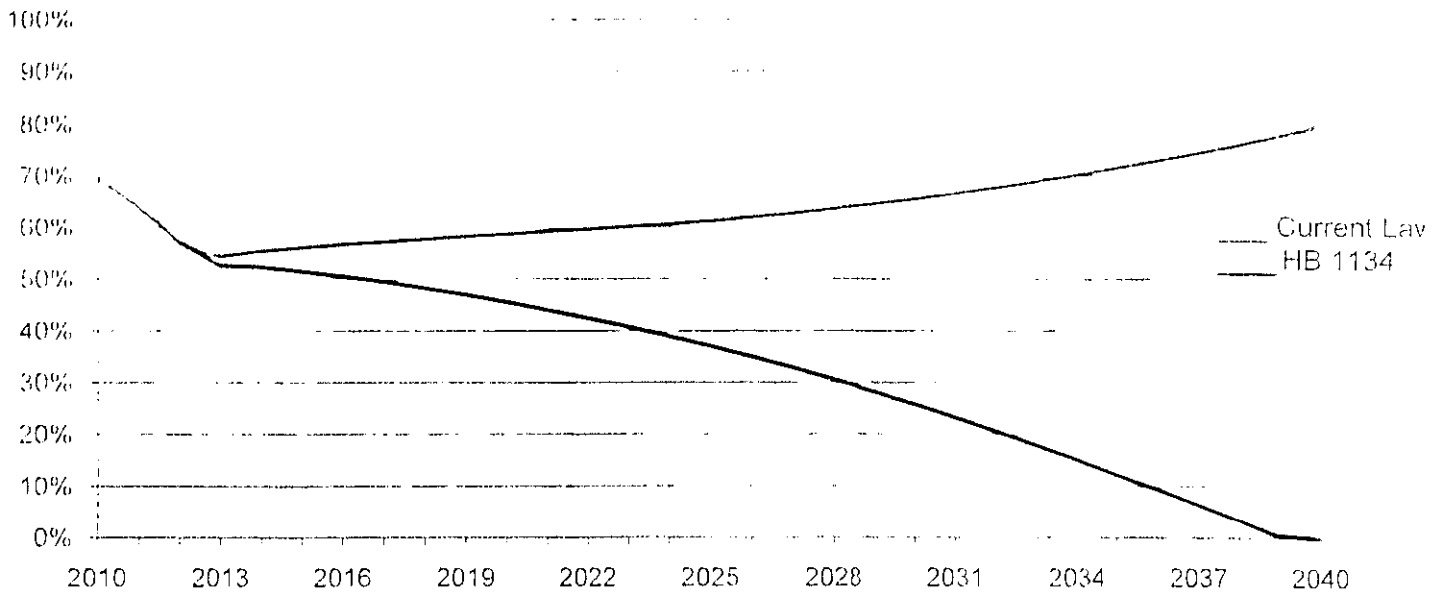


Chart 4

### North Dakota Teacher's Fund for Retirement

#### Comparison of Projected Contributions under Current Law and HB 1134

Fiscal Year Beginning July 1, (1)	Projected Payroll (2)	Current Law Provisions			Bill 54			Total Increase (8)-(5)
		Employer Contributions (3)	Employee Contributions (4)	Total Contributions (3) + (4) (5)	Employer Contributions (6)	Employee Contributions (7)	Total Contributions (6) + (7) (8)	
2010	\$ 493.5	\$ 43.9	\$ 38.2	\$ 82.1	\$ 43.9	\$ 38.2	\$ 82.1	\$ 0.0
2011	505.5	44.9	39.2	84.1	44.9	39.2	84.1	0.0
2012	519.2	46.1	40.2	86.3	56.7	51.4	108.1	21.8
2013	533.9	47.4	41.4	88.8	58.3	52.9	111.2	22.4
2014	549.9	48.9	42.6	91.5	71.2	65.6	136.8	45.3
2015	566.7	50.4	43.9	94.3	73.4	67.6	141.0	46.7

Amounts shown in millions

Projections are based on July 1, 2010 actuarial valuation

Projections assume 8.00% net investment return in FY 2011 and all future years

Contribution rates under current law for all years: employee 7.75%, employer 8.75%

Contribution rates under bill 54:

- Fiscal years beginning July 1, 2012 and July 1, 2013: employee 9.75%, employer 10.75%
- Fiscal years beginning July 1, 2014 and thereafter: employee 11.75%, employer 12.75%

**EMPLOYEE BENEFITS PROGRAMS COMMITTEE  
REPORT TO THE 62ND LEGISLATIVE ASSEMBLY  
REGARDING PROPOSED HOUSE BILL NO. 1134**

*- Attachment  
TWO  
- Feb 10, 2011  
- Representative  
Grade*

**Date:** October 26, 2010

**Sponsor:** Board of Trustees

**Proposal:** Modifies benefits for most current and future members of TFFR, principally by increasing the eligibility requirements for an unreduced (normal) retirement and increasing required contributions for both employers and members. The bill increases both employer and member contribution rates a total of four percentage points in two steps of two percentage points. The employer contribution rate increases from 8.75 percent to 10.75 percent on July 1, 2012, and increases to 12.75 percent on July 1, 2014. The member contribution rate increases from 7.75 percent to 9.75 percent on July 1, 2012, and increases to 11.75 percent on July 1, 2014. The bill also changes the eligibility for an unreduced retirement benefit. Nongrandfathered Tier 1 members and all Tier 2 members would have to be at least age 60 and would have to meet the Rule of 90 to be eligible to retire with an unreduced benefit. A grandfathered member is eligible to retire with an unreduced benefit. A grandfathered member is a Tier 1 member who, on June 30, 2013, is vested, has three years of service, and is at least age 55 or the sum of the member's age and years of service is at least 65. The bill also modifies reduced (early) retirement benefits, makes changes to the disability benefit, and requires that reemployed retired teachers pay the member contribution to TFFR.

**Actuarial Analysis:** The consulting actuary reported the actuarial cost as follows:

Item	Current Law	Bill No. 54	Difference
Normal cost rate	10.57%	10.30%	-0.27%
UAAL	\$795.2 million	\$773.3 million	-\$21.9 million
Funded ratio	69.8%	70.4%	1.6%
Funding period	Infinite	Infinite	N/A
GASB ARC	12.79%	12.25%	-0.54%

The table above shows the effect of the changes in the benefit provisions but does not illustrate the effect of the contribution increases. The overall effect of Bill No. 54 is illustrated below. While assets are projected to be exhausted before the year 2040 under the current provisions, the plan's funded status is projected to increase to 80.00 percent by 2040 under Bill No. 54.

The increase in the employee and employer contributions to the plan has the most significant effect on the projected improvement in the plan's funded status, adding 4.00 percent each to the contributions. Most of the savings from the revised benefit provisions, a 0.49 percent reduction in the annual required contribution, are due to the changes in retirement eligibility and the early retirement reduction factor. The disability changes (eligibility and benefit) reduced the annual required contribution by an additional 0.05 percent. The additional member contributions that will be required of retired members who are reemployed are equivalent to adding 0.12 percent of total pay in contributions to the system (based on the current 7.75 percent member rate).

Therefore, the combination of all these items—the additional contributions and the savings from benefit reductions—when fully phased in is equivalent to a total of 8.66 percent of payroll:

Item	Effect
Require member contributions from reemployed retirees	0.12%
Increase member contribution rate	4.00%
Increase employer contribution rate	4.00%
Change retirement eligibility and early retirement reduction	0.49%
Change disability provisions (eligibility and benefit)	0.05%
<b>Total</b>	<b>8.66%</b>

Comparison of Projected Information Under Current Law and Bill No. 54									
Valuation as of July 1	Comparison of Current Plan Provisions				Bill No. 54				
	Employer Contribution Rate	Employee Contribution Rate	Funded Ratio	Funding Period (In Years)	Employer Contribution Rate	Employee Contribution Rate	Funded Ratio	Funding Period (In Years)	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	
2010	8.75%	7.75%	70%	Infinite	8.75%	7.75%	70%	Infinite	
2011	8.75%	7.75%	64%	Infinite	8.75%	7.75%	64%	Infinite	
2012	8.75%	7.75%	57%	Infinite	10.75%	9.75%	58%	Infinite	
2013	8.75%	7.75%	53%	Infinite	10.75%	9.75%	54%	Infinite	
2014	8.75%	7.75%	53%	Infinite	12.75%	11.75%	56%	44	
2015	8.75%	7.75%	52%	Infinite	12.75%	11.75%	56%	43	
2020	8.75%	7.75%	46%	Infinite	12.75%	11.75%	59%	37	
2025	8.75%	7.75%	37%	Infinite	12.75%	11.75%	61%	29	
2030	8.75%	7.75%	26%	Infinite	12.75%	11.75%	66%	22	
2035	8.75%	7.75%	12%	Infinite	12.75%	11.75%	72%	16	
2040	8.75%	7.75%	0%	Infinite	12.75%	11.75%	80%	10	

Projections are based on July 1, 2010, actuarial valuation.  
Projections assume 8.00 percent net investment return in fiscal year 2011 and all future years.  
Funded ratios are based upon actuarial values.

Comparison of Projected Contributions Under Current Law and Bill No. 54									
Fiscal Year Beginning July 1	Projected Payroll	Comparison of Current Law Provisions			Bill No. 54			Total Increase (8) - (5)	
		Employer Contribution Rate	Employee Contributions	Total Contributions (3) + (4)	Employer Contributions	Employee Contributions	Total Contributions (6) + (7)		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	
2010	\$493.5	\$43.9	\$38.2	\$82.1	\$43.9	\$38.2	\$82.1	\$0.0	
2011	\$505.5	\$44.9	\$39.2	\$84.1	\$44.9	\$39.2	\$84.1	\$0.0	
2012	\$519.2	\$46.1	\$40.2	\$86.3	\$56.7	\$51.4	\$108.1	\$21.8	
2013	\$533.9	\$47.4	\$41.4	\$88.8	\$58.3	\$52.9	\$111.2	\$22.4	
2014	\$549.9	\$48.9	\$42.6	\$91.5	\$71.2	\$65.6	\$136.8	\$45.3	
2015	\$566.7	\$50.4	\$43.9	\$94.3	\$73.4	\$67.6	\$141.0	\$46.7	

Amounts shown in millions.  
Projections are based on July 1, 2010, actuarial valuation.  
Projections assume 8.00 percent net investment return in fiscal year 2011 and all future years.  
Contribution rates under current law for all years: employee 7.75 percent, employer 8.75 percent.  
Contribution rates under Bill No. 54:  
Fiscal years beginning July 1, 2012, and July 1, 2013: employee 9.75 percent, employer 10.75 percent.  
Fiscal years beginning July 1, 2014, and thereafter: employee 11.75 percent, employer 12.75 percent.

**Committee Report:** Favorable recommendation.

## **Engrossed HB 1134**

### **House Government and Veteran Affairs Committee**

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

As fiduciaries of the TFFR trust fund, the TFFR Board is proposing changes included in HB 1134 which are designed to keep TFFR financially strong and sustainable for past, present, and future ND educators. I will briefly highlight TFFR's funding challenge and comprehensive study of funding improvement options as background for TFFR's legislative proposal.

#### **TFFR's Funding Challenge**

Unfortunately, like other individual, corporate, and public pension plan investors around the country, TFFR experienced significant investment losses in 2008-09 as a result of the global recession. Obviously, a major loss of assets coupled with increased liabilities (longer life expectancies, salary increases, and benefit changes) has a substantial impact on TFFR's long-term funding outlook. When investment earnings decline, funding levels also decline. Prior to the market meltdown, TFFR's funded level was about 80%. As of the July 1, 2010 actuarial valuation report, TFFR's funded level was about 70% (based on actuarial value) or about 55% (based on market value). See Chart 1 – Active and Retired TFFR Members; Chart 2 - TFFR Investment Performance; Chart 3 - Market Value of Assets; and Chart 4 - TFFR Funded Ratio.

Assuming variable investment returns for the 2010-11 fiscal year, plus 8% returns in the future, Chart 5 shows projected TFFR funding levels if no changes are made. As you can see, with an 8% return this year, and 8% returns every year in the future, TFFR funding levels are projected to decline to less than 50% within the next few years, and will steadily deteriorate in the future.

TFFR has the funds needed to pay current pension benefits when they are due (currently about \$127 million each year). However, looking long term, there is a shortfall in the funding of TFFR benefits. If no changes are made, TFFR will eventually be unable to pay benefits.

TFFR's challenge then is to stop this downward trend, stabilize funding, and over the long-term, improve funding levels.

## **TFFR Funding Improvement Study**

In 2009, the TFFR Board took the prudent and proactive step of establishing a TFFR Funding Improvement Study Group. TFFR Board and RIO staff members, along with representatives from the ND Education Association (NDEA), ND Council of Educational Leaders (NDCEL), ND School Boards Association (NDSBA), and ND Retired Teachers Association (NDRTA) spent more than a year studying options to offset 2008-09 investment losses and address declining funding levels.

The Group focused on developing proposals which would reflect the following core principles:

- Restore the financial health of the TFFR plan.
- Maintain adequate retirement security for ND educators.
- Share responsibility for funding improvement with employees and employers.
- Phase changes over time.
- Protect benefits of those employees closest to retirement.

Options considered include: (1) investment performance over 8% assumed return; (2) increasing contributions; (3) reducing benefits; (4) state general fund; (5) and a combined approach. The Study Group discussed in depth the advantages and disadvantages of various alternatives; analyzed actuarial, legal, financial, and policy issues; and seriously considered the impact on members, employers, and the State.

The Board was encouraged and aided by the feedback received from stakeholder groups helping to shape legislative recommendations. As a result, the TFFR Board submitted three bills to the interim Legislative Employee Benefits Programs Committee (LEBPC) for interim legislative review. The Committee studied the bills, received technical and actuarial analysis, took public comment, and gave recommendations on the bills. The interim legislative committee gave the TFFR funding improvement bill (Study Bill 54, now HB 1134) a favorable recommendation.

### **HB 1134 – TFFR FUNDING IMPROVEMENT**

In general, changes included in HB 1134 are designed to improve TFFR funding levels over the long-term by increasing employee, employer, and re-employed retiree contributions. It also reduces future liabilities by raising the retirement age for unreduced benefits and increasing the early retirement reduction factor for reduced benefits for non-retired employees who are more than 10 years away from retirement under special grandfathering criteria. A Summary of HB 1134 provisions is attached (Attachment 1).

I will review each section of the bill, but would like to begin with Section 2, since sections 1, 3, and 4 are closely related and should be reviewed together.



