

# MICROFILM DIVIDER

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



ROLL NUMBER

DESCRIPTION

2180

2001 SENATE EDUCATION

SB 2180

## 2001 SENATE STANDING COMMITTEE MINUTES

### BILL/RESOLUTION NO. SB 2180

Senate Education Committee

☐ Conference Committee

Hearing Date 01-24-01

Tape Number	Side A	Side B	Meter #
1		x	6.7 - 42.5
1 (02-12-01)		x	43.4 - end
2 (02-12-01)	x		0 - 8.0
Committee Clerk Signature <i>Linda Johnson</i>			

Minutes: CHAIRMAN FREBORG called the hearing on SB 2180 which relates to assessment and resumption of teaching under the teachers' fund for retirement.

SENATOR HOLMBERG, District 17, testified in support of SB 2180 and presented an amendment for consideration. (see attached). SENATOR COOK asked about IRS requirements.

The only requirement for a teacher is they have to be out of the classroom for one year.

SENATOR WANZEK asked if this would be additional service to be added to their retirement.

It would not. SENATOR COOK wondered where these retired teachers would be on the pay scale. That would be up to the local district.

CLARE CARLSON, Governor's Office, stated the Governor's office would support this bill. It would help alleviate the shortage of teachers in a specific way.

FAY KOPP, Deputy Executive Director, ND Retirement and Investment Office, presented testimony in support of the bill. [see attached including additional actuarial comments on TFFR (Teachers Fund For Retirement) retiree]. Discussion on teachers who were retired prior to 1/1/01

being able to return to work in critical shortage areas full time when the bill becomes effective (8/1/01). Also discussed teachers who are already retired being required to have an additional one year break in service. SENATOR COOK asked if there was a time in drafting this bill that the TFFR would decide the critical areas rather than the Standards and Practices Board. She replied that the original draft had included the TFFR. However, the TFFR Board determined it would not be the best entity to make that determination. In further discussion it was noted that the retirement benefits would not change due to a retired person going back to work. The monthly benefits would not be recalculated based on the period of re-employment as an active teacher. SENATOR COOK asked why is the employer required to pay his share of the retirement benefit when there seems to be no impact on the person's retirement benefit and there seems to be no potential costs to the retirement fund. She replied the greater reason was so the employer would not pick the retiree over an active teacher. More discussion on how long after retirement a retired teacher can go to work full time in a critical shortage area and if the bill in it's present form could be abused. FAY KOPP stated she would look into supplying amendments to cover the concerns of the committee on the time line.

JANET WELK , Education Standards and Practices Board, feels the retired teachers have much to offer our school districts and there is a definite need.

LINDA EDWARDS, Director of Professional Development for NDEA, gave information on a survey they had conducted. They surveyed 184 school districts with numerous questions.

Twenty-five districts recruited retired teachers this past year, and out of those twenty-seven districts were able to fill positions by retired teachers. The areas were science, math, music, and vocational. SENATOR COOK asked if NDEA would support the bill if the employer were not required to pay into the retirement fund. She could not answer that. SENATOR KELSH asked

if a large amount of teachers retire without completing the current school year because they've reached the rule of 85. She feels it is minimal. Most of the teachers want to finish out the year so they get the full years worth of benefits.

**There was no opposition to the bill.**

**The hearing was closed on SB 2180.**

**02-12-01, Tape 1, Side B, 43.4 - end, Tape 2, Side A, 0 - 8.0**

CHAIRMAN FREBORG asked the committee to look at the proposed amendment from Senator Holmberg. (see attached to his testimony 10095.0301). There is also a proposed amendment from Fay Kopp (see attached to his testimony 1/29/01).

**SENATOR KELSH moved to adopt Holmberg amendments. Seconded by SENATOR O'CONNELL. Roll Call Vote: 7 YES. 0 NO. 0 Absent. Amendment adopted.**

SENATOR COOK stated that he had a note from Fay Kopp that she had concerns over the Holmberg amendment. However, Senator Cook does not see a difference between the two. He stated that either amendment states the teacher has to be out of teaching for one year, and during that year, all they can do is substitute teach, and they have to return in the critical shortage area. More discussion on the two amendments.

