

2013 SENATE POLITICAL SUBDIVISIONS

SB 2150

2013 SENATE STANDING COMMITTEE MINUTES

Senate Political Subdivisions Committee

Red River Room, State Capitol

SB 2150

January 24, 2013

17689

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to restriction of per diem compensation for members of boards and commissions established by statute; and to provide an effective date

Minutes:

You may make reference to "attached testimony."

Vice Chairman Sorvaag opened the committee SB 2150. All senators were present.

Senator Andrist, a member of the Administrative Rules Committee for about 6 sessions. The Administrative Rules Committee is a little different from other committees. We have a set schedule in which we have to meet for the statutory committee. Unlike the others that have leeway, our actions are binding, whereby most of your study committees seek information for possible introduction of a bill. See written testimony.

Senator Judy Lee: Does this interfere with providing reimbursement for expenses, travel, lodging that kind of thing? **Chairman Andrist** responded that's what the per diem is for.

Senator Judy Lee: I mean if we come out for a legislative hearing I get paid the per diem but I also get the cost of my motel and my gas reimbursed. This is a significant cut in part of the disparity based on the kind of work load that the people on the boards might have. I would be troubled if we were going to give them the per diem but they aren't going to get their expenses paid in order to be able to come and we do, so, can you just clarify that for me please?

Chairman Andrist: Probably not as our committee chairman is going to also testify. Since it sets the level at the same rate as the Legislature, it would be my sense it probably would be the same rules would apply, but we didn't broach that question specifically.

Senator Anderson: Mr. John Walstad is in error here because the Board of Pharmacy does have their per diem rate in statute. He missed that when he wrote this thing. Was there any discussion about what happens to the statutes that are in place now, the laws that say somebody has a specific reimbursement rate? Are they automatically changed or do we need to go through and list all those with this bill or how does that work?

Chairman Andrist responded it would be my sense from my experience and nobody asked that specifically, since this would become a statute it would take precedence over any prior statute.

Vice-Chairman Sorvaag will continue to chair for the remainder of this hearing.

Representative Koppelman: Co-Sponsor of this bill at the request of Chairman Andrist to testify on this bill. Senator Andrist is the Vice Chairman of the Administrative Rules Committee during the past Interim. Just a couple of clarifying points on a few issues based on the questions you've asked plus other information. The Administrative Rules Committee first of all is a little bit of a different animal. It is not an Interim committee even though it meets during the Interim. It is a statutory committee and we'll actually be meeting during our session here in March. We are required statutorily to meet quarterly under law. The reason is that we like to think of the Administrative Rules Committee as sort of maintaining the legislature's responsibility over what functions as law, which are the Administrative Regulations that are made primarily in the Executive Branch of government but elsewhere as well. This issue is something that we have looked at the last couple of legislative sessions, and the Administrative Rules Committee has been assigned this study twice now to try to look at this whole issue of inequity in not only the amount of reimbursement for these boards and commissions, but also how they are set. It was mentioned I believed some of them are set by statute, and we have boards and commissions coming to us every two years and saying you know we haven't had a pay increase for 2 years or 10 years, we really think it should be increased. Sometimes that pay is set as an equivalent amount to whatever the legislative reimbursement would be by reference; as this bill partially does as a cap. Sometimes it's set in an exact dollar amount. Sometimes those are not set by statute at all and in some cases they are set by the board or commission involved. I know that some are higher than what you would make as a legislator coming to an interim meeting, some are considerably lower. We had a lot of discussion about this about how to get a handle on this. There seems to be a general opinion that standardization of some sort would be good. But when you try to lock everybody into the same box it does cause problems. The discussion that we had in the Administrative Rules Committee is that it wouldn't be a bad idea to continue to allow the process that exists, be it by statutes or be it by board setting their rates, but that it might not be a bad idea to set a cap. The reason we believe that and you may oppose this or not, (Example given) but many of you take time away from your job or business I would guess more often than all of us probably serve at a sacrifice. Most of us believe that is not a bad thing. It is good to pay people. We shouldn't expect anything, but volunteers at the same time say if its public service or service to your profession, maybe there ought to be some pay. There should be a limit, and that is why the cap is there. There are some boards as I believe Senator Andrist alluded to who are paid nothing. In response to Senator Lee's question, this would not interfere with expense reimbursement; this simply has to do with pay. I believe most of these are reimbursed at whatever the state rate in terms of mileage and allowance for meals and lodging and that sort of thing. This addresses what is in addition to it. The other question that was raised is how this affects the statutes that currently exist. At the beginning of the bill language on line 8, it says notwithstanding any other provision of law. What that means is that it trumps anything that might conflict with it somewhere else. In addition to the last past rules general rule, as new law is established. We met in December because we are that Statutory Committee who looks at this more closely. It was pass the deadline to make

recommendations to Legislative Management but actually passed the time when they met in November. That is essentially the bill and I think it sets good public policy and that I was pleased to sign on to it as a co-sponsor. I recommend it for your consideration.

Vice-Chairman Sorvaag: Rep. Koppleman you sat through the hearings, now obviously some of these are statutory, some aren't. Are most of them higher statutory, was there any trend there or is it pretty well all over the place?

Representative Koppleman replied it is really all over the place. I don't think there are many that are higher. (Example given. 12:45-12:54) Another rationale is that it is not taxpayer dollars. That is true, a lot of times they are money collected from the profession in dues and so on. I understand that. But these are publically sanctioned boards and commissions. We set the law saying there shall be a commission of such and such, and you can appoint people from among your membership to serve. So they are mandated by law, they are public service to govern a profession and I think they carry that public service kind of responsibility.