**SECTION 2. NDCC 15-39.1-09 Membership in fund and assessments**

Actuarial analysis shows that the current statutory contribution rates of 7.75% of salary for employees and 8.75% for employers/school districts are insufficient to amortize TFFR's unfunded liability over 30 years which means there is a funding deficit.

To address this funding shortfall, HB 1134 would increase contribution rates for all employees and employers a total of 8%, shared equally between employees (4%) and employers (4%). The rate increases would be phased in over two bienniums as follows:

	<b>Current 7/1/10</b>	<b>Proposed 7/1/12</b>	<b>Proposed 7/1/14</b>
Employee	7.75%	9.75%	11.75%
Employer	<u>8.75%</u>	<u>10.75%</u>	<u>12.75%</u>
Total	16.50%	20.50%	24.50%

Under this proposal, the higher contributions are not intended to be permanent. The higher employee and employer contribution rates would be effective until TFFR reaches 90% funded level on an actuarial basis at which time the contribution rates would be reduced to 7.75% each. These were the rates in effect prior to 7/1/07. It should be noted, however, that actuarial projections show the higher contributions would be in effect for at least the next 30 years.

In dollar terms, employee and employer contribution increases are estimated to increase TFFR revenues about \$40-45 million each year after both rate increases are fully phased in (\$20+ million employee and \$20+ million employer). Contribution amounts are estimated at \$5 million a year for every 1% increase in TFFR contribution rates and based on current total employee salaries; total contribution amounts will differ based on actual total employee salaries for any given year. (Chart 6 – Projected Contribution Amounts.) Since TFFR retirement benefits are part of a teacher's total compensation package (salary and benefits), TFFR contribution rate increases will likely reduce funding for future salary increases and other benefits.

**Section 2 Amendment**

The House amended section 2 of the bill to require that the new employee contribution increases (7/1/12 and 7/1/14) must be paid by the employee and cannot be negotiated to be paid by the employer. While there are no actuarial implications to this proposed amendment, there are tax related ramifications since it was drafted in such a way that it impacts the tax deferred treatment of employee contributions. We do not believe that this consequence was intended, however, it is the result according to TFFR's outside tax counsel.

Current employer payment plans developed by the TFFR Board allow for tax deferral of employee contributions under three models as follows:

- Model 1: Employee contribution is paid by the employee through a salary reduction and remitted by the employer on a tax deferred basis (43% of employers; 60% of members).
- Model 2 (all) Employee contribution is paid by the employer in lieu of a salary increase and remitted to TFFR on a tax deferred basis (41% of employers; 35% of members).
- Model 2 (partial %) or Model 3 (partial \$): A portion of the employee contribution is paid by the employer in lieu of a salary increase and remitted to TFFR on a tax deferred basis. The remaining employee contribution is paid by the employee and remitted by the employer on an after tax basis (9% of employers; 4% of members).

TFFR's outside tax counsel (Calhoun Law Group, Washington DC) has reviewed Engrossed HB 1134, and provided the TFFR Board with a potential amendment that would address the tax related issues for Model 1 (salary reduction) employees. This proposed amendment is attached and is offered to the Committee for your consideration (Attachment 2).

For **Model 1 schools** where the employees are paying the employee contribution through a salary reduction, and it is remitted to TFFR by the employer as tax deferred dollars, the House amendment would impact the tax deferred treatment of the employee contributions – that is, a Model 1 employee as of 7/1/12 would have 9.75% of salary reduced from pay with 7.75% of it tax deferred and the remaining 2% taxed. This would potentially affect about 6,000 TFFR members.

Under TFFR's proposed amendment (suggested by outside tax counsel), by simply moving the House amended language, the House amendment still does what it was intended to do (employers cannot pay the additional employee contribution), but it does not impact the tax deferred treatment of the employee contribution for the employees under Model 1 – the entire 9.75% employee contribution as of 7/1/12 would be reduced from pay and all 9.75% would be remitted by the employer as tax deferred dollars.

However, for **Model 2 schools** where the employers are currently paying all of the 7.75% employee contribution on a tax deferred basis (because it was in lieu of a salary increase), they would automatically become Model 2 partial due to the House amendment, and the additional 2% employee contribution would not be tax deferred. This is how Model 2 partials are handled under current employer payment models. Therefore, the House amendment that no longer allows the 2% employee contribution to be negotiated, will still affect Model 2 employees from a tax perspective under current TFFR employer payment models. The amendment TFFR is proposing would not change the tax treatment of the employee deduction under Model 2 partial schools; consequently about 4,000 TFFR members would not be able to have the additional 2% employee contribution made on a tax deferred basis since it was not done in lieu of a salary increase.

TFFR does not currently allow employers to combine the models. Changing the current models to allow employers to combine the models is something that may need to be considered by the Board later, and will need to be done in consultation with TFFR's outside tax counsel and IRS regulations.

## **SECTION 1. NDCC 15-39.1-04 (14 and 15) Definitions:**

TFFR currently has two tiers of participating members. Tier 1 employees are those who were members of the system prior to 6/30/08. Tier 2 employees are those who began TFFR participation after 6/30/08. The differences in the two tiers relate to their eligibility for and calculation of retirement benefits.

- Tier 1 employees can retire when they reach the Rule of 85, 3 year vesting, and 3 year final average salary calculation.
- Tier 2 employees can retire when they reach the Rule of 90, 5 year vesting, and 5 year final average salary calculation.

Both membership tiers use the multiplier of 2.0% X years of service credit X final average salary in calculating retirement benefits.

Section 1 creates two new definitions for grandfathered and non-grandfathered Tier 1 members. The intent is to "grandfather" or protect those Tier 1 members who are within 10 years of retirement eligibility and allow them to remain under current retirement eligibility provisions. Approximately 3,500 employees (or 35%) would be grandfathered, and would therefore not be affected by unreduced and reduced retirement benefit eligibility changes described in sections 3 and 4. Non-grandfathered Tier 1 members, Tier 2 employees, and future employees would be affected by such changes.

To identify which employees are within 10 years of retirement eligibility, grandfathering criteria would be established as follows:

A Tier 1 grandfathered member is one who, as of 6/30/13, is vested (3 years of service credit) and (a) is at least 55 years of age; or (b) has a combined total of years of service and age which is 65 or greater.

A Tier 1 non-grandfathered member is one who does not qualify as a Tier 1 grandfathered member (i.e. is not vested, is younger than age 55, and has less than Rule of 65 on 6/30/13).

In determining eligibility for grandfathering provisions, the employee's actual age and service credit (including any purchased service credit made before 6/30/13) would be calculated to the nearest thousandth (0.000) according to information on file at TFFR.

Examples:

- 1) Tier 1 employee is age 57 with 4 years of service credit.  
Yes, employee is grandfathered since vested and over age 55.
- 2) Tier 1 employee is age 45 with 20 years of service credit.  
 $45 + 20 = 65$  Yes, employee is grandfathered since total is 65 or over.
- 3) Tier 1 employee is age 40 with 15 years of service credit.  
 $40 + 15 = 55$  No, employee is not grandfathered since total is less than 65.

### **SECTION 3. NDCC 15-39.1-10. Eligibility for normal unreduced retirement benefits.**

Under current law, all vested employees can retire with full unreduced benefits at age 65, or earlier if they reach the Rule of 85 (Tier 1) or Rule of 90 (Tier 2). There are no minimum retirement ages. The changes in HB 1134 refer to whether employees can retire earlier than age 65 based on their age and service.

HB 1134 provides for a minimum retirement age of 60 for non-grandfathered employees. However, the bill allows Tier 1 grandfathered employees (those within 10 years of retirement) to remain under current provisions (i.e. Rule of 85) to qualify for unreduced retirement benefits. Non-grandfathered Tier 1 employees, Tier 2 employees, and all future employees would be required to work longer in order to qualify for unreduced retirement benefits.

Effective 7/1/13, non-grandfathered employees would need to work until a minimum of 60 years of age, and could then retire with unreduced benefits if they have the Rule of 90. If, however, they do not have the Rule of 90, they would need to continue working, or defer drawing benefits until they reach the Rule of 90/minimum age 60, or until age 65.

Note that under this proposal, the employee must work until minimum age 60 to receive unreduced benefits, even if they reach the Rule of 90 at an earlier age.

Examples:

- 1) Grandfathered Tier 1 employee, age 50 @ 25 yrs service credit on 6/30/13.  
Current: Elig Rule 85 @ age 55 + 30 yrs (R85) in 2018  
Proposed: Elig Rule 85 @ age 55 + 30 yrs (R85) in 2018 No change
  
- 2) Non-grandfathered Tier 1 employee, age 40 @ 15 yrs service credit on 6/30/13.  
Current: Elig Rule 85 @ age 55 + 30 yrs (R85) in 2028  
Proposed: Elig Age 60 + 35 yrs (R95) in 2033 + 5 yr diff  
(\*Reached R90 @ age 58 + 33 = R91)
  
- 3) Non-grandfathered Tier 2 employee, age 32 @ 6 years service credit on 6/30/13.  
Current: Elig Rule 90 @ age 58 + 32 years (R 90) in 2039  
Proposed: Elig Age 60 +34 yrs (R94) in 2041 + 2 yr diff
  
- 4) Non-grandfathered Tier 1 employees at various age/service combinations after 6/30/13.  
Age 60 + 30 years service or more  
Age 61 + 29 years service  
Age 62 + 28 years service  
Age 63 + 27 years service  
Age 64 + 26 years service  
Age 65 + vested (3 years service or more)

Note: The TFFR Board looked at other alternatives with regard to changing member benefits for future members only OR future members and current nonvested members, however, these produced very small savings. This legislation, by grandfathering members eligible for or near

eligibility for retirement, attempts to minimize the impact on members who are making active plans for their retirement, while still producing meaningful savings.

**SECTION 4. NDCC 15-39.1-12. Early reduced retirement benefits.**

Current statutes also allow a vested member to be eligible to retire before normal retirement age and receive reduced retirement benefits if the employee is age 55 or older. Early retirement benefits are reduced by 6% per year from the earlier of age 65 or the Rule of 85 (Tier 1) or Rule of 90 (Tier 2).

HB 1134 does not change the minimum age 55 eligibility requirement for receiving reduced benefits, but it does increase the 6% per year reduction to 8% per year reduction from the proposed unreduced retirement ages outlined in Section 3. That is, effective 7/1/13, a non-grandfathered member's benefits would be reduced by 8% from the earlier of age 65 OR the later of either age 60 or Rule of 90. The 8% per year reduction approximates a full actuarial reduction while retaining a simplified formula.

Example: Non-grandfathered Tier 1 employee, age 55 @ 19 years of service, FAMS \$3,000

Current: Age 65-55 = 10 x 6% = 60% reduction  
\$3,000 x 19 yrs x 2% = 1140 x 40% = \$456 per month at age 55

Proposed Age 65-55 = 10 x 8% = 80% reduction  
\$3,000 x 19 yrs x 2% = 1140 x 20% = \$228 per month at age 55

Difference - \$228 month

**SECTION 5. NDCC 15-39.1-18. Disability retirements.**

Under current law, members are eligible for disability benefits if they have at least one year of service and qualify for total disability as determined by the Board. If approved, the amount of the disability benefit is calculated based on a minimum of 20 years of service credit, for a minimum disability benefit of 40% of final average salary. On average, about 7 members each year are determined eligible for disability benefits.

HB 1134 increases the vesting requirement from 1 year to 5 years, and changes the benefit calculation to using actual service credit earned instead of the 20 year minimum. This change would be effective 7/1/13 for all non-retired Tier 1 and Tier 2 employees.

Example: Teacher age 40 @ 15 years service credit, FAMS \$3,000

Current: \$3,000 X 20 X 2.0% = \$1,200 mo.

Proposed: \$3,000 X 15 X 2.0% = \$ 900 mo.

Difference - \$300 month

**SECTION 6. NDCC 15-39.1-19.1 Retired teachers return to active service - Annuities discontinued on resumption of teaching over annual hour limit**

## **SECTION 7. NDCC 15-39.1-19.2 Retired teachers return to active service – Critical shortage areas and disciplines.**

Current law allows public school teachers and administrators to return to work after retirement and continue receiving their TFFR benefits under certain employment limitations. The limits apply to TFFR covered employment, but do not apply to non contracted substitute teaching, teaching in a public college, university, or private school, employment outside of education, or employment outside of ND.

Under the general rule, the maximum annual hour limit is based on length of contract duties: 9 month contract = 700 hours; 10 month contract = 800 hours; 11 month contract = 900 hours; 12 month contract = 1,000 hours. If the retiree exceeds the annual hour limit, their monthly retirement is suspended and they are then treated like an active employee with their benefit possibly recalculated upon subsequent retirement if they meet certain conditions outlined in state law.

Under the critical shortage area exemption, retirees can return to TFFR covered employment in an approved critical shortage area and exceed the annual hour limitation (work full time) without losing retirement benefits. A one-year waiting period is required. Critical shortage areas are determined each year by the Education Standards and Practices Board (ESPB). For the 2010-11 school year, ESPB has designated all areas except for elementary education and physical education as critical shortage areas.

Current law requires the employer to pay employer contributions on the salary paid to the re-employed retiree.

During the 2009-10 year, there were 305 re-employed retirees. Of the total, 278 worked part time under the annual hour limit, 20 worked full time under critical shortage area exemption, and 7 worked full time under the benefit suspension and recalculation option. So far in the 2010-11 school year, there are 287 re-employed retirees.

HB 1134 would require all re-employed retirees to pay employee contributions on the salary earned from the school district beginning 7/1/12. This is estimated to bring in approximately \$600,000 of additional contributions per year based on current contribution rates. The re-employed retiree's pension benefit would not increase as a result of the additional contributions being paid (unless their benefit was suspended because they exceeded the annual hour limit). However, the employee contributions would be included in the retiree's guaranteed account value.

## **SECTION 8. EFFECTIVE DATES**

This section provides for effective dates for the various changes made by the bill. The effective dates for the employee and employer contribution rate increases (section 2) are included in the bill's language and become effective 7/1/12 and 7/1/14. Requiring re-employed retiree contributions (sections 6 and 7) would become effective 7/1/12. The changes relating to unreduced retirement, reduced retirement, and disability benefits (sections 3, 4, and 5) would become effective 7/1/13.