**SENATOR KELSH moved to reconsider the action on the Holmberg amendment.**

**Seconded by SENATOR COOK. Roll Call Vote: 7 YES. 0 NO. 0 Absent. Motion carried.**

**SENATOR COOK moved to adopt the Fay Kopp amendment. Seconded by SENATOR KELSH. Roll Call Vote: 7 YES. 0 NO. 0 Absent. Motion Carried.**

Page 4  
Senate Education Committee  
Bill/Resolution Number SB 2180  
Hearing Date 01-24-01

SENATOR COOK stated that the bill would be better if we did not require that the employer to pay the assessment required by section 15-39.1-09. He feels that if a retired teacher goes back to work under this bill, the payment of the assessment will not make any difference to that teacher's retirement. All it will do is build up the TFFR fund.

SENATOR COOK moved to delete page 4, line 25 after "15-39.1-09," and all of line 26.

Seconded by SENATOR FLAKOLL. Roll Call Vote: 5 YES. 2 NO. 0 Absent.

Amendment Adopted.

SENATOR COOK moved a DO PASS as Amended. Seconded by SENATOR KEISH.

Roll Call Vote: 7 YES. 0 NO. 0 Absent. Motion Carried.

Carrier: SENATOR CHRISTENSON

**FISCAL NOTE**  
 Requested by Legislative Council  
 01/11/2001

Bill/Resolution No.: SB 2180

Amendment to:

**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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

There should be no cost to the state for SB2180. Small actuarial cost, if any, will be funded through actuarial reserves in the trust fund.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

NA

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

NA

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

NA

<b>Name:</b>	Fay Kopp	<b>Agency:</b>	ND Retirement & Investment Office
<b>Phone Number:</b>	328-9895	<b>Date Prepared:</b>	01/12/2001



10095.0301  
Title.

Prepared by the Legislative Council staff for  
Senator Holmberg  
January 24, 2001

PROPOSED AMENDMENTS TO SENATE BILL NO. 2180

Page 4, line 23, remove "not" and replace "part-time" with "noncontractual substitute"

Renumber accordingly

Date: 2/12/01  
Roll Call Vote #: 1

**2001 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2180**

Senate Education Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

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

Action Taken adopt amendment 10095.0301

Motion Made By Sen Kelsh Seconded By Sen O'Connell

Senators	Yes	No	Senators	Yes	No
Senator Freborg - Chairman	✓		Senator Christenson	✓	
Senator Flakoll - Vice Chairman	✓		Senator Kelsh	✓	
Senator Cook	✓		Senator O'Connell	✓	
Senator Wanzek	✓				

Total (Yes) 7 No 0

Absent 0

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

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

Reconsidered

**Roll Call Vote #:**

**BILL/RESOLUTION NO. 2/80**

## Senate Education

☐ Subcommittee on

☐ Conference Committee

Legislative Council Amendment Number

Action Taken Reconsider action on adopt amend  
10095.0301

Motion Made By Sen. Kilsch Seconded By Sen. Cook

By

[illegible]

Total (Yes) 7 No 0

Absent 0

### Floor Assignment

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

PROPOSED AMENDMENTS TO SENATE BILL NO. 2180

Page 4, line 19, after "To return to" insert "teaching under this section, a retired teacher must: 1) return to teach in a critical shortage geographical area or subject discipline as determined by the education standards and practices board by rule; and 2) if retired after January 1, 2001, must have been receiving a retirement annuity for at least one year. A retired teacher may perform non-contracted substitute teaching duties, but may not engage in full or part-time teaching duties, during the one-year separation from service."

Page 4, delete lines 20-22.

Page 4, line 23, delete "teacher may not engage in part-time teaching during the one-year separation from service."

Renumber accordingly.

Roll Call Vote #: 3

**2001 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2180**

**Senate      Education**

☐ Subcommittee on \_\_\_\_\_  
or \_\_\_\_\_

☐ Conference Committee

Legislative Council Amendment Number

Action Taken adopt amendment by Fay Kopp

Motion Made By Sen. Cook Seconded By Sen. Kelsh

[illegible]

Total (Yes) 7 No 0

Absent 0

### Floor Assignment

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

Roll Call Vote #: 4

**BILL/RESOLUTION NO. 2180**

## Senate Education

Subcommittee on

☐ Conference Committee

**Legislative Council Amendment Number**

### Action Taken

**Motion Made By**

[illegible]**Total**

**Absent**

## Floor Assignment

If the vote is on an amendment, briefly indicate intent: P4 line 25, after comma remove all pg 4 line 26 remove whole line.  
does not require the employer of a teacher to pay into retirement fund.

