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ROLL NUMBER

DESCRIPTION

1457

2005 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1457

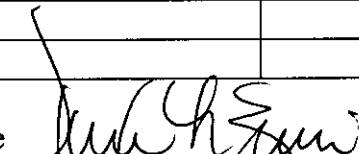
2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1457

House Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 2/3/05

Tape Number	Side A	Side B	Meter #
1	x		35.5-54.9
Committee Clerk Signature 			

Minutes: HB Relating to computation of service credit under the teachers' fund for retirement.

Rep. Norland-District 1-For-It is a fairness bill, it pertains to kindergarten teachers only, it backs up from 1987 and prior to 1987. There were two situations that existed at that time and still exist today concerning kindergarten teachers, in the rural area or in a larger area. Kindergarten teachers in the larger areas would teach would teach a half a day all year long. In there service credit for retirement would receive a full year for that. In the rural areas, because of transportation they weren't able to do that, so the kindergarten teacher would teach kindergarten all day long, a half of a semester. The way the law read, if you taught kindergarten a half a day all year long, about 700 hours, you received a full years credit in your teachers retirement, but if you taught kindergarten a full day, half of a semester, the same amount of hours, you received only a half years credit on your retirement. In 1988 they changed that, but only backed up to 1988. However, prior to that time, the teachers caught in that loop still did not receive a full years credit and I am not sure why they quit at 1988. Anyway this particular bill then would be a fairness bill

to those teachers that are still out there in the loop that never did get credit for that, if they are still teaching, actively employed and it pertains only to kindergarten teachers. If you read in the bill it is up to the kindergarten teacher to produce there contracts, yes I was in that situation and do have money coming.

Rep. Conrad: The fiscal note says they don't know how much this is going to cost, I am wondering if you have any idea how much you think it is going to cost?

Rep. Norland: I don't know how many teachers this going to involve, the one thing that is important is that the teacher must still be actively teaching.

Rep. Conrad: For example if 150 years of additional service credit was granted, it would increase the unfunded liability by approximately 1.3 million.

Rep. Norland: That might be true and I guess I didn't think of it as in the terms of a fiscal note, I thought of it in just pure fairness.

Rep. Conrad: Calculations is based on average cost per additional year of \$8700 times number of years of retroactive service credit.

Rep. Meier: Have you had some people come forward from your district that were having issues with this?

Rep. Norland: It came about in meetings that I get invited to.

Fay Kopp-Deputy Executive Director ND Retirement and Investment

Office-Against-Testimony Attached.

Rep. Meier: What is NDRIO?

Fay: The North Dakota Retirement Investment Office, which is agency that administers the teachers fund for retirement funds.

Rep. Klemin: I guess I can only assume the 1987 legislature considered this very issue, back in 1987 when they made it prospective only, do you know if that is the case?

Fay: I did go back and looked at the testimony I have hear and the very reason that the TFFR board at that time proposed the change in the law to go from day to two hours was to provide a more equitable method of calculating service credit for members who are employed part time. It was acknowledged at that time.

Chairman Haas: The question that Rep. Klemin raises is one of Legislative intent, from reading the testimony was it obvious to you that it was prospective?

Rep. Klemin: At that time they could have said they could go back to 1911. I guess they could have done that.

Kay: In view of the testimony I would concur that I believe there intent was to only go forward, I also looked at the actuarial cost and every indication was it was to be prospective. No in there did they service credit would be retro active.

Chairman Haas: Thank you very much. Any more questions on HB 1457.

Rep. Sitte: I move a Do Not Pass on HB 1457.

Rep. Potter: I second the motion.

VOTE: 12 NO 0 ABSENT 2 DO NOT PASS ON HB 1457

REP. SITTE WILL CARRY THE BILL.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1457

House Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 2/10/05

Tape Number	Side A	Side B	Meter #
1	x		35.2-40.1
Committee Clerk Signature <i>Duke H. Smith</i>			

Minutes: HB 1457 Relating to computation of service credit under the teachers' fund for retirement.

14 members present, 0 absent.

Chairman Haas: It is the bill that would have gone back and given service credit for Kindergarten teachers who worked prior to 1987, the fiscal note is huge and it is speculative, because there is not much way of really knowing how many people this would really affect.

Rep. Sitte: I move a Do Not Pass.

Chairman Haas: Rep. Sitte has moved a Do Not Pass on HB 1457, is there any discussion.