## LEGAL ISSUES

HB 1134 does raise some potential legal issues. TFFR's legal counsel from the ND Attorney General's Office (AGO) has examined the issue regarding the legality of pension benefit changes. General conclusions are: (1) State cannot change pension benefits of retired members. (2) State can change benefits of new employees. (3) State can change benefits or contributions of active and inactive members, but any time the benefits or contributions of active and inactive members are detrimentally changed, a potential legal challenge is created. It is difficult to predict the outcome of any challenge, but the risks associated with any detrimental change to member benefits could vary depending upon the level of change or the burden placed upon the members and whether there is a corresponding advantageous change.

## ACTUARIAL ANALYSIS

TFFR's actuarial consultant, GRS, conducted an actuarial analysis and technical review of this bill which is described in more detail in their letter dated October 22, 2010.

Chart 7 shows the actuarial impact of the changes outlined in HB 1134. As you can see, without any changes, TFFR funding levels are expected to be exhausted within 30 years even if TFFR earns 8% each year in the future. With HB 1134 changes, plus 8% returns in the future, TFFR's funded level is projected to reach about 80% in 30 years and would return TFFR to its funding level before the 2008-09 market meltdown.

While a 100% funding policy is optimal for many reasons (total cost is less if contributions are made sooner rather than later, inter-generational equity, GASB rules, etc.), the Board recognizes it will take time to reach the 100% funding target. Future investment returns of greater or less than 8% will also change the timing and look of TFFR's funding picture.

The increase in the employee and employer contributions (8.0%) to the plan has the most significant effect on the projected improvement in the plan's funded status under HB 1134 as you can see from the following chart. The combination of all these items included in the bill, when fully phased in, is equivalent to a total of 8.66% of payroll.

	<u>Effect</u>
Increase member contribution rate	4.00%
Increase employer contribution rate	4.00%
Require re-employed retiree member contributions	0.12%
Change retirement eligibility and early retirement reduction factor	0.49%
Change disability provisions	<u>0.05%</u>
Total	8.66%

**FISCAL NOTE**

This bill increases employer contributions from 8.75% to 10.75% beginning 7/1/12 and from 10.75% to 12.75% beginning 7/1/14 which amounts to an additional \$10.6 million for 2011-13 biennium and \$33.2 million for 2013-15 biennium. Notice that the rate increases start the 2<sup>nd</sup> year of each biennium.

This totals \$43.8 million increase in employer contributions each biennium after increases are totally phased in until TFFR reaches 90% funded level. Estimates are based on assumptions and calculations from TFFR's actuarial consultant in letter dated 10/22/10. Fiscal impact may be more or less depending on actual salary paid to active members. Here is the breakdown by school districts, counties, and general fund:

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$75,260		\$235,720	
Appropriations			\$75,260		\$235,720	

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
			\$8,480		\$10,516,260	\$26,560		\$32,937,720

4 state entities currently employ about 74 TFFR participating members (0.71%) and would be required to pay the increased employer contributions of approximately \$75,260 for the 2011-13 biennium and \$235,720 for the 2013-15 biennium totaling \$310,980 for both biennium after increases are phased in:

Bienniums	2011-13	2013-15
ND Center for Distance Education	\$22,578	\$70,716
ND Youth Correctional Center	\$22,578	\$70,716
ND School for the Deaf	\$15,052	\$47,144
ND School for the Blind	\$15,052	\$47,144

9 counties currently employ 9 county superintendents (0.08%) who are TFFR participating members and would be required to pay the increased employer contributions of approximately \$8,480 for the 2011-13 biennium and \$26,560 for the 2013-15 biennium totaling \$35,040 for both biennium after increases are phased in.

208 school districts, special education units, vocational centers, and other public education entities employ the majority of TFFR participating members (99.21%) and would be required to pay the increased employer contributions of \$10,516,260 for 2011-13 biennium and \$32,937,720 for the 2013-15 biennium totaling \$43,453,980 for both bienniums after increases are phased in.



## SUMMARY

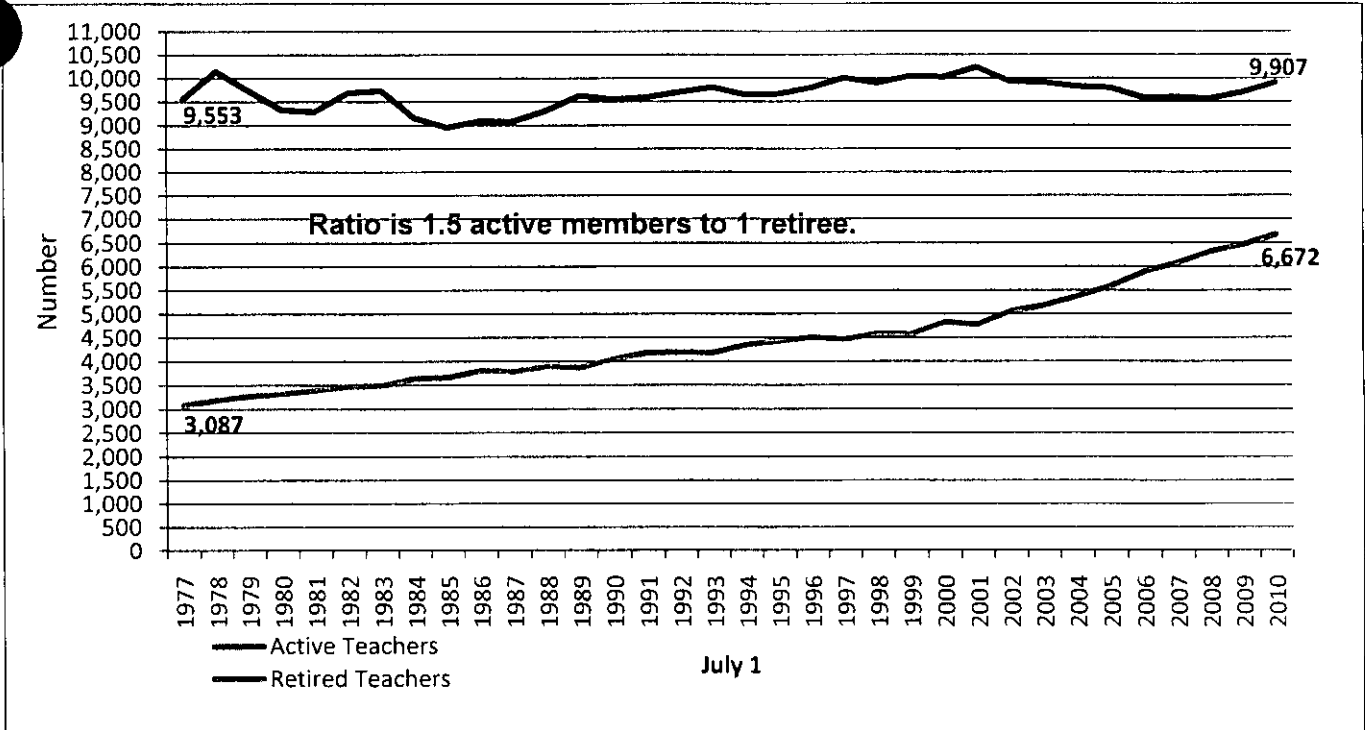
The TFFR Board believes that in addition to future positive investment growth, additional revenue and benefit changes are needed to contribute to TFFR's funding solution. HB 1134 reflects shared responsibility from both employees and employers for TFFR's long term funding improvement.

The interim Legislative Employee Benefits Programs Committee voted unanimously to give this bill a favorable recommendation. The House approved Engrossed HB 1134 by a vote of 92-2. The TFFR Board respectfully requests that your Committee further amend this bill as outlined in the attached amendment, and give HB 1134 a "do pass" recommendation.

Thank you.

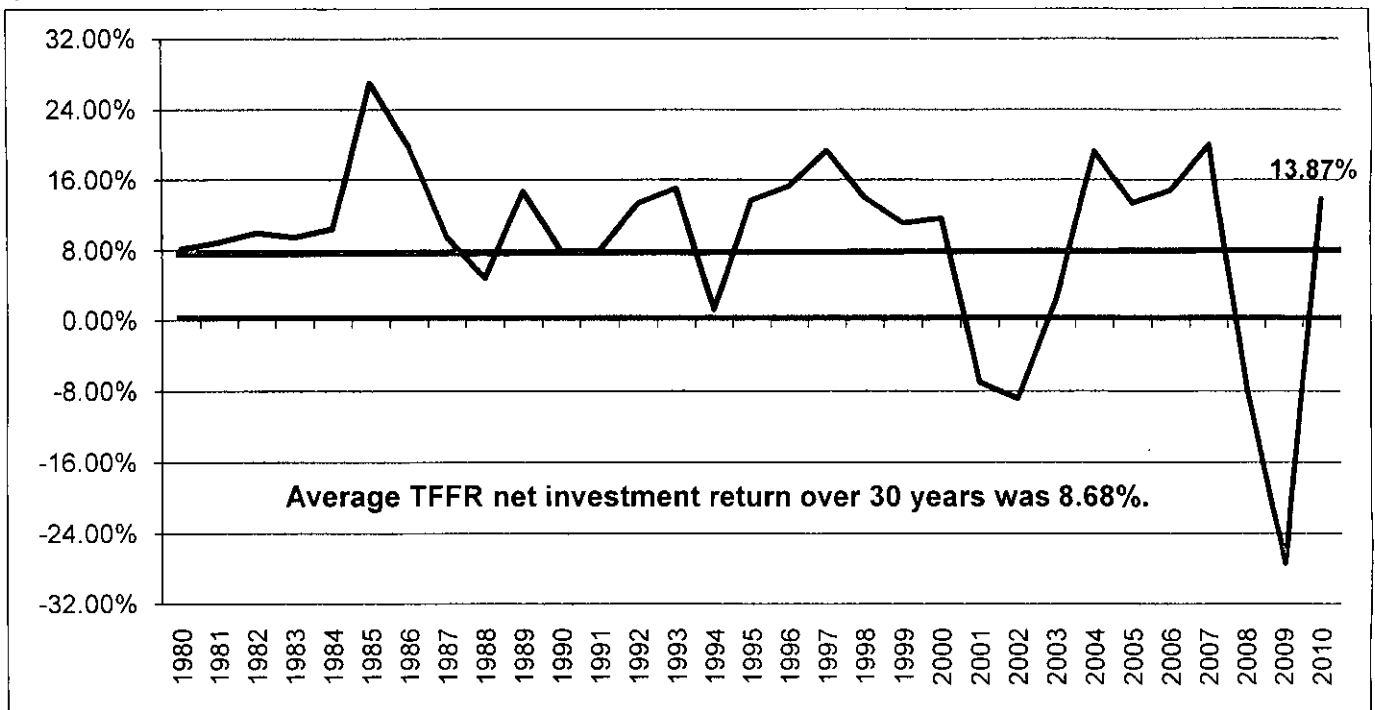
## Active and Retired TFFR Members 1977 - Present

Chart 1



## TFFR Net Investment Performance – Annual 1980 - 2010

Chart 2



Note: The investment returns shown were calculated by the SIB investment consultant. This calculation uses daily time-weighted cash flows in compliance with Global Investment Performance Standards (GIPS). These returns differ from the returns calculated by the actuary. The actuary calculation uses a very simplified approach with annual income and valuation data obtained by the actuary at the end of each fiscal year.