Roll Call Vote #: 5

**2001 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2182**

Senate	Education	Committee
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☐ Subcommittee on \_\_\_\_\_

**or**

☐ Conference Committee

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

Action Taken DPA

Motion Made By Sen. Cook Seconded By Sen. Kelsch

[illegible]

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Christenson

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

**REPORT OF STANDING COMMITTEE**

**SB 2180: Education Committee (Sen. Freborg, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2180 was placed on the Sixth order on the calendar.

Page 4, line 17, after the underscored period insert:

"1."

Page 4, line 20, after the first "a" insert "retired" and replace "have been receiving a retirement annuity for at least" with ":

- a. Return to teach in a critical shortage geographical area or subject discipline as determined by the education standards and practices board by rule; and
- 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.

2."

Page 4, remove lines 21 and 22

Page 4, line 23, remove "teacher may not engage in part-time teaching during the one-year separation from service."

Page 4, line 25, remove ", but the governmental body employing a retired"

Page 4, line 26, remove "teacher under this section must pay the employer assessment required by section 15-39.1-09"

Renumber accordingly



2001 HOUSE EDUCATION

SB 2180

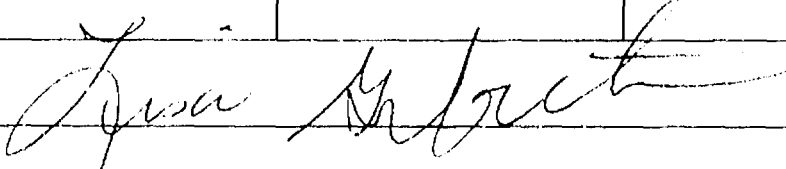
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2180

House Education Committee

☐ Conference Committee

Hearing Date 03/07/01

Tape Number	Side A	Side B	Meter #
#1		X	380 to 1532
Committee Clerk Signature 			

Minutes:

Chairman R. Kelsch, Vice-Chair T. Brusegaard, Rep. Bellew, Rep. Grumbo, Rep. Haas, Rep. Hanson, Rep. Hawken, Rep. Hunsakor, Rep. Johnson, Rep. Meier, Rep. Mueller, Rep. Nelson, Rep. Nottestad, Rep. Solberg, Rep. Thoreson

Vice Chairman Brusegaard: We will now open the hearing on SB2180.

Sen. Holmberg: \*Please refer to written testimony\*

Vice Chairman Brusegaard: On the amendment where you limited to positions in geographic areas that are determined by ESPB that be in shortage. Have they done that already, or is that a process they need to go through?

Sen. Holmberg: They haven't done that already. This would be a new thing.

Rep. Nelson: Where would that teacher fit into the salary schedule when they come back in?

Sen. Holmberg: That would depend on what the Lakota school district and that teacher determined.

Rep. Grumbo: In other words, I go back and teach for two more years. Do they calculate that separately from what my ability would be?

Sen. Holmberg: What happens is during that time when you have taken your talent and experience back into the classroom to help out a school district, you are receiving your annuity every month, there's no change. You're also getting paid by the school district, but you are not paying further into the fund, and the way the bill was amended in the Senate, the school district is not paying money into the fund, so you do that for two years, and you walk away, and you continue to receive the regular annuity that you received. That school district is able to have a qualified teacher for a couple more years, and you've got a little boost in your income.

Fay Kopp: \*Please refer to written testimony\*

Rep. Hanson: Is that person going to have to pay social security?

Kopp: I believe that any salary that is being paid to them is subject to social security.

Rep. Haas: There's nothing in here that would preclude a person from going back to work full time and forfeiting their benefits.

Kopp: You are correct.

Ryan Bernstein: (ND Governor's Office) The Governor's office supports this bill.

Larry Klundt: (ND Council of Educational Leaders) We support this legislation.

Rep. Nelson: In your opinion, would administrators be included in this legislation?

Klundt: Yes.

Vice Chairman Brusegaard: In your opinion, a school district would have to continue to pay social security contributions if they rehired a retired teacher? And the same would apply to unemployment benefits?