Senator Anderson: I look at the history of this and it's the same thing you received at your Administrative Rules meeting. At one time many did tie it to the same reimbursement rate. At one time, the Legislature got sensitive about every time they increased their pay they were increasing the pay for everybody else. So that is why this bill 2052 broke that link. It was intentionally. I would suggest our board go back and tie it to that link because ours is \$200 now, obviously, and this is not a big cut in pay. It is just arbitrarily we picked \$200; put it in the statute and now I would guess that we are tied to this one to make it simpler, so that we don't have to change it all the time. I can see eventually you're going to have the same problem that you had at this time; if you raise the pay for legislators than you raise the pay for everybody else. Can you answer that a little bit?

Representative Koppleman replied yes we did discuss that. Apparently there was an attempt at one point in the past, as a result of one of these efforts, where we talked about linking the pay of all these boards and commissions with the legislative pay and it resulted in a huge fiscal note. It wasn't just legislators because so many had by reference tied it to whatever amount legislators received. That is kind of an easy way to do it. This bill doesn't do that. This bill simply says its' capped at that level, so you may even want to look at adding an amendment that would say that the board must state in dollar terms what the pay is. It wouldn't be an automatic link, you would have to periodically go back and still do it, but you would have to do it consciously. It wouldn't be an automatic increase if the Legislature raised its pay you would have to go back at your next meeting and say we want to match that. There was some discussion in the committee, who believe they ought to get whatever legislators get. Serving in the legislature is a bigger sacrifice meeting for 3.5 or 4 months every other year and doing all these Interim committee things being away from work and family etc., than being on a board that maybe meets two or three times a year. Therefore maybe it shouldn't be as high, so we had all kinds of discussion. This is what we've landed.

Senator Anderson: If we say that the board needs to establish this and not encourage them from establishing a link to the statute, then that means they have to go through the rule making process every time they set their compensation to something different. Is that correct?

Representative Koppleman replied well if that is how they do it. Some do it by administrative rule, some I believe and I stand to be corrected on this but I believe there are some that can simply do it by motion of the board by the way they are set. Others can also do it through statutes, so they would have to come back to the legislature and ask either for that to be changed so they could set it by their own motion or come back to us or through the rule process as well.

Senator Anderson: Does that mean that would pass muster with the Administrative Rules Committee? It is okay if we just do it by motion?

Representative Koppleman replied I suspect if it says you have to make a rule in the law we would insist that you would do so. You could always change the statute in a separate bill to allow your particular board to do it by motion. I think the Legislature would be far more comfortable with that kind of thing if this kind of cap were in place however.

Sparb Collins, Executive Director of the North Dakota Public Employees Retirement System (PERS). Spoke in neutral position on SB 2150. See written testimony.

Vice-Chairman Sorvaag: So you're feeling they are still getting their salary, they are working on issues and they are all involved obviously in PERS, it's done by the 5 public employees, is that correct?

Sparb Collins responded yes.

Vice Chairman Sorvaag then asked but you're feeling if they can't have the per diem on top of their salary they are not going to be interested in being on that board and working for that.

Sparb Collins responded that he doesn't know. I do know that it does help because they do have to perform a lot of duties outside of that date. They have to prepare for the board materials, so when they come to our board meeting during the day their regular job doesn't go away and they still have to do that. That ends up being sometimes after working hours. It does help to recognize those other responsibilities they undertake, and I am thinking it does help to attract to afford people that we would like to have on the board.

Senator Anderson: I am not sure this particular issue was discussed at all at the Interim Rules committee when they were talking over this was it?

Sparb Collins replied to be honest, the first awareness that I had of this was when the bill came forward. This is probably my fault for not keeping track of the Administrative Rules Statutory Committee.

Senator Anderson: I always assumed that the members of our board of course who are employees of the state don't get paid much when they are working for the state. It is the same with me. When I am working on the Health Council I don't both get paid by the Board of Pharmacy and take my per diem from the Health Council. I assumed that's the way everybody was, but apparently in your statute it says they can get both and so my question

is, should we decide 64:63 is that the reference to the statute that describes all of your people that you want?

Sparb Collins: It is chapter 54:52 is what set up the legislative considerations that are reflected in our bill for our board.

Senator Anderson: So if we said for example, except for section 54:52 that would go back to all of your controlling statutes, presently?

Sparb Collins responded yes. And as mentioned to you earlier, the word notwithstanding is very powerful. It does override everything in the statute, everything else. I didn't realize that until a couple of sessions ago.

Chairman Andrist: You know all of us have preparation work to do for our meetings. But I am wondering what your policy is for public workers? I would like to have more specific information as you said five of the seven could be affected?

Sparb Collins replied yes. **Chairman Andrist:** But at the same time you said that some of them are retired which would make them not affected.

Sparb Collins replied, yes. **Chairman Andrist:** It merely says that they can't draw double compensation. **Sparb Collins:** Let me clarify how the members come to our board. One is appointed by the Governor and that is our board chairman. That person is generally not somebody from the public sector. A second one is elected by our retired membership and that is not a public employee, so those two out of the seven clearly wouldn't be covered by this bill. Of the other five members one is a State Health Officer as the designee is the Deputy State Health Officer, one is appointed by the Attorney General and that is the Deputy Attorney General; three are elected from the active membership in the retirement plan. Generally that will come from somebody, the state or a political subdivision who can be elected. Those are the five the bill would be potentially affect so, if this would pass those five wouldn't get the per diem, the other two would get the per diem. Does that help? **Chairman Andrist:** But they would still have the choice wouldn't they of taking the per diem in place of costs, if they want to take leave? **Sparb Collins** replied I am not sure. As I read the bill, it seemed to say that they wouldn't have the opportunity to have the per diem that their being paid for. **Chairman Andrist:** I think the bill just prohibits them from taking both. I don't think it specifies which they could choose. It it's a state health officer himself, he would still be able to draw his full salary if he didn't take the per diem and he is here anyway. If he designated somebody in his office to go, I would have a hard time understanding why it would be appropriate for them to draw twice. But to answer an earlier question of Senator Anderson, we didn't particularity discuss any boards and open it up to public discussion. So nobody was specifically informed that we were going to do this which is a fair statement to make for Sparbs benefit.