Chart 3

### Market Value of TFFR Assets 1977 - 2010

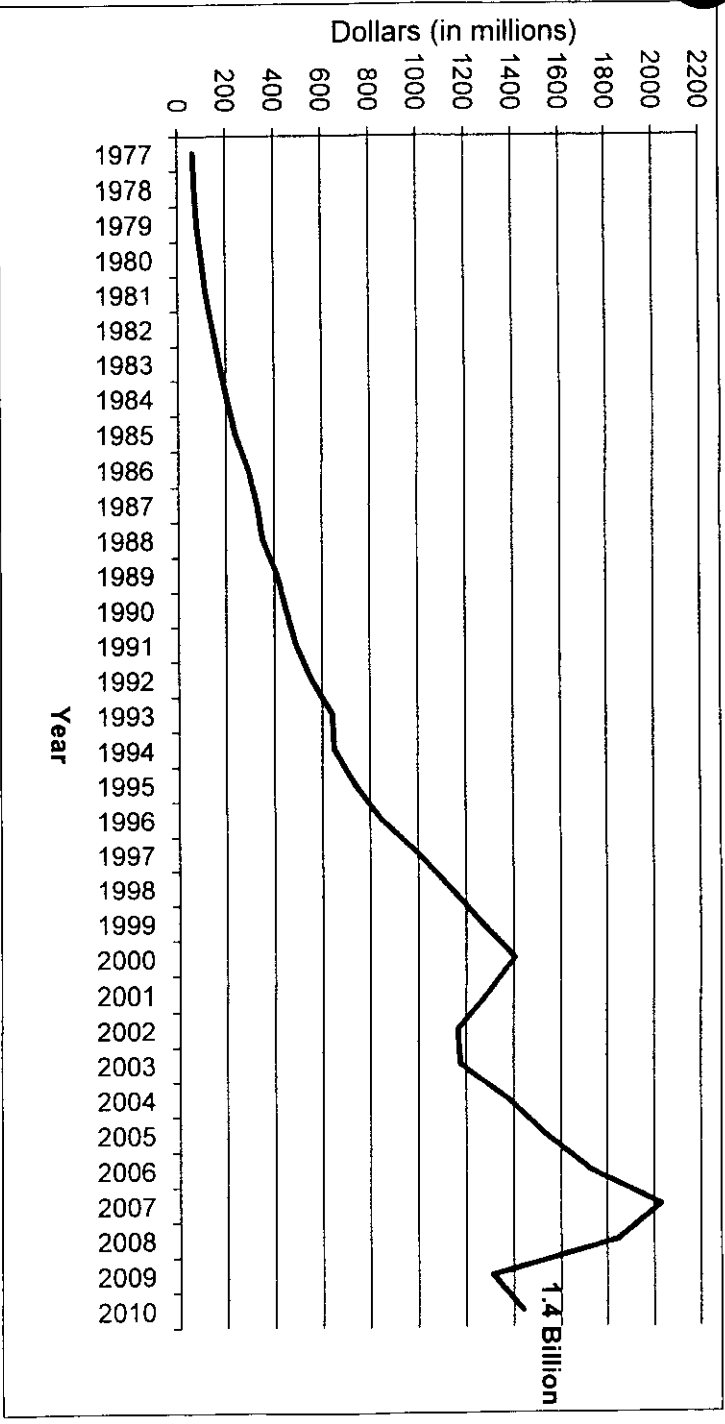


Chart 4

### TFFR Funded Ratio (AVA) 1977 - 2010

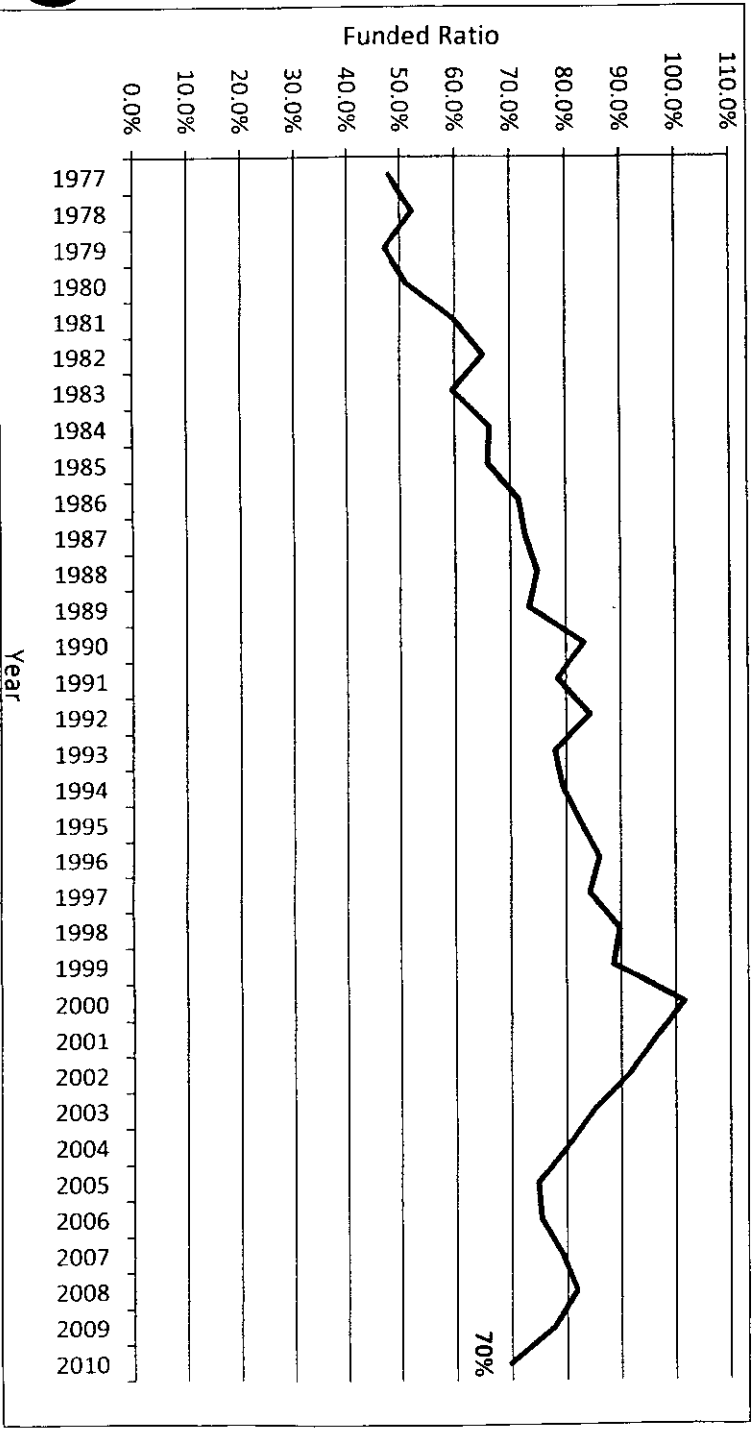
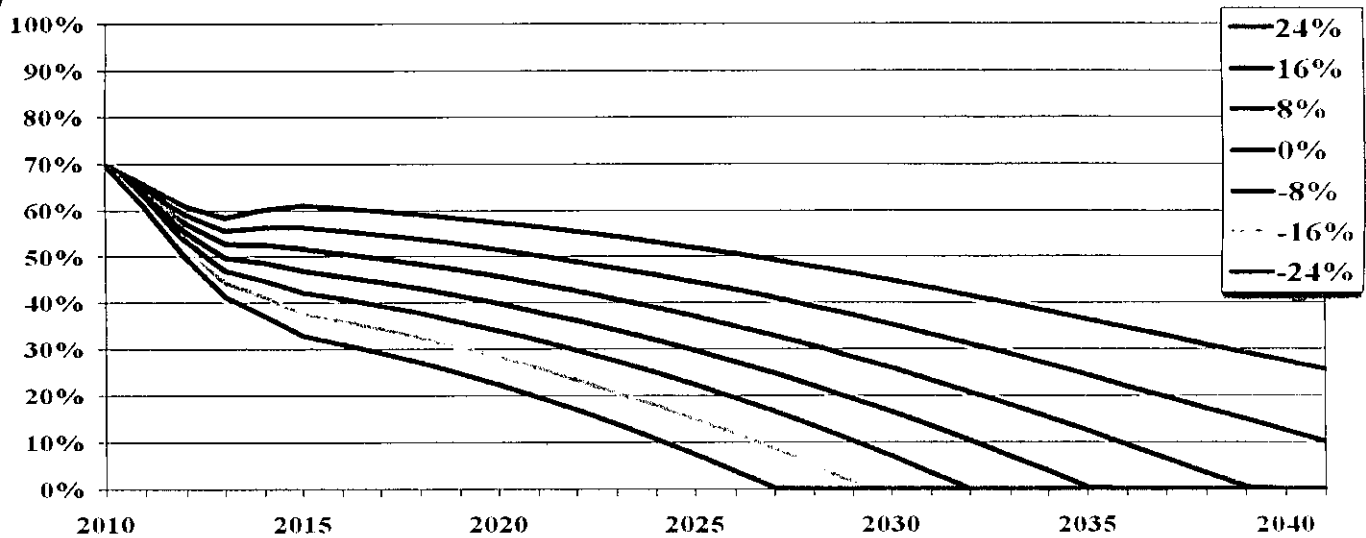


Chart 5

## Projected TFFR Funded Ratio (AVA) Current Plan – No Changes



Note: Projections assume variable market returns for FY 2011, and 8% returns in 2012 and all years thereafter.

Chart 6

### North Dakota Teacher's Fund for Retirement

#### Comparison of Projected Contributions under Current Law and HB 1134

Fiscal Year Beginning July 1, (1)	Projected Payroll (2)	Current Law Provisions			Bill 54			Total Increase (8)-(5) (9)
		Employer Contributions (3)	Employee Contributions (4)	Total Contributions (3) + (4) (5)	Employer Contributions (6)	Employee Contributions (7)	Total Contributions (6) + (7) (8)	
2010	\$ 493.5	\$ 43.9	\$ 38.2	\$ 82.1	\$ 43.9	\$ 38.2	\$ 82.1	\$ 0.0
2011	505.5	44.9	39.2	84.1	44.9	39.2	84.1	0.0
2012	519.2	46.1	40.2	86.3	56.7	51.4	108.1	21.8
2013	533.9	47.4	41.4	88.8	58.3	52.9	111.2	22.4
2014	549.9	48.9	42.6	91.5	71.2	65.6	136.8	45.3
2015	566.7	50.4	43.9	94.3	73.4	67.6	141.0	46.7

Amounts shown in millions

Projections are based on July 1, 2010 actuarial valuation

Projections assume 8.00% net investment return in FY 2011 and all future years

Contribution rates under current law for all years: employee 7.75%, employer 8.75%

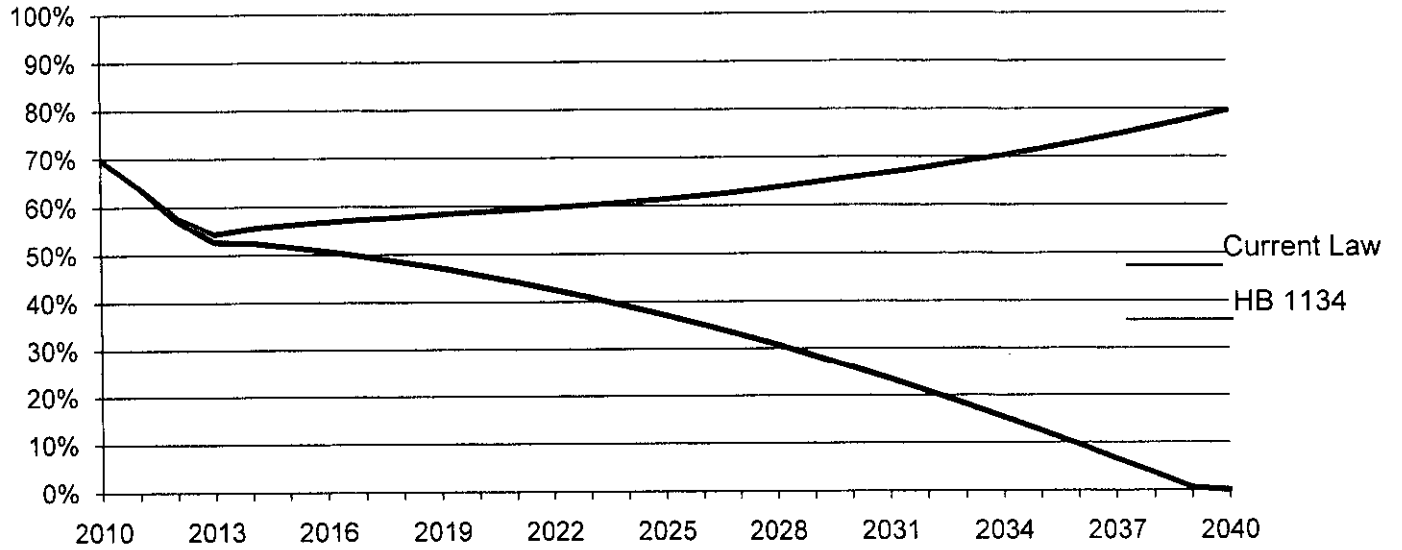
Contribution rates under bill 54:

- Fiscal years beginning July 1, 2012 and July 1, 2013: employee 9.75%, employer 10.75%

- Fiscal years beginning July 1, 2014 and thereafter: employee 11.75%, employer 12.75%

Chart 7

### Comparison of Projected TFFR Funded Ratios (AVA) HB 1134 – Contribution Increases and Benefit Changes



**HB 1134 - TFFR Funding Improvement (TFFR Board)**

- **Increase employee (teacher) contributions 4% over 2 bienniums**  
Current 7.75%      Proposed 9.75% on 7/1/12 and 11.75% on 7/1/14  
(Return to 7.75% when TFFR reaches 90% funded level)
- **Increase employer (school district) contributions 4% over 2 bienniums**  
Current 8.75%      Proposed 10.75% on 7/1/12 and 12.75% on 7/1/14  
(Return to 7.75% when TFFR reaches 90% funded level)
- **Require re-employed retirees to pay employee contribution rates beginning 7/1/12**
- **Modify disability benefits** for all employees by changing eligibility from 1 year to 5 years of service credit and replacing 20 year minimum with actual service in benefit calculation.
- **Modify eligibility for unreduced retirement benefits and reduction factor for reduced retirement benefits for certain employees described below:**

**Grandfathered Tier 1 Employees who are within 10 years of retirement eligibility would not be affected by unreduced and reduced retirement changes.**

- Tier 1 employees who are vested (3 years of service credit) and at least age 55 OR have the Rule of 65 or greater (age + service) on 6/30/13 would be grandfathered under current retirement eligibility provisions (i.e. Rule of 85).

**Non-grandfathered Tier 1 Employees and all Tier 2 Employees** would be affected and would have the following benefit changes as of 7/1/13:

- Unreduced retirement: Eligibility age would increase from Rule of 85 (Tier 1) or Rule of 90 (Tier 2) to Minimum Age 60 and the Rule of 90+, OR Minimum Age 65 for those employees who do not reach the Rule of 90.
- Reduced retirement: Reduction factor would increase from 6% to 8% per year from the earlier of Age 60/Rule of 90 or Age 65.

- **Estimated Impact - TFFR funded level projected to reach 80% over 30 years.**

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1134

Page 2, line 20, remove the overstrike over "Each", remove "Except for the member contribution increases beginning after June 30, 2012,"

Page 2, line 21, remove "each"

Page 3, line 2, after "or" insert ", except for the member contribution increases beginning after June 30, 2012,"

Renumber accordingly



**Senate Government and Veterans Affairs Committee  
TESTIMONY IN SUPPORT OF HB1134**

**March 17, 2011**

Josh Askvig – 701-223-0450 – [josh.askvig@ndea.org](mailto:josh.askvig@ndea.org)

Chairman Dever, members of the Senate Government and Veterans Affairs Committee, for the record my name is Josh Askvig from the North Dakota Education Association (NDEA). On behalf of our 8,800 members including current public school teachers, retired teachers, students going into the profession of education, and also education support professionals (teacher aides, clerical staff, custodial staff, bus drivers, etc...), I rise today in support of HB1134.

Before I get into the reasons for our support I want to go on record stating our appreciation to the TFFR Board and staff, under the leadership of TFFR Board President and Minot teacher Mike Guessner and Deputy Executive Director Fay Kopp. As some of you know, HB1134 is the result of a very inclusive and exhaustive process facilitated by the TFFR Board and its staff, for which they should be highly commended. The way TFFR conducted this activity should be a model for all agencies in state government.

As you know from previous testimony in this committee, the NDEA believes that retirement should be a reward for a life's work. In order for it to be rewarding, your retirement funds must be safe and secure to retire. One should not have to fret about if they will have enough to get through the remaining days of his/her life, but should enjoy retirement with family and friends. That is why providing retirement security is the right thing to do. The best way to provide retirement security is to ensure that ALL North Dakotans have strong defined benefit retirement plans.



As the NDEA studied the TFFR funding shortfall we judged all efforts to fix this problem on four criteria: 1) we want to preserve the defined benefit for current and future members; 2) we want to avoid drastic benefit changes; 3) we want to minimize member contribution increases; and 4) we want to maintain the two percent multiplier. **HB 1134 meets these objectives!**

The Representative Assembly, the ultimate governing body of the NDEA, voted in overwhelming support of the TFFR approach to fixing the funding problem at its Representative Assembly in April 2010. Members accepted the contribution increase contemplated in this bill as their part of a solution to this problem. They further accepted that a decrease in the benefit, which is manifested in the raising of the unreduced retirement age, is also necessary for them to be a part of the solution to this problem. NDEA members support the "grandfathering" language as the only fair means of giving vested members of TFFR within ten years of the current unreduced retirement age an opportunity to prepare for a change in their retirement plans.