Page 3  
House Education Committee  
Bill/Resolution Number SB2180  
Hearing Date 03/07/01

Klundt: Yes.

Vice Chairman Brusegaard: So then they wouldn't be eligible to receive any unemployment benefits?

Klundt: No. You are correct.

Joe Westby: (NDEA) We support this bill.

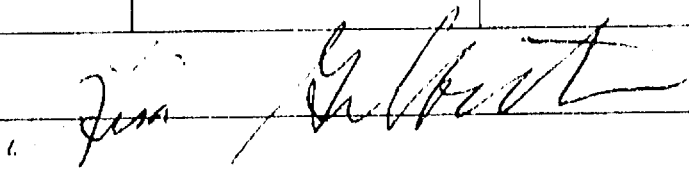
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2180 A

House Education Committee

☐ Conference Committee

Hearing Date 03/19/01

Tape Number	Side A	Side B	Meter #
#1	X		300 to 905
Committee Clerk Signature 			

Minutes:

Chairman R. Kelsch, Vice-Chair T. Brusegaard, Rep. Bellew, Rep. Grumbo, Rep. Haas, Rep. Hanson, Rep. Hawken, Rep. Hunsakor, Rep. Johnson, Rep. Meier, Rep. Mueller, Rep. Nelson, Rep. Nottestad, Rep. Solberg, Rep. Thoreson

Chairman Kelsch: We will now take up SB2180. What are the wishes of the committee?

Rep. Brusegaard: I move a DO PASS.

Rep. Bellew: Second.

Chairman Kelsch: Committee discussion.

The motion of DO PASS passes with 14 YAY 0 NAY 1 ABSENT

Floor Assignment: Rep. Nottestad

Date: 3/19/01  
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2180

House House Education Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

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

Action Taken Do Pass

Motion Made By Rep. Brusegaard Seconded By Rep. Bellew

Representatives	Yes	No	Representatives	Yes	No
Chairman-RaeAnn G. Kelsch	✓		Rep. Howard Grumbo	✓	
V. Chairman-Thomas T. Brusegaard	✓		Rep. Lyle Hanson	✓	
Rep. Larry Bellew	✓		Rep. Bob Hunsakor	✓	
Rep. C.B. Haas	✓		Rep. Phillip Mueller	✓	
Rep. Kathy Hawken			Rep. Dorvan Solberg	✓	
Rep. Dennis E. Johnson	✓				
Rep. Lisa Meler	✓				
Rep. Jon O. Nelson	✓				
Rep. Darrell D. Nottestad	✓				
Rep. Laurel Thoreson	✓				

Total (Yes) 14 No 0

Absent 1

Floor Assignment Rep. Nottestad

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

**REPORT OF STANDING COMMITTEE (410)**  
March 19, 2001 10:56 a.m.

**Module No: HR-47-5997**  
**Carrier: Nottestad**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2180, as engrossed: Education Committee (Rep. R. Kelsch, Chairman) recommends**  
**DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2180  
was placed on the Fourteenth order on the calendar.

2001 TESTIMONY

SB 2180



*Sen. Holmberg*

**SB 2180 - Allowing retired teachers to return to the classroom without a loss of retirement benefits.**

A superintendent from a small school district approached me last year concerning the prospects of hiring retired teachers in disciplines where there are chronic shortages. He suggested North Dakota look at a program, started in a handful of other states, to utilize the skills and experience of retired teachers in areas of critical shortage.

According to Investor's Business Daily, Maryland, Missouri, Texas, and North Carolina have passed legislation allowing retired teachers to return to the classroom and fill vacant teaching positions in shortage areas like math, science, and technology. Under the legislation they are able to collect their full retirement while teaching. Recent changes in Social Security rules on income limits help make this legislation a good investment for teachers and children in classrooms.

Teachers in North Dakota are making decisions to retire every day. Many of these teachers leave North Dakota, and return to the classroom elsewhere, taking their pension and experience with them.

This program has the potential to assist school districts in helping alleviate teacher shortages. It does it the right way, by utilizing the unique talents and experience of seasoned teachers; keeping them in North Dakota, teaching North Dakota children,

If this program helps even a few school districts each year find an experienced teacher to fill a critical shortage area, it will be a success, especially for the children in the school affected.