Senator Anderson: I don't have a problem with it. I've been living just fine with not taking compensation and other people assumed you couldn't. However, one of these elected people maybe a truck driver for the highway department and his compensation is not that great in the first place. To expect to do a lot of extra work and not have compensation well I can understand that. I am not sure that they wouldn't do it otherwise just as well.

Fay Kopp, Interim Executive Director Chief Retirement Officer ND Retirement and Investment Office, ND Teacher's Fund for Retirement; Neutral position. See written testimony.

Vice-Chairman Sorvaag: Can you tell me the section, I missed that. **Fay Kopp** responded it was 15-39.1-08. That is what outlines their responsibilities; it might be 09 or 10 within that section that talks about their board pay. **Vice-Chairman Sorvaag**: In all fairness our neutral testimony is really enough, isn't it? **Fay Kopp** replied that the board has not considered this yet. I would have some concerns from an agency perspective.

Chairman Andrist: Do you think that the teacher members of your board are drawing their full salary from their home school districts?

Fay Kopp replied yes, I believe the teachers and the administrators, the active members, their responsibility for their positions don't go away just because they are not there. While its' true there might be a substitute teacher who is ensuring that the lesson plans are done for the week, they are still held accountable for the education of the learning that goes in the classroom on those occasions where the teacher is not present as well. Yes, they would be.

Senator Anderson: Could I suggest that we don't close the hearing until we get a couple of questions answered. We need to ask the Attorney General whether these teachers actually fall under this or not. I don't know whether they do or not. Also of course, I think we need to know whether we're covering the PERS and the TFFR people with this statute or we can simply just exempt them and how that would play out. This question should be on the record.

Vice Chairman Sorvaag: We can keep the hearing open.

Chairman Andrist: Perhaps a better resource is John Walstad who serves the Administrative Rules Committee, who drafted this bill and could more readily answer specific questions in this regard.

Vice Chairman Sorvaag stated we won't close the hearing of SB 2150, we'll leave it open to the discretion of Chairman Andrist. At this point I will turn the Chair back to Senator Andrist. He stated that he thinks it is important that we get some of these questions answered for our own satisfaction.

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Senate Political Subdivisions Committee Red River Room, State Capitol

SB 2150
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17699 *A.M.*

☐ Conference Committee

Committee Clerk Signature

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Relating to restriction of per diem compensation for members of boards and commissions established by statute; and to provide an effective date

Minutes:

You may make reference to "attached testimony."

Chairman Andrist reopened the hearing on SB 2150. Chairman Andrist, Vice-Chairman Sorvaag, Senators Judy Lee, Anderson, Grabinger, Dotzenrod was present.

Chairman Andrist: If we make so many rules which do not apply to the public sector, but apply to the private sector then I would just remind the committee that all the private sectors have to make these arrangements and accommodations but not the public sectors. That was the sense, I got from Senator Heckaman, but I am not positive of that. She was eager to testify on this if we needed it and she felt pretty strongly that it was a good bill.

Senator Judy Lee: My concern was expressed by my initial question concerning clarification about per diem and some of the other things. Then, I see by briefly perusing some of the testimony that was provided there were others who also had concerns about the kinds of time, kinds of expertise that is required. I think as somebody who was licensed in more than one career for a long period of time, that the people who are being licensed ought to be able to decide what the fees are going to be in order to manage that activity. Because there are more, like the cosmetology board requirements may be different from the FFR Board, or some of these others; there asking somebody who is a pharmacist or a CPA to participate in those board activities doesn't necessarily recognize the difference in the commitment that it takes for a variety of things on that board compared to the Board of Animal Health. I don't know why we think that we should tell the people who are actually being licensed what the fee should be because the people who are being licensed have a right to determine what is going on. Now we have caps that Senator Anderson has talked about. In other cases you have it in statute and you don't have to go through the expense of administrative rule making. I just philosophically have a real problem with setting those kinds of things in statute. I think the people who are regulated by the Board should have and know how much work they have to do. They should be able to determine what kinds of fees are being paid by themselves in order to run this. This is money that is coming out of those boards with their license and registration fees.

Chairman Andrist: the only thing I could reply to that is if it takes them three days to do a meeting, up it per diem for three day so it's a level of compensation for the work they do and not the time they spend on it.

Senator Judy Lee: I get that except I don't think the work is equivalent all the time. Why would I have the right to tell the Board of Pharmacy or the Board of CPA's what they should compensate their own members when their members are paying the license fees that they are paying the compensation.

Chairman Andrist: But they don't have much say over the selection in most cases. It isn't something they get together and elect the people who are going to do it. Senator Judy Lee: I realize that the governor appoints the people to the board, but the professional associations to which most of these professionals belong certainly have input at least they did in the 35 years I was in the real estate business. I have a whole lot of involvement with the board in talking about educational requirements and what is being presented as opportunities for the members and since I don't belong to those anymore, since I don't have a real job, I think I can speak just from experience. I really think we need to think carefully about how intrusive we want to get in that and I am waiting here to hear from the rest of the committee.

Chairman Andrist: I don't want to draw this out, it doesn't tell them it just caps what they can pay.

Senator Anderson: We can do it by motion, once we say we can adopt this or whether we have to spend money to make a rule to change it. Because if this statute means now we have to go back and spend money to make rules and every other board has to do the same thing, what we're doing is telling everybody you've got to raise your costs here if you want to change anything. One of the things that we do as most of the boards now have professional. (Example given 5:44-6:03) As far as the Legislature, I think that I perceive that some legislators felt like we only get paid a small stipend and these guys who served on the board are volunteering things and they should only get what we get. I don't object to the arbitrary cap in there or whatever; and I do not think our board members will have a problem with it. (Example given)

Senator Ron Sorvaag: There are only neutral testimony which was a little bit in opposition to the double dipping more than the value. No one spoke on those who are getting paid more should get paid less. In your discussions which was discussed the most, the dollar amount or the double-dipping?