NDEA members could have taken the easy road and voted for no change for currently vested members, passing the solution to this problem on to future generations of teachers who would never know the benefits that current members are prepared to sacrifice to keep for them. However, they realize that in spite of significant efforts in recent years by the Legislative Assembly, North Dakota teacher salaries are likely to remain in the bottom 10 percent of the nation for years to come. They believe that one of the ways to compensate for those low salaries is to have a viable, sustainable defined benefit retirement plan. HB1134 helps to assure that benefit will be there for current and future generations of North Dakota teachers.

This defined benefit plan is good not only for teachers, but it is good for local North Dakota economies as well. As you can see on the attached handout from the National Institute on Retirement Security (NIRS), a non-partisan, not-for-profit organization established to contribute to informed

policymaking by fostering a deep understanding of the value of retirement security, estimates that in 2006, for every dollar that was invested in PERS and TFFR, the state got back \$9.33 in economic activity. That's because our retirees tend to stay in this state when they retire. Having a safe and secure retirement when they stay here, they continue to own houses, purchase automobiles, refrigerators and other consumer goods that stimulate business growth, especially in our smaller communities. NIRS also estimates that each dollar paid out in the state pension plans generated \$1.24 of economic activity in the state. A solid defined benefit retirement plan enables our retired teachers to be six times less likely than those who do not have a defined benefit retirement to require public assistance in their retirement, according to NIRS.

Mr. Chairman and members of the committee I would be remiss if I didn't mention our concerns about an amendment the other chamber added. We ask that you remove the House amendment contained in Section 2 subsection 2 on page 2 line 20. This language undermines locally agreed contracts and also causes potential tax implications for our members and school districts.

For example, West Fargo school district pays both the employer and employee share of the TFFR contributions. When this was agreed to it was done in lieu of some salary increases. This amendment negates the local agreement and will likely increase the taxable wages for about 4,000 TFFR members and 93 school districts. I have attached an example that TFFR helped us calculate regarding West Fargo. As you can see from that attachment, it could cost just the school district roughly \$49,000 a year, the cost of about 1 teacher. Further, a teacher making \$40,000 would end up paying an additional \$219.37 per year in taxes as well. It is clear this isn't good for schools, it isn't good for teachers, and we ask that it be removed.

In closing, the members of the NDEA voted overwhelmingly to support the solution to the TFFR funding problem as found in HB1134. Our members willingness to accept a contribution increase, which results in a reduction in

take-home pay, as well as a willingness to accept a benefit reduction in the form of increasing the age for an unreduced retirement is indicative of their desire to preserve the current TFFR defined benefit retirement program. Additionally, the Interim Legislative Employee Benefits and Programs Committee voted unanimously to give this legislation a FAVORABLE recommendation to the 62<sup>nd</sup> Legislative Assembly.

Again, the NDEA asks that you remove the language in Section 2 subsection 2 and then urges the committee to give it a DO PASS recommendation.

Thank you for your time today and I would be happy to answer any questions.

# NORTH DAKOTA

## Pensionomics:

Measuring the Economic Impact of State and Local Pension Plans

### Key Findings

Benefits paid by state and local pension plans support a significant amount of economic activity in the state of North Dakota.

Pension benefits received by retirees are spent in the local community. This spending ripples through the economy, as one person's spending becomes another person's income, creating a multiplier effect.

Expenditures stemming from state and local pensions supported:

- 1,584 jobs that paid \$71.4 million in wages and salaries
- \$203.8 million in total economic output
- \$27.0 million in federal, state and local tax revenues

in the state of North Dakota

For every dollar paid out in pension benefits, supported \$1.74 in total economic activity in North Dakota

Each dollar "invested" by North Dakota taxpayers in these plans supported \$9.33 in total economic activity in the state

### Overview

Expenditures made by retirees of state and local government provide a steady economic stimulus to North Dakota communities and the state economy. In 2006, 13,017 residents of North Dakota received a total of \$164.22 million in pension benefits from state and local pension plans, with \$153.20 million paid from plans within the state and the remainder originating from plans in other states.

The average pension benefit received was \$1,051 per month or \$12,616 per year. These modest benefits provide retired teachers, public safety personnel and others who served the public during their working careers income to meet basic needs in retirement.

### Impact on Jobs and Incomes

Retiree expenditures stemming from state and local pension plan benefits supported 1,584 jobs in the state. The total income to state residents supported by pension expenditures was \$71.4 million.

Of this, the greatest share, \$38.0 million, was comprised of employee compensation (wages and salaries). Proprietors' income (self-employment income) represented \$5.6 million, and other property income (including payments from interest, rent, royalties, profits and dividends) totaled \$27.7 million.

### Economic Impact

State and local pension funds in North Dakota and other states paid a total of \$164.22 million in benefits to North Dakota residents in 2006. Retirees' expenditures from these benefits supported a total of \$203.8 million in total economic output in the state, and \$79.6 million in value added in the state.

\$157.3 million in direct economic impacts were supported by retirees' expenditures on goods and services from businesses in the state. An additional \$23.8 million in indirect economic impact resulted when these businesses purchased additional goods and services, generating additional income in the local economy. \$22.7 million in induced impacts occurred when employees hired by businesses as a result of the direct and indirect impacts made expenditures, supporting even more additional income.

total economic impact \$203.8 million

**DIRECT  
IMPACT**  
\$157.3  
million

**INDIRECT  
IMPACT**  
\$23.8 million

**INDUCED  
IMPACT**  
\$22.7  
million

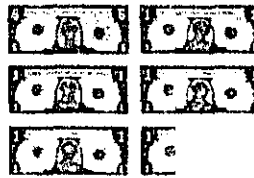
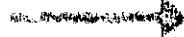
## Economic Multipliers

### Taxpayer Contribution Factor\*



**\$1.00**

Contributed by taxpayers to North Dakota pensions over 30 years



**\$9.33**

total output

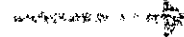
Each \$1 in taxpayer contributions to North Dakota's state and local pension plans supported \$9.33 in total output in the state. This reflects the fact that taxpayer contributions are a major source of financing for retirement benefits, which in turn help to stimulate and sustain the state economy.

### Pension Benefit Multiplier



**\$1.00**

pension benefits paid to retirees in North Dakota



**\$1.24**

total output

Each \$1 in state and local pension benefits paid to North Dakota residents ultimately supported \$1.24 in total output in the state. This multiplier is a function of the direct, indirect and induced expenditures that result from pension spending, as it applies to the state economy.

\*The Taxpayer Contribution Factor is based on the assumption that the average taxpayer contributes \$1.00 to North Dakota pensions over 30 years.

Source: Bureau of Economic Analysis, 2010

## Impact on Tax Revenues

State and local pension payments made to North Dakota residents supported a total of \$27.0 million in revenue to federal, state and local governments. Taxes paid by retirees and beneficiaries directly out of pension payments totaled \$6.9 million. Taxes attributable to direct, indirect and induced expenditures accounted for \$20.1 million in tax revenue.

Federal tax	16.88 million
State/Local tax	10.14 million
Other Corporate taxes	0.01 million
<b>Total</b>	<b>\$27.02 million</b>

## Economic Impacts by Industry Sector

The economic impact of state and local pension benefits was broadly felt across various industry sectors in the state. The ten industry sectors with the largest employment impacts are presented in the table below.

Industry	Employment Impact (# Jobs)	Value Added Impact (\$ millions)	Income Impact (\$ millions)	Output Impact (\$ millions)
Health Care and Social Assistance	354	10.8	23.5	12.7
Retail Trade	350	1.5	10.0	12.8
Accommodation and Food Services	200	3.0	3.4	8.6
Other Services (Except Public Administration)	149	1.2	2.7	4.1
Finance and Insurance	66	1.1	5.3	10.3
Real Estate and Rental and Leasing	65	3.6	3.1	1.9
Professional, Scientific, and Technical Services	45	1.1	2.1	4.1
Wholesale Trade	41	1.1	3.2	2.1
Arts, Entertainment, and Recreation	40	0.1	0.1	1.1
Administrative and Waste Services*	30	1.1	2.4	1.1

U.S. Department of Commerce, Bureau of Economic Analysis, 2010. \*Includes all other industry sectors.

NORTH DAKOTA RETIREMENT AND INVESTMENT OFFICE

West Fargo SCHOOL DISTRICT

FROM MODEL 2 AT 7.75% TO MODEL 2 AT 9.75% FOR A SIMILAR RAISE IN BASE PAY

ASSUMPTIONS:

ALL INFORMATION BELOW IS FOR INFORMATIONAL PURPOSES ONLY

DISTRICT IS CURRENTLY UNDER MODEL 2 at 7.75%

UNDER PROPOSED SCENARIOS EMPLOYER CONTRIBUTIONS INCREASE FROM 8.75% TO 10.75%

UNDER PROPOSED SCENARIOS EMPLOYEE CONTRIBUTIONS INCREASE FROM 7.75% TO 9.75%

ROW	FORMULA	CURRENT MODEL 2 @ 7.75%	PROPOSED MODEL 2 @ 9.75%	PROPOSED MODEL 2 @ 7.75% WITH PAY INCREASE
A	AVERAGE CONTRACT/ADDITIONAL SALARY	\$ 40,000.00	\$ 40,000.00	\$ 40,886.43
B	% DISTRICT WISHES TO PAY OF MEMBER CONTRIBUTIONS	7.750%	9.75%	7.750%
C	RETIREMENT SALARY TO TFFR A / (1 - B)	\$ 43,360.43	\$ 44,321.33	\$ 44,321.33
D	TAXED MEMBER CONTRIBUTIONS			\$ 886.43
E	TAX-DEFERRED MEMBER CONTRIBUTIONS Pickup % * C	\$ 3,360.43	\$ 4,321.33	\$ 3,434.90
F	EMPLOYER CONTRIBUTIONS	\$ 3,794.04	\$ 4,764.54	\$ 4,764.54
G	CONTRACT/ADDITIONAL SALARY A	\$ 40,000.00	\$ 40,000.00	\$ 40,886.43
H	CONTRIBUTIONS DEDUCTED FROM PAY CHECK E	\$ -	\$ -	\$ 886.43
I	TAKE HOME PAY FOR TEACHER BEFORE TAXES G - H	\$ 40,000.00	\$ 40,000.00	\$ 40,000.00
	Take home pay increase before taxes		0.00%	0.00%
			\$ -	\$ 0.00
J	SALARY REPORTED FOR FEDERAL TAX C - E	\$ 40,000.00	\$ 40,000.00	\$ 40,886.43
K	SALARY REPORTED FOR FICA WAGES A	\$ 40,000.00	\$ 40,000.00	\$ 40,886.43
	<b>EFFECT ON SCHOOL DISTRICT PAYROLL</b>	<b>MODEL 2 @ 7.75%</b>	<b>MODEL 2 @ 9.75%</b>	<b>MODEL 2 @ 7.75% WITH PAY INCREASE</b>
L	TOTAL DISTRICT COMPENSATION 2009-10	\$ 29,000,000.00	\$ 29,000,000.00	\$ 29,642,659.00
M	TFFR SALARY L / (1 - B)	\$ 31,436,314.36	\$ 32,132,963.99	\$ 32,132,963.69
N	MEMBER CONTRIBUTION PAID BY DISTRICT M * B	\$ 2,436,314.36	\$ 3,132,963.99	\$ 2,490,304.69
O	EMPLOYER CONTRIBUTIONS PAID BY DISTRICT	\$ 2,750,677.51	\$ 3,454,293.63	\$ 3,454,293.60
P	FICA TAX PAID BY EMPLOYER L * 7.65%	\$ 2,218,500.00	\$ 2,218,500.00	\$ 2,267,663.41
Q	TOTAL PAYROLL EXPENSE FOR SCHOOL L + N + O + P	\$ 36,405,491.87	\$ 37,805,757.62	\$ 37,854,920.70
	DISTRICT PAYROLL EXPENDITURE INCREASE OR		3.85%	3.98%
			\$ 1,400,265.74	\$ 1,449,428.83



# Testimony on HB1134

By

**Dr. M. Douglas Johnson, Executive Director—NDCEL**

Chairman Dever and members of the Senate Government and Veteran Affairs Committee, for the record my name is Doug Johnson and I am the executive director of the ND Council of Educational Leaders (NDCEL) which represents North Dakota's school leaders. I am here to testify in support to **HB1134**.

The NDCEL, along with the ND Education Association, ND School Boards Association, and ND Retired Teachers Association were asked to participate with the TFFR Board as a "TFFR Funding Improvement Study Group" and consider how best to address the significant investment losses in 2008-09 as a result of the global recession. Our associations, along with the TFFR board spent more than a year considering a variety of options to offset investment losses and address declining fund levels. The result of the Study Group's work is before you in **HB1134**.

The changes recommended by the Study Group that are included **HB1134** will improve TFFR funding levels over the next 30 years to being 80% funded. These changes include raising employee and employer contributions 4% each (total 8%) over next 2 bienniums, requires re-employed retirees to pay employee contributions, modifies disability benefits, and increases retirement eligibility for unreduced benefits (minimum age 60 with Rule of 90) and reduction factor for reduced benefits (8%) for non-grandfathered employees (age 55 or Rule of 65). The NDCEL does support these recommendations. However, we do have concerns about the possible tax ramifications of the House amendment which would require the additional 2% of employee contributions to be paid by the employee and not subject to negotiations which is in the **Engrossed HB1134** you are considering this morning.

The House amendment to **HB1134** was drafted in such a way that it impacts the tax deferred treatment of employee contributions under the salary reduction model (Model 1). We do not believe that this was the intended consequence of the amendment. TFFR uses the three



models listed below when determining “tax deferred” treatment of employee contributions for a school district:

- Model 1: Employee contribution is paid by the employee through a salary reduction and remitted by the employer as tax deferred dollars.
- Model 2 (all): Employee contribution is paid by employer in lieu of a salary increase and remitted to TFFR as tax deferred dollars.
- Model 2 (partial %) or Model 3 (partial \$): A portion of the employee contribution is paid by the employer in lieu of a salary increase and remitted to TFFR as tax deferred dollars. The remaining employee contribution is paid by employee and remitted by employer as taxed dollars.

For the **Model 1** schools, where the employees are paying the employee contribution through a salary reduction and it is remitted to TFFR by the employer as tax deferred dollars, the House amendment would impact the tax deferred treatment of the additional 2% employee contributions. It is my understanding the TFFR board has had outside tax counsel review the House amendment and who recommended that the TFFR board offer an amendment which would still do what the original amendment was intended to do (employers cannot pay the additional employee contribution) but it would not impact the tax deferred treatment of the employee contribution for the employees under Model 1 – that is, the entire 9.75% employee contribution as of July 1, 2012 would be reduced from pay and all 9.75% would be remitted by the employer as tax deferred dollars.