The relevant changes of SB 2180 are found on page 4 in Section 3 of the bill.

In order to qualify for this program, a teacher must have been out of the classroom for at least one year. During that year the retired teacher may substitute teach but cannot be under a teaching contract. (this is to conform to IRS rules regarding a real retirement vs. a sham retirement)

The teacher must teach in either a geographic or discipline area of critical shortage as determined by Education Standards and Practices board by rule.

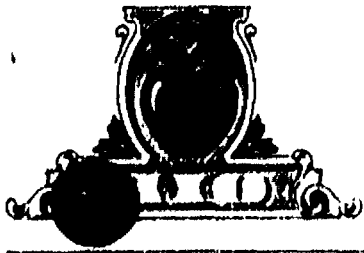
Line 23 -24 states that a teacher may not "engage in part-time teaching during the one year separation." That is overly restrictive and I'll provide the committee with language to clarify that a retiree can perform non-contractual substitute teaching. (this conforms to a suggestion from the TFFR Benefits/Services Committee.

As amended in the Senate, neither teacher nor school board would pay additional assessments into the fund under this act, and the teacher's benefits would not be adjusted to reflect changes in age or final average monthly salary at the end of the period of reemployment.

There is an expiration date of July 31, 2005. This is to provided the opportunity to revisit the issue, and reevaluate its usefulness and relevance at that time. This bill has been presented to the statutory retirement committee.

Senator Ray Holmberg

March 7, 2001, House Education Committee



# ND Retirement and Investment Office

*Teachers' Fund for Retirement  
State Investment Board*

Steve Cochrane, CFA  
Executive Director

Fay Kopp  
Deputy Executive Director

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ND Toll Free 800-952-2971  
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## TESTIMONY ON SB 2180 SENATE EDUCATION COMMITTEE

**JANUARY 24, 2001**

Fay Kopp, Deputy Executive Director  
ND Retirement and Investment Office

During the 2000 interim, Senator Holmberg asked the TFFR Board to provide input relating to the retiree return-to-work provisions provided for in SB 2180. The Board, with input from member and employer interest groups and TFFR's actuarial consultant offered a number of suggestions that were favorably considered. Because of the changes made, the TFFR Board supports this version of the bill since it would not jeopardize the financial soundness of the TFFR plan, nor its qualified status with the IRS.

### CURRENT LAW

Under current law, if a retired member is re-employed on a part time basis (employment stays under certain statutory limits), the retiree can teach and continue drawing retirement benefits. However, if a retired member is re-employed on a full-time basis (employment exceeds statutory limits), retirement benefits are suspended and the retiree becomes an active member. Both the retiree and the employer begin making regular retirement contributions, and the retiree's benefit may be recalculated if re-employed for at least two years.

### SB 2180 PROPOSAL

SB 2180 would modify the TFFR retiree return-to-work provisions. A retired member could be re-employed on a full time basis and continue receiving TFFR benefits. However, in order to be eligible to exercise this option:

- 1) Retiree must actually be retired and receiving TFFR benefits for a minimum of one year. Retiree cannot engage in full or part-time teaching during the one-year separation from service, with the exception of substitute teaching.

- 2) Retiree must be re-employed in a critical shortage geographical area or subject discipline as determined by the Education Standards and Practices Board by rule.

Upon re-employment, the retiree would be allowed to retain his/her retirement benefit and would be treated as being retired. The re-employed retiree would not be required to pay retirement contributions, but the employer would be required to pay employer contributions to the Fund. The re-employed retiree would not earn any additional service during the re-employment period, nor would the retiree's benefits be adjusted to reflect changes in age or salary upon their re-retirement. However, the retiree would receive all retiree benefit adjustments during the re-employment period.

Because the bill would sunset in 2005, it gives TFFR the chance to monitor usage, and if found to be heavily utilized and costly to the fund, to modify future retirement rate assumptions.