Chairman Andrist: It was the dollar amount that got our attention that we ought to have something simple instead of control over it. When you brought in the double dipping thing my sense is the reaction was well, it's sort of a no brainer.

Chairman Anderson: The double dipping deal must be in the statute somewhere already and maybe Bethany could find that. That has been the standard we've operated under for a long period of time. (Examples given).

Senator Judy Lee: I would like to know if there any comments about whether or not those people who are on boards that are receiving low fees are going to raise it then. If it were all cranked out of shape that somebody is getting \$50 more for a meeting, I think it is a pretty silly way to spend our time.

Senator Ron Sorvaag: That would be the question for Mr. Walstad. Some of these can't raise again without it, but does this blanket say they all can raise up to that. That will be the question for Walstad.

Chairman Andrist: Well right now they can raise it to whatever they want. They can do it either by statute or by rule.

Senator Ron Sorvaag: But is this addressing some of those because we vote on some of them. In GVA we went over a lot of them and we're limiting to \$50-60. But what I am just saying by doing this, do we open them all so they can all go there without coming back? I don't know the answer. I think that is for Mr. Walstad, or do we still control those that are below the cap. When it was discussed last session too, it is all over the place.

Chairman Andrist closed the hearing on SB 2150.

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Chairman Andrist continued the hearing on SB 2150. Vice-Chairman Sorvaag, Senators Judy Lee, Howard Anderson, John Grabinger were present. Senator Dotzenrod was absent.

Chairman Andrist asked John Walstad to make any preliminary comments about the committee.

John Walstad Legislative Council, Code reviser and as such I serve as council to the Administrative Rules committee where this discussion originated. The committee's concern was first of all looking at compensation rates for boards and commissions. It is a difficult thing to measure as you can see. They are all over the board on how much allowance is made. Each board and commission has unique circumstances such as number of members, annual license fee they think members are willing to pay, that is what determines their budget, which in turn determines how much they will pay members for serving. But some of them also have an additional problem in talking someone into serving on the board. Obviously, I think the board wants to have more senior members of the licensed profession serving rather than the newest and youngest members. To get those experienced people to serve in some professions takes a little more replacement funding because time out of their regular practice is money out of their pockets. I can't speak to any individual boards' circumstances but if the question is how did they get to these dollar amount rates, the answer is the legislature let them at some point. The Legislature either approved a statutory dollar amount daily per diem, all the stuff on the first page handout, or approved authority for the commission to set by rule what the compensation rate is (stuff on second page), and then those go through another layer of approval which is the Administrative Rules Committee review, and then there are a couple that have obtained approval by legislation again to set those compensation rates by policy, not even a rule. Three kinds of authority but all of them of course have their root with Legislative approval of first of all licensing this occupation or profession; secondly how they establish their fees to members and how they compensate the members of their boards.

Chairman Andrist: If we set it at the rate of legislative compensation, and that legislative rate changed would they have to go back to the rule making process to change it?

John Walstad replied, if that is the policy chosen that is how I would hope it operate because a few years back, the practice was all of these boards and commissions had a provision saying 'compensation at the same rate provided for the members of the legislative assembly for attendance at interim committee meetings under section 54...whatever that is'. So, when the Legislature looked at changing Interim meeting compensation, the fiscal note came back reflecting that 70 boards and commission members would also get an increase from that because they just tied directly into that statutory amount. I had to go through the code at the direction of the Legislative Council at the time, break all those links and put in the dollar amounts (\$62.50 at that time); for all those boards and commissions so they were not directly linked what legislators received. The way the bill is drafted, what legislators receive would be a ceiling but if that rate is changed up or down, it would not affect the boards and commissions. It would be a ceiling but they would have to take action on their own to either get a statutory change or a rule change or a policy change.

Chairman Andrist responded which they probably could do relatively easily the next time they changed the rule if they didn't have to go through a rule making process just for that purpose.

Senator Anderson asked about whether you have to go into the rule making process or whether you can just pass a motion at the board meeting. I am not clear what language should be in the statute to let you just do it by motion. Ours used to say, as set by the board, and then the interpretation we had was, it had to be set by the board via the rule making process. We can discuss how that wording should be done, later. The question arose from the Teachers Fund for retirement and the PERS people the other day. Right now there people are double dipping; they are getting paid their salary as a teacher and their getting paid their compensation on the board. Their impression was this changed that. It said they couldn't do that anymore. Was then intentional or an unintended consequence?

John Walstad responded that was an intended consequence when I was putting the draft together because the committee expressed concern that serving on any board or commission should not result in that individual getting paid twice for the same day if the source of the payment is governmental employment or fees or whatever that are paid from member licensing.

Senator Anderson asked if an employee of a school in Crosby, ND who serves on the Teachers Fund for Retirement is considered to be paid by the state and so cannot double dip?

John Walstad replied I would have to look at the bill. I don't recall how that is worded. I avoided using the word state in here. It just says an elected or appointed governmental official or governmental employee, so it doesn't matter if it's a school district or water resource district or whoever, that individual wouldn't be able to collect pay from taxpayers on one hand and licensed holders on another or a different group of taxpayers on the other side.

Senator Anderson asked if that was intentional on the part of the Interim Rules Committee, that they wanted that link broken so they couldn't get paid twice, then our answer to those people is if we want to do what the Interim Rules committee says, you don't get paid twice. The other option would be we could put exceptions for PERS and the Teachers Fund for Retirement in here. They were the only two who came to us and said right now we double dip. It must be in statute someplace else where we can't double-dip because that's been the standard in the Health Council, Park Board for a long time. You don't get paid twice. Do you know where else that might be?