However, for those Model 2 schools, where the employers are currently paying all of the 7.75% employee contribution on a tax deferred basis (because it was in lieu of a salary increase), will automatically become Model 2 partial due to the House amendment and the additional 2% employee contribution would not be tax deferred. This is how Model 2 partials are handled under current TFFR employer payment models. Therefore, the House amendment which no longer allows the 2% employee contribution to be negotiated, would affect Model 2 employees from a tax perspective under current TFFR employer payment models. It is my understanding the amendment TFFR is proposing will not change the tax treatment of the employee deduction under Model 2 partial schools. Consequently, TFFR members under Model 2 partial would not be able to have the additional 2% employee contribution made on a

tax deferred basis since it was not done in lieu of a salary increase.

Finally, current employer payment plan models allow for tax deferral of employee contributions either through salary reduction (Model 1) or in lieu of salary increase (Model 2 all). If all of the employee contributions are not paid by the employer (Model 2 partial % or Model 3 partial \$) then the part that is paid by the employee is on an after tax basis. TFFR does not currently allow employers to combine the models. The TFFR Board recognizes that changing the current models may need to be considered later and in consultation with TFFR's tax advisor and IRS regulations.

We believe it is in the best interest of our membership to get the **Engrossed HB1134** back to its original language allowing payment of the additional employee contributions to be negotiated. This could result in tax deferred tax treatment of the additional employee contributions if the additional 2% employee contributions are negotiated to be paid by the employer. The bottom line is that this is an issue of local control. As it stands now **HB1134** forces school districts paying both sides of TFFR into a Model 2 Partial and does not allow them to pay the 2% employee contribution. The original bill would still allow districts to negotiate how this increase would impact salaries and contributions to TFFR. If a district chooses not to pick up the employees' increase in TFFR it will still have tax consequences but they are as a result of the negotiations process and not as result of the current version of **HB1134**. Finally, there is not a way to amend statutes to have Model 2 Partials operate differently – that can only happen through TFFR board and policies based on IRS regulations.

Chairman Dever and members of the Senate Government and Veteran Affairs Committee, the NDCEL is supports **HB1134** in its original form and urges the committee to amend the bill to that effect and give the bill a do pass. This concludes my testimony and I will be glad to answer any questions that the committee might have at this time.

**Testimony**

**House Bill 1134 – Ken Tupa, North Dakota Retired Teachers Association**

**Senate Government and Veterans Affairs Committee**

**Senator Dick Dever, Chairman**

**March 17, 2011**

Chairman Dever and members of the Committee, my name is Ken Tupa and I am here representing the North Dakota Retired Teachers Association (NDRTA). NDRTA is a state association and includes 16 local unit associations in communities throughout ND. As of July 1, 2010, there were 6672 retired educators in ND receiving a retirement annuity from TFFR. I am here to testify in support of House Bill 1134.

NDRTA serves retired educators by advocating to 1) strengthen and maintain the existing defined benefit retirement plan and 2) advocate for annuity adjustments for retired educators if the financial environment allows.

Throughout the interim, NDRTA was involved in the discussions to develop options to improve the funded level of TFFR. This past summer and fall we visited many of our local units and discussed the options being considered by TFFR to improve the financial health of the retirement fund. Overwhelmingly, our members commented on these areas – 1) They are very appreciative for the current defined benefit plan and their retirement annuity; 2) They are very thankful for the supplemental payment approved by the Legislature in 2009; 3) They understand the current economic environment and the need to make changes to improve the status of the retirement fund; 4) They understand the fund has the resources to pay current annuities and that it is necessary to make the changes in HB 1134 so that retirement obligations will continue to be met well into the future and; 5) Likelihood of near-term annuity adjustments or supplemental payments from investment margin is slim.

We believe the bill before this committee provides a reasonable, responsible, and achievable solution for the long term viability of the retirement fund. We ask this committee for favorable consideration of HB 1134.

Thank you Mr. Chairman and members of the committee for the opportunity to testify before you this morning.



*North Dakota Retired Teachers Association*

## Trenbeath, Thomas L.

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From: Murtha, Janilyn K.  
Sent: Friday, March 25, 2011 12:18 AM  
To: Trenbeath, Thomas L.; Sagsveen, Matthew A.  
Subject: HB 1134

Attached to this email are the materials I reviewed in reference to the question received today from Senator Dever regarding whether HB 1134 was "in its most defensible form". In addition to the attached materials I also reviewed the following 3 cases; Payne v. Board of Trustees, 76 N.D. 278, 35 N.W.2d 553 (N.D. 1948); LePire v. Workmen's Compensation Bureau, 111 N.W.2d 355 (N.D. 1961); Rilling v. Workmens Compensation Bureau (1967) <http://www.ndcourts.gov/court/opinions/8401.htm>.

These cases were referred to me by Aaron Webb whom I spoke with today. Mr. Webb did indicate to me that while he did not draft a legal memorandum regarding the defensibility of HB1134 he did prepare various power point presentations relating to this matter, one of which is attached. I would also like to note that given the time constraints I have not had the opportunity to do any additional research regarding this matter above and beyond review of the materials provided herein.

The most succinct answer to whether HB 1134 is in its most defensible form is "no". Both general counsel previously assigned to look into this matter concluded, and I concur, that the "most defensible" position for the legislature to take is to decline to modify the existing benefit structure to the member's detriment. Aaron specifically stated that while the Legislature could modify the existing benefit structure to the member's detriment, doing so could trigger a constitutional challenge by the aggrieved members. Thus, such a change, while available as an option to the legislature, involves a potential risk. I assume the legislature would like an evaluation of the likelihood of success of such a challenge should they pass HB 1134. Given the age of the relevant case-law within North Dakota and what has been referred to as the "changing landscape" of pension fund law, I must decline to speculate, as did my immediate predecessor, on the outcome of a challenge.

I will go so far to state that it appears that pursuant to the Payne case, North Dakota construed public pension plans as contractual in nature and therefore an evaluation of the risk of a constitutional challenge to HB 1134 under that framework seems appropriate. As indicated in the attached article regarding Public Pension Plan Reform, whether state actions are unconstitutional under the contract clause is determined by a 3 step analysis: 1) Is there a contractual relationship; 2) does the state action substantially impair that relationship; 3) an if so, is the change justified by an important public purpose and is the advancement of the purpose reasonable and necessary given the circumstances? I believe that HB1134 would clearly implicate both of the first two prongs therefore any litigation would focus on the third. While, at this point, again given the time constraints, I will decline to go through this analysis as it relates to each proposed section of HB 1134, I would note that if the legislature is faced with the failure of the fund as indicated by the actuarial reports obtained by TFFR there is at least an argument to be made that passage of these changes are justified by an important public purpose and no lesser option is available. I think it is especially helpful that while member contributions are increasing so are the employer contributions, as this indicates that as opposed to abandoning the burden the legislature is acknowledging the need for a remedy involving a financial burden born by both sides.

Of a larger concern is the grandfathering provision of HB 1134 differentiating between grandfathered and non-grandfathered tier one employees. While this change is of course beneficial to those qualifying for the grandfathered status, it is my understanding that the motivation behind this change is an arbitrary determination that those within 10 years of retirement will have relied on the current benefit structure to greater extent than those more than 10 years from retirement. I have not had the opportunity or occasion to discuss the rationale behind this recommendation with RIO staff in any detail, but some elaboration of the justification for excluding tier one employees more than 10 years from retirement from the benefit of a grandfathered status during this process would seem appropriate. Again the purpose of such an elaboration would be to develop the legislative history in the event a challenge occurs.

Please let me know if you would like to discuss this matter in greater detail or if a formal memorandum regarding the defensibility of HB 1134 is requested.

**Engrossed HB 1134**

**Senate Appropriations Committee**

**Fay Kopp, Deputy Director - Retirement Officer  
ND Retirement and Investment Office (RIO) - Teachers' Fund for Retirement (TFFR)  
March 30, 2011**

As fiduciaries of the TFFR trust fund, the TFFR Board is proposing changes included in HB 1134 which are designed to keep TFFR financially strong and sustainable for past, present, and future ND educators.

**TFFR's Funding Challenge**

Like other pension plans around the country, TFFR experienced significant investment losses in 2008-09 as a result of the global recession. Obviously, a major loss of assets coupled with increased liabilities has a substantial impact on TFFR's long-term funding outlook. When investment earnings decline, funding levels also decline. Prior to the market meltdown, TFFR's funded level was about 80%. As of the July 1, 2010 actuarial valuation report, TFFR's funded level was about 70% (based on actuarial value) or about 55% (based on market value). If no changes are made, TFFR funding levels are projected to decline to less than 50% within the next few years, and will steadily deteriorate in the future.

TFFR has the funds needed to pay current pension benefits when they are due (currently about \$127 million each year). However, looking long term, there is a shortfall in the funding of TFFR benefits. If no changes are made, TFFR will eventually be unable to pay benefits.

TFFR's challenge then is to stop this downward trend, stabilize funding, and over the long-term, improve funding levels.

**HB 1134 – TFFR FUNDING IMPROVEMENT**

In general, changes included in HB 1134 are designed to improve TFFR funding levels over the long-term by increasing employee, employer, and re-employed retiree contributions. It also reduces future liabilities by raising the retirement age for unreduced benefits and increasing the early retirement reduction factor for reduced benefits for non-retired employees who are more than 10 years away from retirement under special grandfathering criteria. A Summary of HB 1134 provisions is attached (Attachment 1).

The sections of the bill having fiscal impact include sections 2, 6, and 7 which I will describe.

**SECTION 2. NDCC 15-39.1-09 Membership in fund and assessments**

Actuarial analysis shows that the current statutory contribution rates of 7.75% of salary for employees and 8.75% for employers/school districts are insufficient to amortize TFFR's unfunded liability over 30 years which means there is a funding deficit.

To address this funding shortfall, HB 1134 would increase contribution rates for all employees and employers a total of 8%, shared equally between employees (4%) and employers (4%). The rate increases would be phased in over two bienniums as follows:

	<b>Current 7/1/10</b>	<b>Proposed 7/1/12</b>	<b>Proposed 7/1/14</b>
Employee	7.75%	9.75%	11.75%
Employer	<u>8.75%</u>	<u>10.75%</u>	<u>12.75%</u>
Total	16.50%	20.50%	24.50%

The higher employee and employer contribution rates would be effective until TFFR reaches 90% funded level on an actuarial basis at which time the contribution rates would be reduced to 7.75% each. These were the rates in effect prior to 7/1/07. Actuarial projections show the higher contributions would be in effect for at least the next 30 years.

In dollar terms, employee and employer contribution increases are estimated to increase TFFR revenues about \$40-45 million each year after both rate increases are fully phased in (\$20+ million employee and \$20+ million employer). Contribution amounts are estimated at \$5 million a year for every 1% increase in TFFR contribution rates and based on current total employee salaries; total contribution amounts will differ based on actual total employee salaries for any given year. (Chart 1 – Projected Contribution Amounts.) Since TFFR retirement benefits are part of a teacher's total compensation package, TFFR contribution rate increases will likely reduce funding for future salary increases and other benefits.

**Section 2 Amendment**

The House amended section 2 of the bill to require that the new employee contribution increases (7/1/12 and 7/1/14) must be paid by the employee and cannot be negotiated to be paid by the employer. While there are no actuarial implications to this proposed amendment, there were unintentional tax related ramifications since the language was placed in the statutes in such a way that it impacted the tax deferred treatment of employee contributions based on current TFFR employer payment plan models.

**Federal and state income tax**

State statutes provide the broad authority allowing employee contributions to be made on a tax deferred basis for federal and state income tax purposes under certain conditions. The TFFR Board has adopted administrative rules outlining the criteria that must be followed, and has developed plans allowing for tax deferral of employee contributions under three models as follows:

- Model 1: Employee contribution is paid by the employee through a salary reduction and remitted by the employer on a tax deferred basis (43% of employers; 60% of members).
- Model 2 (all) Employee contribution is paid by the employer in lieu of a salary increase and remitted to TFFR on a tax deferred basis (41% of employers; 35% of members).
- Model 2 (partial %) or Model 3 (partial \$): A portion of the employee contribution is paid by the employer in lieu of a salary increase and remitted to TFFR on a tax deferred basis. The remaining employee contribution is paid by the employee and remitted by the employer on an after tax basis (9% of employers; 4% of members).

TFFR's outside tax counsel reviewed Engrossed HB 1134, and provided the TFFR Board with an amendment that would address the federal and state income tax deferral issues for Model 1 (salary reduction) employees. If the Senate retained the House amendment, the TFFR Board asked that the bill be further amended to relocate the House amendment. This amendment was adopted by the Senate. Under the Engrossed HB 1134, with Senate GVA amendments:

For **Model 1 schools** where the employees are paying all of the employee contribution through a salary reduction, the entire 9.75% employee contribution as of 7/1/12 (and 11.75% as of 7/1/14) would be reduced from pay and would be remitted by the employer as tax deferred dollars. There are about 6,000 TFFR members under Model 1.

For **Model 2 (all) schools** where the employers are currently paying all of the 7.75% employee contribution on a tax deferred basis (because it was negotiated in lieu of a salary increase), they would automatically become **Model 2 (partial)**, since the additional 2.0% must be deducted from the employee's paycheck and cannot be negotiated (under the House and Senate amendments). In this case, the first 7.75% that the employer pays on the employee's behalf (in lieu of salary increase) is on a tax deferred basis. The 2.0% that the employee pays (through salary reduction) is not tax deferred under current Model 2 partial plan. However, if the TFFR Board allows the models to be combined and changes the Model 2 partial model, then the additional 2% could also be done on a tax deferred basis. This would affect about 4,000 members.

As noted, TFFR does not currently allow employers to combine the models. Changing the current models to allow combination models is something that will need to be considered in consultation with TFFR's outside tax counsel and IRS regulations. If changes are made, TFFR and the employers/school districts will need to make necessary pension and payroll software changes prior to 7/1/12 to reflect model changes.

### **FICA tax**

Engrossed HB1134 does not allow the employee contribution increases in 2012 and 2014 to be paid by the employer in lieu of a salary increase. For this reason, any future salary increases granted to the employee will increase the FICA tax paid by both the employer and the employee. Had the employer been able to negotiate and pay the employee contribution as all or part of a salary increase, the employer and the employee would save FICA taxes.