#### **ACTUARIAL COMMENTS ON SB 2180**

According to TFFR's actuarial consultant, Watson Wyatt, enactment of this bill should not have a measurable cost impact on TFFR, nor jeopardize the plan's qualified status with the IRS. Since a member must be retired for at least one year in order to take advantage of the provision, Watson Wyatt does not anticipate that members will retire earlier than would have otherwise in order to take advantage of the provision. As recommended by Watson Wyatt, this bill also prohibits a teacher from arranging with a school district to retire, teach part-time for a year, and then return to teach in a critical shortage area, in order to draw both a full retirement benefit and a full-time salary. Finally, the employer will contribute to TFFR on behalf of the retiree during the period of re-employment, even though for all other retirement purposes, the teacher is treated as a retiree.

*See Attachment 1 - Additional Actuarial Comments on Retiree Reemployment Issues*

## **ADDITIONAL ACTUARIAL COMMENTS ON TFFR RETIREE RE-EMPLOYMENT ISSUES**

In communications with the TFFR Board relating to this issue, Watson Wyatt points out that TFFR is a qualified retirement plan under the Internal Revenue Code. Certain IRS regulations state to be a qualified pension plan, the plan must restrict distributions to employees who have retired and the plan must prohibit payments before the member's separation from service. Therefore, with some exceptions, qualified defined benefit plans are not permitted to make distributions to participants who are still working. The IRS has disqualified plans that allowed an employee to "retire" on one day, immediately start receiving the retirement annuity, then return to work the next day while continuing to receive the annuity. The IRS position is that the retirement was merely a subterfuge to get around the rule against in-service distributions.

On the other hand, the IRS has allowed plans to continue to pay pension benefits to employees who terminated, started drawing their retirement benefit, and then later returned to work. The issue from the IRS's point of view is whether or not there is a bona fide retirement, or an attempt to circumvent the rules against in-service distributions from a pension plan.

Watson Wyatt recommends that the plan establish some minimum period during which the employee is actually retired before allowing the member to return to work and continue receiving the retirement benefit. The plan should not permit the employee to keep drawing his/her pension unless the period away from work has been long enough to establish that the retirement is genuine or the Fund could risk disqualification. (Note: If the TFFR plan were disqualified, the trust fund would lose its tax-exempt status, so trust income becomes taxable.)

How long should the separation from service be? The IRS has not established a minimum period of time, but has made certain rulings depending on the facts and circumstances of each individual situation. According to Watson Wyatt, in the case of full time employment, a teacher terminating employment in May or June, beginning to draw TFFR benefits, and then returning to full time employment after at least a one-year break in service should establish that the retirement is genuine. This advice differs, however, from a situation in which a retired teacher returns to part time employment. For example, terminating employment in May or June, beginning to draw TFFR benefits, and then returning to part time employment after at least a 30-day break in service should establish that the retirement is genuine. In general, for shorter waiting periods than these, Watson Wyatt advises a private letter ruling from the IRS.

Watson Wyatt has also stated that Congress is aware that current federal law impedes the ability of many older employees to gradually phase out of the workforce by coupling a pension with part-time work. They are currently investigating possible changes that would give employers more flexibility in this area.

Some might wonder why such complex return-to-work rules are necessary. They may believe that the member has earned the retirement benefit, and should be allowed to begin receiving it, even while still working. According to Watson Wyatt, there are two issues to consider:

- 1) The IRS qualification issue which prohibits in-service distributions (above). Even if Congress relaxes these rules, they will probably do so only for part-timers and older or very long-service employees.
- 2) Even if Congress allowed full-time employees to work and receive their pension, there would be significant cost implications for TFFR. An employee could start receiving benefits upon becoming eligible for an unreduced benefit (Rule of 85). It is true that the benefit would be smaller than if the member had waited to start it, because he/she would have less service and would usually have a smaller salary. But in most cases, the fact that the member takes a smaller benefit is more than offset by the fact that the benefit is started earlier and is paid over a longer period of time. According to the actuary, retirement rate assumptions would need to be adjusted which would result in increased plan costs.



# ND Retirement and Investment Office

*Teachers' Fund for Retirement  
State Investment Board*

Steve Cochrane, CFA  
Executive Director

Fay Kopp  
Deputy Executive Director

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## MEMORANDUM

**TO: SENATOR LAYTON FREBORG, CHAIR  
SENATE EDUCATION COMMITTEE**

**FROM: FAY KOPP, DEPUTY EXECUTIVE DIRECTOR  
ND RETIREMENT AND INVESTMENT OFFICE**

**DATE: JANUARY 29, 2001**

**SUBJ: SB 2180**

Please consider the attached suggested amendment to SB 2180. As discussed at the public hearing on January 24, this amendment would allow teachers who were retired prior to 1/1/01 to be able to return to work in critical shortage areas full time when the bill becomes effective (8/1/01). Teachers who are already retired would not be required to have an additional one-year break in service. The amendment also clarifies that teachers who retire after 1/1/01 must have a one-year break in service. During the one-year break, retirees can substitute teach, but cannot perform full or part time teaching duties.