John Walstad responded that he was looking for it. I thought as well, there's got to be a rule like that. There are provisions like that for members of the legislature that if for example you're a teacher and you're here doing your legislative service, you can't get paid from both sources for the same day. But, I can't find a general statute that says you can't have two paymasters for the same day of service.

Vice-Chairman Sorvaag: There's got to be a lot more boards than just teachers, PERS that have public employees serve on them. So, just because those two came in front, if we excluded them we would not be treating fairly to a lot of other members of boards. There are public employees on many other boards.

John Walstad replied that he has the same fear.

Senator Judy Lee: Is there a problem somewhere with this or are we a solution in search of a problem here?

John Walstad replied that is a valid question. The Interim Committee discussion was not an initiated because of any complaint received about compensation rates or anything, it was just a discussion topic that came up and ultimately led to a creation of a bill draft. The committee looked at it in December which was too late for the committee to recommend it, so some of the committee members picked it up introduced it thinking this is a topic the whole legislature out to look at. But, there is no specific complaint that generated it. It is kind of a policy concern.

Senator Judy Lee: You said Interim, it really isn't an Interim Administrative Rules Committee, its' not an Interim committee, it's a Statutory Committee. But I think it is really important that this didn't come from the Administrative Rules Committee, it came from individual senators and in my view there is a big difference between them. It doesn't mean that I take one more seriously than the other, but, there is a difference and it would be unfair to suggest that this was something that was adopted by the whole Administrative Rules committee. It was brought by people who may be serving on that Administrative Rules committee but it is not an Administrative Rules Committee recommendation, is that correct?

John Walstad replied that is exactly right. It was not even a matter that was voted on by the committee because it was too late to be included with their November recommendations.

Chairman Andrist: As the prime sponsor, if I may I would like to comment that I asked the question do you think it is a good idea to introduce this, this long its' too late to prefile it as an action of the board? There was no vote taken on that of course but informally it appeared that nobody thought it was a bad idea.

Senator Anderson: If we kill this bill, the Legislature could when each of these boards come up for their authority set fees. Example shared (14:43). They could eliminate the authority of the boards to the fee set, so right now when these people and of course the double dipping thing. I guess my own personal opinion is these individual boards have made that decision now, and they think it is in their best interest to let the people take their salary and get their fee. (Example shared) Concerns should come from other areas and not just the legislature. The Legislature can just take action each time that request comes to them.

Vice-Chairman Sorvaag: Technically the hearing is still open we have two other individuals who like to give neutral testimony, would you consider that?

Chairman Andrist: Yes.

Ken Tupa, I am not representing any client or any board. I guess I am here just to speak on behalf of myself. I do have some experience with working with boards. My company originally began by managing associations and licensing boards that would contract with our company. To this day we employ two individuals within our company who actively manage and provide administrative and management services for six to eight licensing boards. Of those six boards, four of them do not pay a per diem. They simply provide reimbursement at the appropriate state rates. The other two do provide a per diem. The licensing boards set their budgets and generate their revenue as you all know basically by license fees and renewal fees. Other revenue can be derived from other sources like continuing education approval and things like that, but that is relatively minor. These boards then establish that budget and those again do provide a per diem. I think generally that's something probably that has been discussed, debated, deliberated, often within the statutes, their respective statutes or administrative rules. So it has gone through that entire process; then heard and often times before the legislature and approved. My opinion and my experience is that these boards do a pretty good job by regulating and managing their budgets and if they choose to pay a per diem, I think there is generally probably a reason for that and I think that was mentioned earlier as well. My experience is that it isn't always easy to find individuals willing to volunteer to serve because it is a commitment of time. When you do find those individuals often times they are leaving their occupation, taking time off from their jobs to dedicate to these boards and do the consumer protection these boards require. In that case the per diems may help offset some of that, so in that respect I think it can be positive. Limits can be set, although some amounts may be over or under the dollar set by the legislature. (Example given.) It is very much volunteer service, (example again shared). Neutral testimony.

Jack McDonald spoke to the committee not representing any specific group. I have represented a number of boards over the years and still represent him as Legal Counsel as an attorney not as a lobbyist and the one I do represent is an attorney; one is a physical therapy board. I do know those members are all physical therapists, we have a physician

on the board and we don't pay any per diem, we just pay mileage and expenses. They all have clients and patients and give that up to serve a day to cancel all their patients for the committee hearing. They already make quite a sacrifice as they meet three times a year. The other point I want to make in the bill, again just as a comment, I would be a little afraid of the unintended consequences of this. We're talking about some of the big agencies, PERS and Teachers Fund for the Retirement, and things like that but, this bill says serving on any board or commission set by statute. So what you're going to do is affecting all the county commissions, school boards, township boards, and those things and there are just a lot of people, public employees that serve on county commissions and school boards, etc. I think you're going to go a lot further than just the few biggies we were just talking about here today. I don't see a real problem because the sums are listed on the sheet that Mr. Walstad gave you is not untoward. This is money that is coming from the licensee themselves, it is not really state taxes as such and the sums are not out of line with anything but I think the unintended consequences of this legislation might be more than we anticipate. (Spoke in neutral testimony).

Chairman Andrist asked Mr. Walstad if this applies to a county commissioner who also serves as a Social Service Board. I think what we're looking at is primarily the second part where you cannot double dip.

John Walstad replied the language specifies elected or appointed governmental official or governmental employee (county commissioner) or a city street department employee serving on a Board of Commissioner or other governing body established by statute, that's very broad, most everything is political subdivisions don't have any authority to set up something unless the statutes say they can do it. So, I think that is very broad and would relate to pretty much anything involved in local government where a board is established. No compensation for the governmental office and employment and the service on the board. It was written quite broad, that was my understanding of the committee's wishes, so..

Chairman Andrist: So, Jack McDonald might be right if we could have some other consequences if we hadn't looked at this. Also those consequences I suppose could be arguable because we'd be establishing the principles that you can't get paid twice for the same job.