Therefore, the model changes that will need to be considered by the TFFR Board dealing with federal and state income tax deferral have no impact on the FICA tax calculation.

**SECTION 6. NDCC 15-39.1-19.1 Retired teachers return to active service - Annuities discontinued on resumption of teaching over annual hour limit**

**SECTION 7. NDCC 15-39.1-19.2 Retired teachers return to active service – Critical shortage areas and disciplines.**

State statutes allow public school teachers and administrators to return to work after retirement and continue receiving their TFFR benefits under certain employment limitations. During the 2009-10 year, there were 305 re-employed retirees. Under current law, employers are required to pay employer contributions on the salary paid to the re-employed retiree.

HB 1134 would require all re-employed retirees to pay employee contributions on the salary earned from the school district beginning 7/1/12. This is estimated to bring in approximately \$600,000 of additional contributions per year based on current contribution rates. The re-employed retiree's pension benefit would not increase as a result of the additional contributions being paid. However, the employee contributions would be included in the retiree's guaranteed account value.

**ACTUARIAL ANALYSIS**

TFFR's actuarial consultant conducted an actuarial analysis and technical review of this bill. Chart 2 shows the actuarial impact of the changes outlined in HB 1134. As you can see, without any changes, TFFR funding levels are expected to be exhausted within 30 years even if TFFR earns 8% each year in the future. With HB 1134 changes, plus 8% returns in the future, TFFR's funded level is projected to reach about 80% in 30 years and would return TFFR to its funding level before the 2008-09 market meltdown. While a 100% funding policy is optimal for many reasons, the Board recognizes it will take time to reach the 100% funding target. Future investment returns of greater or less than 8% will also change the timing and look of TFFR's funding picture.

The increase in the employee and employer contributions (8.0%) to the plan has the most significant effect on the projected improvement in the plan's funded status under HB 1134 as you can see from the following table. The combination of all these items included in the bill, when fully phased in, is equivalent to a total of 8.66% of payroll.

	<u>Effect</u>
Increase member contribution rate	4.00%
Increase employer contribution rate	4.00%
Require re-employed retiree member contributions	0.12%
Change retirement eligibility and early retirement reduction factor	0.49%
Change disability provisions	<u>0.05%</u>
Total	8.66%

**FISCAL NOTE**

The fiscal note reflects employer contribution increases only. HB 1134 increases employer contributions from 8.75% to 10.75% beginning 7/1/12 and from 10.75% to 12.75% beginning 7/1/14 which amounts to an additional \$10.6 million for 2011-13 biennium and \$33.2 million for 2013-15 biennium. Notice that the rate increases start the 2<sup>nd</sup> year of each biennium. This



totals \$43.8 million increase in employer contributions each biennium after increases are totally phased in until TFFR reaches 90% funded level. Estimates are based on assumptions and calculations from TFFR's actuarial consultant. Fiscal impact may be more or less depending on actual salary paid to active members.

Here is the breakdown by school districts, counties, and general fund:

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$75,260		\$235,720	
Appropriations			\$75,260		\$235,720	

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
			\$8,480		\$10,516,260	\$26,560		\$32,937,720

**4 state entities** currently employ about 74 TFFR participating members (0.71%) and would be required to pay the increased employer contributions of approximately \$75,260 for the 2011-13 biennium and \$235,720 for the 2013-15 biennium totaling \$310,980 for both biennium after increases are phased in:

Biennium	2011-13	2013-15
ND Center for Distance Education	\$22,578	\$70,716
ND Youth Correctional Center	\$22,578	\$70,716
ND School for the Deaf	\$15,052	\$47,144
ND School for the Blind	\$15,052	\$47,144

**9 counties** currently employ 9 county superintendents (0.08%) who are TFFR participating members and would be required to pay the increased employer contributions of approximately \$8,480 for the 2011-13 biennium and \$26,560 for the 2013-15 biennium totaling \$35,040 for both bienniums after increases are phased in.

**208 school districts, special education units, vocational centers, and other public education** entities employ the majority of TFFR participating members (99.21%) and would be required to pay the increased employer contributions of \$10,516,260 for 2011-13 biennium and \$32,937,720 for the 2013-15 biennium totaling \$43,453,980 for both biennium after increases are phased in.

### SUMMARY

The TFFR Board believes that in addition to future positive investment growth, additional revenue and benefit changes are needed to contribute to TFFR's funding solution. HB 1134 reflects shared responsibility from both employees and employers for TFFR's long term funding improvement.

Thank you.

**North Dakota Teacher's Fund for Retirement**

**Comparison of Projected Contributions under Current Law and HB 1134**

Fiscal Year Beginning July 1,	Projected Payroll	Current Law Provisions			Bill 54			Total Increase (8)-(5)
		Employer Contributions	Employee Contributions	Total Contributions (3) + (4)	Employer Contributions	Employee Contributions	Total Contributions (6) + (7)	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
2010	\$ 493.5	\$ 43.9	\$ 38.2	\$ 82.1	\$ 43.9	\$ 38.2	\$ 82.1	\$ 0.0
2011	505.5	44.9	39.2	84.1	44.9	39.2	84.1	0.0
2012	519.2	46.1	40.2	86.3	56.7	51.4	108.1	21.8
2013	533.9	47.4	41.4	88.8	58.3	52.9	111.2	22.4
2014	549.9	48.9	42.6	91.5	71.2	65.6	136.8	45.3
2015	566.7	50.4	43.9	94.3	73.4	67.6	141.0	46.7

Amounts shown in millions

Projections are based on July 1, 2010 actuarial valuation

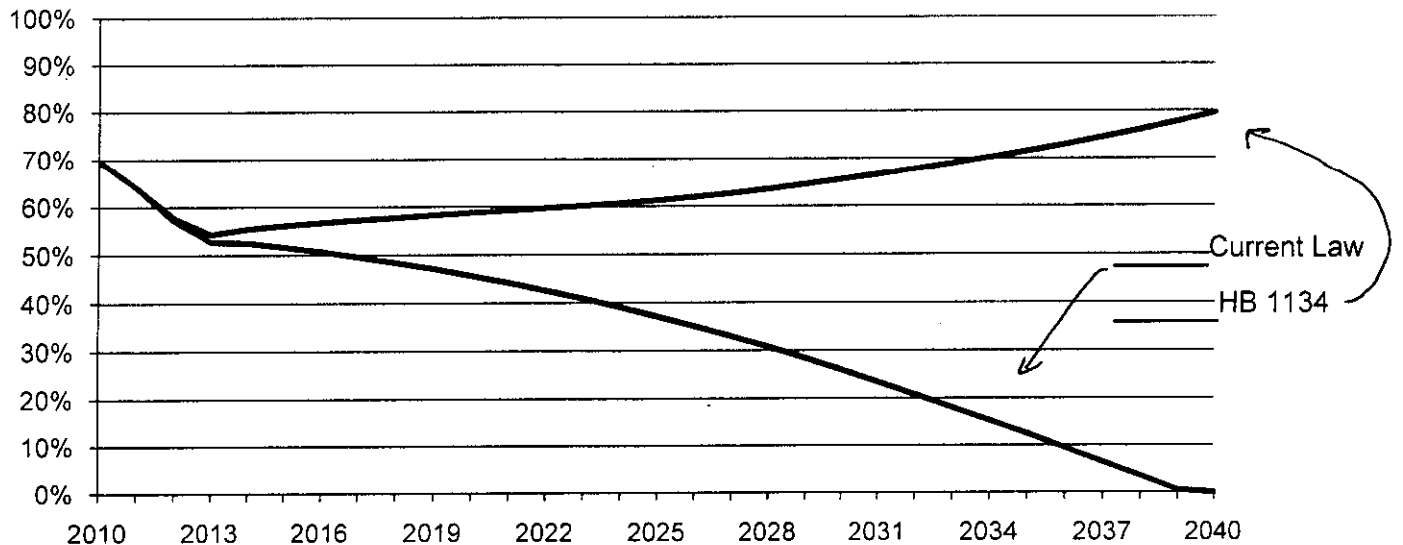
Projections assume 8.00% net investment return in FY 2011 and all future years

Contribution rates under current law for all years: employee 7.75%, employer 8.75%

Contribution rates under bill 54:

- Fiscal years beginning July 1, 2012 and July 1, 2013: employee 9.75%, employer 10.75%
- Fiscal years beginning July 1, 2014 and thereafter: employee 11.75%, employer 12.75%

**Comparison of Projected TFFR Funded Ratios (AVA)  
HB 1134 – Contribution Increases and Benefit Changes**



**HB 1134 - TFFR Funding Improvement (TFFR Board)**

- **Increase employee (teacher) contributions 4% over 2 biennium**  
Current 7.75%      Proposed 9.75% on 7/1/12 and 11.75% on 7/1/14  
(Return to 7.75% when TFFR reaches 90% funded level)
- **Increase employer (school district) contributions 4% over 2 biennium**  
Current 8.75%      Proposed 10.75% on 7/1/12 and 12.75% on 7/1/14  
(Return to 7.75% when TFFR reaches 90% funded level)
- **Require re-employed retirees to pay employee contribution rates beginning 7/1/12**
- **Modify disability benefits** for all employees by changing eligibility from 1 year to 5 years of service credit and replacing 20 year minimum with actual service in benefit calculation.
- **Modify eligibility for unreduced retirement benefits and reduction factor for reduced retirement benefits for certain employees described below:**

**Grandfathered Tier 1 Employees who are within 10 years of retirement eligibility would not be affected by unreduced and reduced retirement changes.**

- Tier 1 employees who are vested (3 years of service credit) and at least age 55 OR have the Rule of 65 or greater (age + service) on 6/30/13 would be grandfathered under current retirement eligibility provisions (i.e. Rule of 85).

**Non-grandfathered Tier 1 Employees and all Tier 2 Employees** would be affected and would have the following benefit changes as of 7/1/13:

- Unreduced retirement: Eligibility age would increase from Rule of 85 (Tier 1) or Rule of 90 (Tier 2) to Minimum Age 60 and the Rule of 90+, OR Minimum Age 65 for those employees who do not reach the Rule of 90.
  - Reduced retirement: Reduction factor would increase from 6% to 8% per year from the earlier of Age 60/Rule of 90 or Age 65.
- **Estimated Impact - TFFR funded level projected to reach 80% over 30 years.**

NORTH DAKOTA RETIREMENT AND PENSION OFFICE

West Fargo SCHOOL DISTRICT

FROM MODEL 2 AT 7.75% TO MODEL 2 AT 9.75% OR A SIMILAR RAISE IN BASE PAY

**ASSUMPTIONS:**

ALL INFORMATION BELOW IS FOR INFORMATIONAL PURPOSES ONLY

DISTRICT IS CURRENTLY UNDER MODEL 2 at 7.75%

UNDER PROPOSED SCENARIOS EMPLOYER CONTRIBUTIONS INCREASE FROM 8.75% TO 10.75%

UNDER PROPOSED SCENARIOS EMPLOYEE CONTRIBUTIONS INCREASE FROM 7.75% TO 9.75%

ROW	FORMULA	CURRENT MODEL 2 @ 7.75%	PROPOSED MODEL 2 @ 9.75%	PROPOSED MODEL 2 @7.75% WITH PAY INCREASE
A	AVERAGE CONTRACT/ADDITIONAL SALARY	\$ 40,000.00	\$ 40,000.00	\$ 40,886.43
B	% DISTRICT WISHES TO PAY OF MEMBER CONTRIBUTIONS	7.750%	9.75%	7.750%
C	RETIREMENT SALARY TO TFFR A / (1 - B)	\$ 43,360.43	\$ 44,321.33	\$ 44,321.33
D	TAXED MEMBER CONTRIBUTIONS			\$ 886.43
E	TAX-DEFERRED MEMBER CONTRIBUTIONS Pickup % * C	\$ 3,360.43	\$ 4,321.33	\$ 3,434.90
F	EMPLOYER CONTRIBUTIONS	\$ 3,794.04	\$ 4,764.54	\$ 4,764.54
G	CONTRACT/ADDITIONAL SALARY A	\$ 40,000.00	\$ 40,000.00	\$ 40,886.43
H	CONTRIBUTIONS DEDUCTED FROM PAY CHECK E	\$ -	\$ -	\$ 886.43
I	TAKE HOME PAY FOR TEACHER BEFORE TAXES G - H	\$ 40,000.00	\$ 40,000.00	\$ 40,000.00
	Take home pay increase before taxes		0.00%	0.00%
			\$ -	\$ 0.00
J	SALARY REPORTED FOR FEDERAL TAX C - E	\$ 40,000.00	\$ 40,000.00	\$ 40,886.43
K	SALARY REPORTED FOR FICA WAGES A	\$ 40,000.00	\$ 40,000.00	\$ 40,886.43
				MODEL 2 @ 7.75% WITH PAY INCREASE
L	<b>EFFECT ON SCHOOL DISTRICT PAYROLL</b>			
	TOTAL DISTRICT COMPENSATION 2009-10	\$ 29,000,000.00	\$ 29,000,000.00	\$ 29,642,659.00
M	TFFR SALARY L / (1 - B)	\$ 31,436,314.36	\$ 32,132,963.99	\$ 32,132,963.69
N	MEMBER CONTRIBUTION PAID BY DISTRICT M * B	\$ 2,436,314.36	\$ 3,132,963.99	\$ 2,490,304.69
O	EMPLOYER CONTRIBUTIONS PAID BY DISTRICT	\$ 2,750,677.51	\$ 3,454,293.63	\$ 3,454,293.60
P	FICA TAX PAID BY EMPLOYER L * 7.65%	\$ 2,218,500.00	\$ 2,218,500.00	\$ 2,267,663.41
Q	TOTAL PAYROLL EXPENSE FOR SCHOOL L + N + O + P	\$ 36,405,491.87	\$ 37,805,757.62	\$ 37,854,920.70
	DISTRICT PAYROLL EXPENDITURE INCREASE		3.85%	3.98%
	OR		\$ 1,400,265.74	\$ 1,449,428.83

*Handwritten initials/signature*

# HB 1134

## Change Effect on Individual Payroll

From Model 2 full @ 9.75% to Model 2 partial at 7.75% with an equal salary increase

Compares teacher take home pay with Model 2 full 9.75% to Model 2 partial 7.75% plus a salary increase

Federal Tax                    Y            [Enter Y if yes, N if no]  
 State Tax                     Y            [Enter Y if yes, N if no]  
 Withholding Status        M            [S for single, M for married]  
 # of exemptions            0