According to Watson Wyatt, there should be no IRS qualification concern and no cost to this amendment. Since this group is already retired, they could not have prearranged retirement and subsequent reemployment in a critical shortage area to coincide with the provisions of this bill. Watson Wyatt continues to advise, however, a one-year break in service for future retirees who return to work full time in a critical shortage area.

Senator Freborg, thank you for the opportunity to provide you with this suggested amendment. I have also shared this with Senator Holmberg. He has indicated to me that he supports the amendment.

Please contact me if you have any questions at 328-9895.



# ND Retirement and Investment Office

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State Investment Board*

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## TESTIMONY ON ENGROSSED ~~SB 2180~~ HOUSE EDUCATION COMMITTEE MARCH 7, 2001

Fay Kopp, Deputy Executive Director  
ND Retirement and Investment Office

During the 2000 Interim, Senator Holmberg asked the TFFR Board to provide input relating to the retiree return-to-work provisions provided for in SB 2180. The Board, with input from member and employer interest groups and TFFR's actuarial consultant, offered a number of suggestions that were favorably considered. Because of the changes made, SB 2180 should not jeopardize the financial soundness of the TFFR plan, nor its qualified status with the IRS.

### CURRENT LAW

Under current law, if a retired member is re-employed on a part time basis (employment stays under certain statutory limits), the retiree can teach and continue drawing retirement benefits. Approximately 40 - 50 retirees have returned to work under these limits in the past few years.

However, if a retired member is re-employed on a full-time basis (employment exceeds statutory limits), retirement benefits are suspended and the retiree becomes an active member. About 2-3 retirees have returned to work and exceeded the limits in the past few years. In these cases, after benefit suspension, the retiree and the employer begin making regular retirement contributions, and the retiree's benefit may be recalculated if re-employed for at least two years.

### SB 2180 PROPOSAL

Engrossed SB 2180 would modify the TFFR retiree return-to-work provisions. A retired member could be re-employed on a full time basis and continue receiving TFFR benefits. However, in order to be eligible to exercise this option:

- 1) Retiree must be re-employed in a critical shortage geographical area or subject discipline as determined by the Education Standards and Practices Board by rule.



- 2) If retired after January 1, 2001, the retiree must have been receiving a retirement annuity for at least one year before returning to employment. A retired teacher may perform noncontracted substitute teaching duties, but may not perform full-time or part-time teaching duties during the one-year separation from service. Teachers who are already retired would not be required to have an additional one-year break in service.

Upon re-employment, the retiree would be allowed to retain his/her retirement benefit and would be treated as being retired. Neither the re-employed retiree nor the employer would be required to pay retirement contributions under engrossed SB 2180. (Note: The original version of SB 2180 required employers to pay into the retirement system to reduce the possibility that school districts, due to financial situations, would hire retired teachers before other qualified non-retired teachers.)

The re-employed retiree would not earn any additional service during the re-employment period, nor would the retiree's benefits be adjusted to reflect changes in age or salary upon their re-retirement. However, the retiree would receive all retiree benefit adjustments during the re-employment period.

#### **ACTUARIAL COMMENTS ON SB 2180**

According to TFFR's actuarial consultant, Watson Wyatt, enactment of this bill should not have a measurable cost impact on TFFR, nor jeopardize the plan's qualified status with the IRS. Since a member must be retired for at least one year in order to take advantage of the provision, Watson Wyatt does not anticipate that members will retire earlier than they would have otherwise in order to take advantage of the provision. As recommended by TFFR's actuary, this bill also prohibits a teacher from arranging with a school district to retire, teach part-time for a year, and then return to teach in a critical shortage area, in order to draw both a full retirement benefit and a full-time salary.