John Walstad replied that's what I was asked to do, that's why I wrote this so broadly but I did not try to imagine every circumstance that might apply too. But obviously it could apply to just about of any kind board or commission if you're on some sort of salary from any governmental entity other than federal.

Senator Anderson: With the conversation we've had now, I can see that a local employee who serves on the school board even though the school board meets at night; this is a per diem compensation. The bill really says they can't really get paid twice on the same day. So even though they are not covering the same hours they still couldn't get compensation for both of them. It is written fairly broad, apparently intentionally but I think it's a good excuse just to kill the whole thing and let the Interim Committee look at it again if they want too.

Chairman Andrist closed the hearing on SB 2150.

Committee Discussion Followed. (28:56-33:09)

Senator Anderson moved a Do Not Pass
2nd Senator Judy Lee
Roll Call vote: 4 Yea 1 No 1 Absent
Carrier: Senator Judy Lee

Date: 1-25-2013
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2150

Senate Political Subdivisions 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 Senator Anderson Seconded By Senator Judy Lee

Senators	Yes	No	Senator	Yes	No
Chairman John Andrist		✓	Senator Jim Dotzenrod		
Vice- Chairman Ronald Sorvaag	✓		Senator John Grabinger	✓	
Senator Judy Lee	✓				
Senator Howard Anderson, Jr.	✓				

Total (Yes) 4 No 1

Absent 1

Floor Assignment Senator Judy Lee

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

REPORT OF STANDING COMMITTEE

SB 2150: Political Subdivisions Committee (Sen. Andrist, Chairman) recommends **DO NOT PASS** (4 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). SB 2150 was placed on the Eleventh order on the calendar.

2013 TESTIMONY

SB 2150

Testimony SB 2150
Political Subdivision Committee -- North Dakota Senate
Sen. John M. Andrist

You will note that all of the sponsors of SB 2150 are members of the interim Administrative Rules Committee. This committee studied the issue of Per Diem compensation for Board and Commission members, and found a huge disparity, ranging from tiny to \$300 per day. A copy of that study prepared by John Walstad from the Legislative Council is attached to my testimony.

We endeavored to approve the draft for pre-filing at our November meeting, but found we were too late, so I agreed to be the prime sponsor.

Rather than set an equalized rate for all of the boards, we chose this approach to put a capped rate in effect, and we set the cap at the same level as legislative reimbursement, which is slowly becoming a standard.

Among the higher rates now being paid are \$300 a day for the Board of Accountancy and \$200 for Chiropractors and Dentists. In the case of Nursing, Medical Examiners and Pharmacists they can pay whatever they choose.

At the other end of the spectrum five boards pay \$50 or less.

In addition to capping the rate 2150 would also prohibit double dipping, so to speak, for elected and appointed state officials who also serve on one of the boards or commissions.

I am confident you will find no opposition from any member of our Administrative Rules Committee.

BOARD AND COMMISSION MEMBER COMPENSATION

This memorandum is intended to provide a survey of daily compensation provided by statutory or administrative rules provisions for board or commission members of executive branch or occupational and professional boards and commissions.

There has never been a standard compensation rate provided by law for members of boards and commissions. For many years, the practice prevailed of linking compensation of members of boards and commissions to the statutory daily compensation rate for legislators attending meetings of interim legislative committees. The practice became so prevalent that it became very difficult for the Legislative Assembly to increase legislator compensation for interim committee meetings without also increasing compensation for a very large number of board and commission members as a result of the statutory change. This difficulty was addressed by enactment of 1997 Senate Bill No. 2052, which removed 37 statutory board and commission compensation links to the rate of \$62.50 per day that was then provided for legislator interim committee compensation under North Dakota Century Code Section 54-35-10. The bill removed the link by substituting the amount of \$62.50 for the statutory link to Section 54-35-10, and many of these statutory compensation rates for boards and commissions still provide compensation of \$62.50 per day for members. However, several boards and commissions have increased board member compensation or obtained legislative approval of changes to board and commission member compensation, sometimes to an increased compensation amount provided for legislators for interim committee meetings.

After the link between board and commission member compensation and legislative interim committee compensation was eliminated, legislator daily compensation for interim meeting attendance was increased to \$75 in 1999, \$100 in 2001, \$104 in 2007, \$108 in 2008, \$135 in 2009, \$141 in 2009, \$148 in 2010, \$152 in 2011, and \$157 in 2012.

**BOARD AND COMMISSION MEMBER
DAILY COMPENSATION
SET BY STATUTE**

Dollar Amount of Daily Compensation	Boards and Commissions
\$148	State Board of Higher Education, Teachers' Fund for Retirement Board, State Investment Board, and Public Employees Retirement System Board
\$135	State Fair Association Board of Directors, Milk Marketing Board, State Board of Agricultural Research and Education, Credit Review Board, State Board of Animal Health, Board of Appraisers appointed by the State Board of Animal Health, and Seed Commission
Not exceeding \$135/day	Water Resource District Board, Beef Commission, Dairy Promotion Commission, and Wheat Commission
\$110	Education Factfinding Commission
\$100	State Banking Board, Central Personnel Board, State Plumbing Board and Board of Massage Therapy, which sets member compensation at a rate not exceeding \$100 per day
\$75	Parole Board, Board of Architecture and Landscape Architecture, Criminal Justice Information Sharing Board, Aeronautics Commission, Domestic Violence Fatality Review Commission, Gaming Commission, Lottery Advisory Commission, and Racing Commission
\$62.50	State Board of Public School Education, County Committee for School Annexation, Education Standards and Practices Board, Game and Fish Advisory Board, Public Health District Board, Petroleum Release Compensation Advisory Board, Board of Water Well Contractors, Board of Professional Soil Classifiers, County Peer Review Committee appointed by the County Social Service Board, Commission on Legal Counsel for Indigents, and Irrigation District Director, who may be compensated at a rate set by the board not exceeding \$62.50 per day
\$50	Board of Podiatric Medicine
\$45	Multi-County Social Service Board, County Social Service Board, and Human Service Council
\$30	Vector Control District Commissioners
\$25	State Board of Law Examiners and Board of Reflexologists
\$3	Flood Irrigation Board