	Proposed Model 2 Full 9.750%		Proposed Salary Increase Model 2 Partial 9.75% Member Contribution 7.75%		
		Pickup		Pickup	
Yearly Contracted Salary	40,000.00		40,886.43		
TFFR Yearly Retirement Salary	44,321.33	Contract Salary / (1 minus % of pick-up amount)	44,321.33		Contract Salary / (1 minus % of pick-up amount)
Pay Periods	12		12		
Monthly Contract Salary	3,333.33		3,407.20		
TFFR Monthly Retirement Salary	3,693.44		3,693.44		
Taxed Member Contributions	-	Deducted from Pay (taxed)	73.87		Deducted from Pay (taxed)
Tax-Deferred Member Contrib	360.11	Paid by Employer (tax-deferred)	286.24		Paid by Employer (tax-deferred)
Taxable Salary (Fed & State)	3,333.33		3,407.20		
Monthly Contract Salary	3,333.33		3,407.20		
Deductions:					
Taxed TFFR Contributions	0.00		73.87		
Tax-Deferred TFFR Contrib	-		0.00		Monthly Difference
Federal Tax	336.00		347.08		11.08
State Tax	54.61		56.16		1.55
Social Security	206.67	6.2% X Monthly Contract Salary	211.25		4.58
Medicare	48.33	1.45% X Monthly Contract Salary	49.40		1.07
Net Salary	2,687.72		2,669.44		18.28
					<b>Yearly Total</b> 219.37

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April 19, 2011

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1134

That the Senate recede from its amendments as printed on pages 1510-1514 of the House Journal and pages 1321-1326 of the Senate Journal and that Engrossed House Bill No. 1134 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact two new subsections to section 15-39.1-04 of the North Dakota Century Code, relating to definitions of member tiers under the teachers' fund for retirement; to amend and reenact subsections 1 and 2 of section 15-39.1-09, subsection 1 of section 15-39.1-10, and sections 15-39.1-12, 15-39.1-18, 15-39.1-19.1, and 15-39.1-19.2 of the North Dakota Century Code, relating to employee and employer contribution requirements, eligibility for normal unreduced retirement benefits eligibility for early reduced retirement benefits, eligibility for disability benefits, and retiree reemployment under the teachers' fund for retirement; to provide an effective date; and to provide an expiration date.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** Two new subsections to section 15-39.1-04 of the North Dakota Century Code are created and enacted as follows:

"Tier one grandfathered member" for purposes of sections 15-39.1-10 and 15-39.1-12 means a tier one member who, as of June 30, 2013, is vested as a tier one member in accordance with section 15-39.1-11; and

- a. Is at least fifty-five years of age; or
- b. Has a combined total of years of service credit in the plan and years of age which equals or exceeds sixty-five.

"Tier one nongrandfathered member" for purposes of sections 15-39.1-10 and 15-39.1-12 means a tier one member who does not qualify as a tier one grandfathered member.

**SECTION 2. AMENDMENT.** Subsection 1 of section 15-39.1-09 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided by law, every teacher is a member of the fund and must be assessed upon the teacher's salary seven and seventy-five hundredths percent per annum, which must be deducted, certified, and paid monthly to the fund by the disbursing official of the governmental body by which the teacher is employed. Member contributions increase to nine and seventy-five hundredths percent per annum beginning July 1, 2012, and increase thereafter to eleven and seventy-five hundredths percent per annum beginning July 1, 2014. Except as otherwise provided by law, every governmental body employing a teacher shall pay to the fund eight and seventy-five hundredths percent per

annum of the salary of each teacher employed by it. Contributions to be paid by a governmental body employing a teacher increase to ten and seventy-five hundredths percent per annum beginning July 1, 2012, and increase thereafter to twelve and seventy-five hundredths percent per annum beginning July 1, 2014. The required amount of member and employer contributions must be reduced to seven and seventy-five hundredths percent per annum effective on the July first that follows the first valuation showing a ratio of the actuarial value of assets to the actuarial accrued liability of the teachers' fund for retirement that is equal to or greater than ninety percent. The disbursing official of the governmental body shall certify the governmental body payments and remit the payments monthly to the fund.

**SECTION 3. AMENDMENT.** Subsection 2 of section 15-39.1-09 of the North Dakota Century Code is amended and reenacted as follows:

2. Each employer, at its option, may pay the teacher contributions required by subsection 1 for all compensation earned after June 30, 1983. The amount paid must be paid by the employer in lieu of contributions by the employee. If an employer decides not to pay the contributions, the amount that would have been paid will continue to be deducted from compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining income tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the employer, they may not be included as gross income of the teacher in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The employer shall pay these teacher contributions from the same source of funds used in paying compensation to the teachers. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or, except for member contribution increases beginning after June 30, 2012, that increase an administrator's or teacher's negotiating unit's base salary, when combined with member contribution increases, by more than seven percent per year, by an offset against future salary increases. If teacher contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as teacher contributions made prior to the date the contributions were assumed by the employer. The option given employers by this subsection must be exercised in accordance with rules adopted by the board.

**SECTION 4. AMENDMENT.** Subsection 1 of section 15-39.1-10 of the North Dakota Century Code is amended and reenacted as follows:

1. The following members who have acquired a vested right to a retirement annuity as set forth in section 15-39.1-11 are eligible to receive monthly lifetime normal unreduced retirement benefits under this section:
  - a. All tier one and tier two members who have earned three years of teaching service credit and who have attained the age of sixty-five years.
  - b. All tier one grandfathered members who have earned three years of teaching service credit and who have a combined total of years of service credit and years of age which equals or exceeds eighty-five.

- c. ~~All tier two members who have earned five years of teaching service credit and who have attained the age of sixty-five years~~nongrandfathered members and tier two members who are at least sixty years of age and who have combined total of years of service credit and years of age which equals or exceeds ninety.
- d. ~~All tier two members who have earned five years of teaching service credit and who have a combined total of years of service credit and years of age which equals or exceeds ninety.~~

**SECTION 5. AMENDMENT.** Section 15-39.1-12 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-12. Early reduced retirement benefits.**

~~A tier one member who has acquired a vested right to a retirement annuity as set forth in section 15-39.1-11 and who has attained age fifty-five may retire prior to the normal retirement age as set forth in section 15-39.1-10 but the benefits to which the member is then entitled must be reduced to the actuarial equivalent of the benefit credits earned to the date of early retirement from the earlier of age sixty-five or the age at which current service plus age equals eighty-five. A tier two member who has acquired a vested right to a retirement annuity as set forth in section 15-39.1-11 and who has attained age fifty-five may retire prior to the normal retirement age as set forth in section 15-39.1-10 but the benefits to which the member is then entitled must be reduced to the actuarial equivalent of the benefit credits earned to the date of early retirement from the earlier of age sixty-five or the age at which current service plus age equals ninety according to the following schedule:~~

- 1. All tier one grandfathered member benefits must be reduced by six percent per annum from the earlier of:
  - a. Age sixty-five; or
  - b. The age at which the sum of the member's current years of service credit and years of age equals eighty-five.
- 2. All tier one nongrandfathered member and tier two member benefits must be reduced by eight percent per annum from the earlier of:
  - a. Age sixty-five; or
  - b. The later of:
    - (1) Age sixty; or
    - (2) The age at which the sum of the member's current years of service credit and years of age equals ninety.

**SECTION 6. AMENDMENT.** Section 15-39.1-18 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-18. Disability retirements.**

- 1. Any member may also retire and receive a disability annuity if, after a period of at least ~~one year~~five years of service as a member in this state, the member ~~suffers from~~qualifies for total disability as determined by the board.



2. The amount of the disability annuity is the ~~greater of the~~ amount computed by the retirement formula in section 15-39.1-10 without consideration of age ~~or the amount computed by that formula without consideration of age but assuming the member had twenty years of credited service.~~ A member determined eligible for a disability annuity under this section may elect to receive an annuity under any of the options allowed in section 15-39.1-16, except the level retirement income with social security option or the partial lump sum option.
3. The disability annuity continues until the death or prior recovery of the disabled annuitant. The board shall ascertain by periodic medical examinations the continued disability status of a disabled annuitant.
4. If a disabled annuitant recovers and returns to active teaching, that annuitant is entitled to the retirement benefit credits which the annuitant earned prior to the time of disablement, and the credits which the annuitant earned after returning to active teaching must be added to those earned prior to disablement.

**SECTION 7. AMENDMENT.** Section 15-39.1-19.1 of the North Dakota Century Code is amended and reenacted as follows: -

**15-39.1-19.1. Retired teachers return to active service - Annuities discontinued on resumption of teaching over annual hour limit.**

1. a. Except as otherwise provided in section 15-39.1-19.2, a retired teacher who is receiving a retirement annuity under chapter 15-39, 15-39.1, or 15-39.2 may not return to covered employment until thirty calendar days have elapsed from the member's retirement date. A retired member may then return to covered employment under an annual hour limit and continue receiving a monthly retirement benefit. The annual hour limit is based on the length of the reemployed retiree's contract as follows:
  - (1) Retiree reemployment of nine months or less, annual limit is seven hundred hours;
  - (2) Retiree reemployment of ten months, annual limit is eight hundred hours;
  - (3) Retiree reemployment of eleven months, annual limit is nine hundred hours; or
  - (4) Retiree reemployment of twelve months, annual limit is one thousand hours.
- b. Employment as a noncontracted substitute teacher does not apply to the annual hour limit. Professional development and extracurricular duties do not apply to the annual hour limit.
- c. The retired member and the retired member's employer must notify the fund office in writing within thirty days of the retired member's return to covered employment. ~~Should the retired member's employment exceed the annual hour limit, the retired member must immediately notify the fund office in writing. Failure to notify the fund office results in the loss of one month's annuity benefit. The retired~~

~~member's monthly benefit must be discontinued the first of the month following the date the member reaches the annual hour limit.~~

- d. A retired member who returns to teaching shall pay the member contributions required by section 15-39.1-09 on these earnings~~the salary~~ received by the retired member ~~after reaching the annual hour limit.~~ The member contributions must be included in the retired member's account value and may not be refunded except as provided under subdivision a of subsection 2 of section 15-39.1-19.1 and section 15-39.1-17.
  - e. A participating employer who employs a retired member under this section shall pay the employer contributions required by section 15-39.1-09 on the salary of the retired member ~~both before and after the retired member reaches the annual hour limit.~~
  - f. A retired teacher who returns to teaching and does not exceed the annual hour limit must be treated as retired for all other purposes under this chapter. A retired teacher may not earn any additional service during the period of reemployment. The retired teacher's benefits may not be adjusted to reflect changes in the retired teacher's age or final average monthly salary at the end of the period of reemployment, any optional form of payment elected under section 15-39.1-16 remains effective during and after the period of reemployment, and additional benefits normally available to an active member, such as disability benefits, are not available to a retired teacher reemployed under this section.
  - g. A retired teacher who returns to teaching and exceeds the annual hour limit must immediately notify the fund office in writing. Failure to notify the fund office results in the loss of one month's annuity benefit for the member. The retired member's monthly benefit must be discontinued the first of the month following the date the member reaches the annual hour limit.
2. Upon the retired teacher's subsequent retirement, the member's benefit must be resumed as follows:
- a. If the teacher subsequently retires with less than two years of additional earned credited service, the teacher's contributions paid to the fund after the member's benefit was suspended must be refunded in accordance with section 15-39.1-20 and the teacher is entitled to receive the discontinued annuity, plus any postretirement benefit adjustments granted during the period of reemployment, the first day of the month following the teacher's re-retirement.
  - b. If the teacher subsequently retires with two or more but less than five years of additional earned credited service, the retired person's annuity is the greater of the sum of the discontinued annuity, plus an additional annuity computed according to this chapter based upon years of service and average salaries earned during the period of reemployment plus any postretirement benefit adjustments granted during the period of reemployment, or a recalculated annuity computed according to this chapter based on total years of service credit earned during both employment periods offset by the actuarial

value of payments already received. The new annuity is payable the first day of the month following the member's re-retirement.

- c. If the teacher subsequently retires with five or more years of additional earned credited service, the retired person's annuity is the greater of the sum of the discontinued annuity plus an additional annuity based upon years of service and average salaries earned during the period of reemployment plus any postretirement benefit adjustments granted during the period of reemployment, or a recalculated annuity based on all years of service computed under subsection 2 of section 15-39.1-10. The new annuity is payable the first day of the month following the member's re-retirement.

**SECTION 8. AMENDMENT.** Section 15-39.1-19.2 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-19.2. Retired teachers return to active service - Critical shortage areas and disciplines - Rules.**

1. A retired teacher who is receiving a retirement annuity under chapter 15-39, 15-39.1, or 15-39.2 may elect to return to teaching without losing any benefits under the provisions of this section or elect to return to teaching under the provisions of section 15-39.1-19.1. To return to teaching under this section, a retired teacher must:
  - a. Return to teach in a critical shortage geographical area or subject discipline as determined by the education standards and practices board by rule;
  - b. If retired after January 1, 2001, have been receiving a retirement annuity for at least one year. A retired teacher may perform noncontracted substitute teaching duties but may not engage in full-time or part-time teaching duties during the one-year separation from service; and
  - c. Notify the fund office in writing within thirty days of the retired member's return to covered employment. The retired member's employer must also notify the fund office in writing within thirty days of the retired member's return to covered employment.
2. A retired teacher who returns to teaching under this section ~~is not required to~~ shall pay the employee assessment member contributions required by section 15-39.1-09 on the salary of the retired member. The member contributions must be included in the retired member's account value and may not be refunded except as provided under section 15-39.1-17. A retired teacher who returns to teaching under the provisions of this section must be treated as retired for all other purposes under this chapter. A retired teacher may not earn any additional service during the period of reemployment. The retired teacher's benefits may not be adjusted to reflect changes in the retired teacher's age or final average monthly salary at the end of the period of reemployment, any optional form of payment elected under section 15-39.1-16 remains effective during and after the period of reemployment, and additional benefits normally available to an active member, such as disability benefits, are not available to a retired teacher reemployed under this section.

3. A participating employer who employs a retired member under this section shall pay the employer contributions required by section 15-39.1-09 on the salary of the retired member.

**SECTION 9. EFFECTIVE DATE.** Sections 7 and 8 of this Act become effective July 1, 2012, and sections 4, 5, and 6 of this Act become effective July 1, 2013.

**SECTION 10. EXPIRATION DATE.** Section 3 of this Act is effective through June 30, 2015, and after that date is ineffective."

Renumber accordingly