Because this provision would expire in 2005, it gives TFFR the chance to monitor usage, and if found to be heavily utilized and costly to the fund, to consider requiring payment of retirement plan contributions and modifying future retirement rate assumptions.

*See Attachment 1 - Additional Actuarial Comments on Retiree Reemployment Issues*

## **ADDITIONAL ACTUARIAL COMMENTS ON TFFR RETIREE RE-EMPLOYMENT ISSUES**

In communications with the TFFR Board relating to this issue, Watson Wyatt points out that TFFR is a qualified retirement plan under the Internal Revenue Code. Certain IRS regulations state to be a qualified pension plan, the plan must restrict distributions to employees who have retired and the plan must prohibit payments before the member's separation from service. Therefore, with some exceptions, qualified defined benefit plans are not permitted to make distributions to participants who are still working. The IRS has disqualified plans that allowed an employee to "retire" on one day, immediately start receiving the retirement annuity, then return to work the next day while continuing to receive the annuity. The IRS position is that the retirement was merely a subterfuge to get around the rule against in-service distributions.

On the other hand, the IRS has allowed plans to continue to pay pension benefits to employees who terminated, started drawing their retirement benefit, and then later returned to work. The issue from the IRS's point of view is whether or not there is a bona fide retirement, or an attempt to circumvent the rules against in-service distributions from a pension plan.

Watson Wyatt recommends that the plan establish some minimum period during which the employee is actually retired before allowing the member to return to work and continue receiving the retirement benefit. The plan should not permit the employee to keep drawing his/her pension unless the period away from work has been long enough to establish that the retirement is genuine or the Fund could risk disqualification. (Note: If the TFFR plan were disqualified, the trust fund would lose its tax-exempt status, so trust income becomes taxable.)

How long should the separation from service be? The IRS has not established a minimum period of time, but has made certain rulings depending on the facts and circumstances of each individual situation. According to Watson Wyatt, in the case of full time employment, a teacher terminating employment in May or June, beginning to draw TFFR benefits, and then returning to full time employment after at least a one-year break in service should establish that the retirement is genuine. This advice differs, however, from a situation in which a retired teacher returns to part time employment. For example, terminating employment in May or June, beginning to draw TFFR benefits, and then returning to part time employment after at least a 30-day break in service should establish that the retirement is genuine. In general, for shorter waiting periods than these, Watson Wyatt advises a private letter ruling from the IRS.

Watson Wyatt has also stated that Congress is aware that current federal law impedes the ability of many older employees to gradually phase out of the workforce by coupling a pension with part-time work. They are currently investigating possible changes that would give employers more flexibility in this area.

Some might wonder why such complex return-to-work rules are necessary. They may believe that the member has earned the retirement benefit, and should be allowed to begin receiving it, even while still working. According to Watson Wyatt, there are two issues to consider:

- 1) The IRS qualification issue which prohibits in-service distributions (above). Even if Congress relaxes these rules, they will probably do so only for part-timers and older or very long-service employees.
- 2) Even if Congress allowed full-time employees to work and receive their pension, there would be significant cost implications for TFFR. An employee could start receiving benefits upon becoming eligible for an unreduced benefit (Rule of 85). It is true that the benefit would be smaller than if the member had waited to start it, because he/she would have less service and would usually have a smaller salary. But in most cases, the fact that the member takes a smaller benefit is more than offset by the fact that the benefit is started earlier and is paid over a longer period of time. According to the actuary, retirement rate assumptions would need to be adjusted which would result in increased plan costs.

**REPORT OF THE LEGISLATIVE COUNCIL'S  
EMPLOYEE BENEFITS PROGRAMS COMMITTEE  
SENATE BILL NO. 95**

**Sponsor:** Senator Ray Holmberg

**Proposal:** Allows retired teachers to return to teaching in critical shortage areas or disciplines as determined by the Teachers' Fund for Retirement Board of Trustees by rule.

**Actuarial Analysis:** The consulting actuary reported that this bill would not have a material actuarial impact. However, the consulting actuary believes that the Teachers' Fund for Retirement Board of Trustees is not the appropriate body to make determinations concerning critical shortage areas.

**Committee Report:** Favorable recommendation. However, the committee was concerned whether the Teachers' Fund for Retirement Board of Trustees is the appropriate entity to determine critical shortage geographical areas or subject disciplines.

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