**BOARD AND COMMISSION MEMBER
DAILY COMPENSATION SET BY
ADMINISTRATIVE RULE**

Dollar Amount of Daily Compensation	Boards and Commissions
\$300	State Board of Accountancy
\$200	Board of Chiropractic Examiners and State Board of Dental Examiners
\$125	Board of Veterinary Medical Examiners
\$62.50	Education Standards and Practices Board
\$25	Board of Architecture (Rules have not been updated.)
\$0	Board of Physical Therapy, for which the rules provide board members receive expenses only

**COMPENSATION SET BY BOARD
OR COMMISSION ACTION**

Compensation of members of the State Board of Nursing is "compensation in an amount fixed by the board." No compensation rate has been set by administrative rules.

Compensation of members of the Board of Pharmacy is "such compensation as four-fifths of the members of the board agree upon." No compensation rate has been set by administrative rule.

State Board of Medical Examiners are to receive "such per diem as must be fixed by the board." No rate has been set by administrative rule.

TESTIMONY OF SPARB COLLINS ON SB 2150

Mr. Chairman, members of the committee my name is Sparb Collins. I am the Executive Director of the North Dakota Public Employees Retirement System (PERS). I appear before you today in a neutral position on this bill but to express concerns about how it may apply to PERS and to offer a suggestion.

PERS is responsible for the administration of the state's retirement plans (5 defined benefit plans, a hybrid plan and two defined contributions plans). PERS is also responsible for the administration of the group insurance programs (health, dental, vision, LTC and EAP). These plans are important programs for our members, both active and retired, and our employers. Section 54 -52-03 NDCC establishes a board of directors to oversee PERS. The composition of this board is reflective of its responsibilities and its membership. Their responsibilities include:

1. Attending board meetings. The board meets at least once a month and subcommittees meet at least quarterly.
2. Preparing for each meeting. At least 7 days in advance of every meeting a board book with the agenda and associated informational materials is sent to each board member to read and prepare for the upcoming meeting
3. Meeting or talking with members or other parties about PERS including its administration and programs
4. Fulfilling the requirements under 54-52-04 including appointing the executive director, overseeing the agency finances, overseeing each of the programs and establishing agency/program policies, developing administrative rules (PERS has extensive rules for the agency and programs), hiring program vendors (health, dental, vision, retirement, flex program, etc) and overseeing their performance, determining staffing needs and performing other oversight functions.
5. Serving as a trustee. In the performance of the above the board members are deemed trustees subject to an extensive and stringent set of fiduciary obligations to the retirement programs' participants and beneficiaries (basically the exclusive benefit rule). Similar provisions apply to the health plan. These obligations both require and justify the need for trustees to be high caliber individuals who have as their sole responsibility and concern the management of the funds and its programs.

We at the staff level know that if we are to be successful and responsive to both our employers and members, any measure of that success is directly correlated with the oversight provided by our board. That is, if we are going to be successful we must have effective leadership. If we do not, we will not be successful, we may not provide the level of service that is expected and warranted, and we may not be as effective with our programs. Attached is a list of activities of the board for this last biennium (Attachment #1). As you will note, much has been accomplished and costs or challenges have been

reduced, stabilized or mitigated in many areas. Looking at just one proposal the board brought forward this session is HB 1058 which would substantially eliminate the state's unfunded pre-Medicare retiree liability of \$65 million. Without an effective board, these types of considerations may not be developed.

That same section that establishes the board's responsibilities also has specific wording authorizing a per diem for our board of \$148 per day for board meetings or subcommittee meetings. We do not give them a per diem to attend other non-board meetings, we do not pay them a per diem if they prepare for the board meetings after hours or on weekends and we do not pay them a per diem to do other board related activities outside of a meeting day or outside a work day. So, while we do not give them a per diem for the other activities, we also know that they must still meet the requirements of their full-time jobs which now may have to be done outside regular working hours. That is recognized in our statute as well which states "the time spent in performing duties as a board member may not be charged against any employee's accumulated annual or any other type of leave". These specific provisions were passed by previous legislatures and in fact the per diem rate was just adjusted during the last session. The total cost of the per diems is small about .48% of our administrative budget and .0056% of our overall administrative and program operations.

Some of our board members come from public service (5 of the 7). They are elected by the active or retired members or are appointed. As presently drafted, the wording in SB 2150 would override without amending these past specific legislative considerations. We believe that past legislative considerations on this matter should be maintained and our belief is that from a risk management perspective it is extremely beneficial to attract to our board the level of competence we have experienced in the past. The risk is the unintended consequences that could occur if the level of decision making is reduced on our board. What if we were not able to bring forth options such as the reduction in the state's retiree liability (eliminating the \$65 million in unfunded obligations), what if we were not as effective in running our programs (costs for life, health, etc. could be higher). Just a .25% difference in health premiums is approximately \$1,175,000 for a biennium. Relating to our members, this last year we negotiated a reduction in fees for their deferred comp accounts (eliminated the \$30 annual fee) and the defined contribution account (eliminated the \$8 annual fee). An extra \$30 in a member's account over 25 years at 8% is \$2,193 in retirement income. We believe that past legislatures addressed this risk by adopting the specific wording in our statutes.

We feel that attracting to our board high quality members increases the likelihood that we will be able to effectively and responsively run our programs to the benefit of our participating employers and members. I believe that is why the specific wording has been placed in our statute by previous legislative sessions based upon their specific considerations. As noted above, the cost of this per diem is a small investment in risk management for our programs. With this background we would request the specific wording in our statute not be overridden by the broad language in this bill and this bill be modified to acknowledge and maintain the existing specific statutory wording in our statute that has been previously adopted.

Mr. Chairman and members of the committee thank you.

2011-2013 PERS Board Initiatives

The following are some of the major initiatives done this biennium.

- Health Plan
 - Completed a competitive bid process (two bidders)
 - 12.9% active increase (about a 10% increase to the state)
 - No retiree increase
 - Developed additional reserves
 - Continued implementation of health care reform
 - Developed a proposal to eliminate the State's \$65 Million OPEB liability (except for legislators) (HB 1058)
 - Added a new Wellness Provider
 - Completed our annual flu shot clinics in Bismarck together with the Family Practice Center (1059 shots in 2012 and 1397 in 2011)
 - Implemented a new HDHP/HSA plan as part of the PERS Health Plan and offered it to state employees
- Dental Plan
 - Completed a competitive bid process (over 10 bidders)
 - Selected a new vendor
 - 7% reduction in rates
 - Addition of an optional network for member use (60% of claims already go through the new network)
- Vision Plan
 - Completed implementation of a competitive bid process (3 Bidders)
 - 35% increase in participation during open enrollment
 - Added a vision network
- Life insurance
 - Completed implementation of a competitive bid process (9 bidders)
 - Basic life coverage for active employees increased from \$1,300 to \$3,500

- Reduced the employee and spouse rates an average of 18% and 26.5%, respectively
- Flex Program
 - Completed a competitive bid process (12 bidders)
 - Selected a new vendor
 - Adding new services for members
 - Debit cards
 - On line claims submission
 - Mobile applications
 - Auto substantiation
 - Expanded service center hours
- Retirement Plans
 - Completed Asset liability Study for the PERS Retirement Plan
 - Implemented the first two years of the four year recovery plan for the PERS Retirement plans and submitted the second 2 years of the recovery plan for consideration this session (SB 2059)
 - Selected a new Defined Contribution and Companion Plan Provider
 - Completed a competitive bid process (8 bidders)
 - Selected a new vendor
 - Lower administrative fees for members
 - Revenue sharing
 - Greater fund selection in mutual fund window
 - 280 days of on site counseling versus 21

SB 2150

SENATE POLITICAL SUBDIVISIONS COMMITTEE

January 24, 2013

**Fay Kopp, Interim Executive Director - Chief Retirement Officer
ND Retirement and Investment Office - ND Teachers' Fund for Retirement**

On behalf of the TFFR Board, I appear today in a neutral position on SB 2150. The Board has not taken a position on the bill, but I would like to share some thoughts on the bill as it relates to TFFR.

TFFR BOARD BACKGROUND

The Teachers' Fund for Retirement (TFFR) Board of Trustees is responsible for administering the retirement plan for our state's public school educators. The seven-member TFFR Board is comprised of five members appointed by the Governor – including two active teachers, one active school administrator, and two retired members. The State Treasurer and the State Superintendent also serve on the TFFR Board by virtue of their office. The TFFR Board meets 6 – 10 times per year. The TFFR Board also selects three of its appointed members (one active teacher, one active administrator, and one retired member) to serve on the State Investment Board to represent TFFR.

Under current state statutes, the five appointed TFFR Board members (not including the State Treasurer and State Superintendent) are entitled to receive \$148 per day as compensation for their board duties, plus necessary mileage and travel expenses for attending meetings of the board. This payment is in addition to their regular salary or pension benefit, and board members are not required to take vacation or other personal leave to attend meetings.

BILL IMPACT

To determine how the bill would impact the TFFR board, it may be helpful to clarify or define "governmental official or governmental employee." For example, does this bill pertain to active employees of school districts and other political subdivisions? In addition, what comprises "per diem compensation?" Does this mean the daily meeting payment only, or does it also include meals, hotel, and other travel expenses associated with attending meetings of the Board?

Based on our initial reading of the bill, it appears that SB 2150 could disallow the three active TFFR Board members from receiving both compensation from the school district for their regular job duties and per diem compensation from TFFR for their responsibilities as a TFFR trustee.

TFFR BOARD RESPONSIBILITIES

Under state law, retirement trustees are subject to an extensive and stringent set of fiduciary responsibilities. These responsibilities require fiduciaries to act solely in the best interests of the trust fund participants and beneficiaries as required by the exclusive benefit rule. Furthermore, fiduciaries must perform their duties in a prudent manner using independent judgment.

In addition, board members are held accountable by the participants in the trust fund which incentivizes board members, in their oversight role, to exercise good judgment and make sound decisions. This accountability factor is a valuable feature of the current board composition.

Managing a public pension plan in today's environment is complex business. State statutes outline the broad TFFR board responsibilities which include establishing plan goals and objectives, determining investment policy, hiring consultants, working with actuary to value plan liabilities and develop funding policy, submitting legislation, developing administrative rules, determining appropriate levels of service for members and employers, and generally overseeing the TFFR program. Competent and accountable board members are essential for the administration of an efficient and responsive retirement program.

Board members spend many hours outside of their regular employment (evenings, weekends, etc.) in board meeting preparation and education related activities in order to be well informed about pension and investment issues before making critical decisions on behalf of the Fund. These decisions have far reaching effects on active teachers and administrators, retirees, school districts, and the State.

Due to these important fiduciary and accountability requirements, it may be difficult to find highly qualified individuals willing to serve on the TFFR board, without some form of compensation for the additional responsibilities and the additional time spent in preparing for and attending Board meetings.

I would ask that the Committee recognize these key points, and consider allowing current TFFR statutory provisions relating to board member compensation to remain unchanged by the broad language of this bill.

Mr. Chairman and members of the Committee, this concludes my testimony. I would be happy to respond to the Committee's questions. Thank you.