Rep. Potter: I second the motion.

Chairman Haas: Rep. Potter has second the motion, any discussion, if not we will ask the clerk to the roll on a Do Not Pass motion on HB 1457. The Do Not Pass motion passes by a vote of 12, 0, and 2 absent, who would like to carry the bill, Rep. Sitte, thank you.

Voting and Discussion are done.

FISCAL NOTE
Requested by Legislative Council
01/18/2005

Bill/Resolution No.: HB 1457

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.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

UNKNOWN FISCAL IMPACT TO TFFR. The proposed legislation grants retroactive TFFR service credit to kindergarten teachers who taught prior to 1987 and did not receive service credit based on the number of hours employed. The bill will result in an unknown actuarial cost to TFFR due to an unknown number of teachers this proposal would affect and unknown amount of service credit that would be granted without funding the cost.

According to TFFR's actuarial consultant, a wide range of results is possible. For example, if 150 years of additional service credit is granted, it would increase TFFR's unfunded liability by approximately \$1.3 million equal to .03% increase in the employer contribution rate. If 750 additional years of service credit is granted, it would increase TFFR's unfunded liability by approximately \$6.5 million equal to .17% increase in the employer contribution rate. The cost of the bill is a function of how many members receive how much additional service.

Calculation is based on average cost per additional year of \$8,700 times the number of years of retroactive service credit granted

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.*

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.*

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.*

Name:	Fay Kopp	Agency:	ND Retirement & Investment Office
Phone Number:	328-9895	Date Prepared:	01/20/2005

Date: 2/10/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1457

House House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Rep. Sitte Seconded By Rep. Potter

Representatives	Yes	No	Representatives	Yes	No
Chairman C.B. Haas	✓		Rep. Bill Amerman	✓	
Bette B. Grande - Vice Chairman	AB		Rep. Kari Conrad	✓	
Rep. Randy Boehning	✓		Rep. Louise Potter	✓	
Rep. Glen Froseth	✓		Rep. Sally M. Sandvig	✓	
Rep. Pat Galvin	AB				
Rep. Stacey Horter	✓				
Rep. Jim Kasper	✓				
Rep. Lawrence R. Klemin	✓				
Rep. Lisa Meier	✓				
Rep. Margaret Sitte	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Sitte

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

REPORT OF STANDING COMMITTEE (410)
February 10, 2005 1:06 p.m.

Module No: HR-27-2411
Carrier: Sitte
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1457: Government and Veterans Affairs Committee (Rep. Haas, Chairman)
recommends **DO NOT PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).
HB 1457 was placed on the Eleventh order on the calendar.

2005 TESTIMONY

HB 1457

**HOUSE BILL 1457
GOVERNMENT AND VETERANS AFFAIRS COMMITTEE**

**Fay Kopp, Deputy Executive Director
ND Retirement and Investment Office
February 3, 2005**

Like kindergarten programs in ND, the TFFR program has had a long and varied history. One aspect of TFFR that you are considering today deals with how service is credited for our participating members, kindergarten teachers in particular.

TFFR SERVICE CREDIT

State statutes (NDCC 15-39.1-27) define how service credit is granted to TFFR members. This definition has changed a number of times over the years. For example:

July 1, 1911 – June 30, 1947	seven months was a legal year (140 days)
July 1, 1947 - June 30, 1959	eight months was a legal year (160 days)
July 1, 1959 – June 30, 1981	nine months was a legal year (180 days)
July 1, 1981 - June 30, 1987	nine months was a legal year (175 days)
July 1, 1987 - present	700 duty hours

*4 or more hours per day for 20 days has always been considered one month of service credit for full time teachers.

- Prior to July 1, 1987, service credit was based on **DAYS** of instruction during the school year. As long as the teacher worked at least four hours per day for 175 days, the teacher earned a full year of service credit. If the teacher taught for fewer days, then the teacher received a proportional share of a year of service credit, based on the ratio of days taught to 175. Members who taught for less than four hours per day had their service credit reduced proportionately. This method for determining service credit produced the same service credit for a member who taught for four hours every day and for one who taught for eight hours every day. Both would receive a full year of service credit. On the other hand, a teacher who taught a full class load for the fall semester and then resigned would only receive about 0.50 of a year of service credit.

Examples (1981-82 to 1986-87):

175 days (4 hrs) / 175 days X 100% = 1.00 service
173 days (8 hrs) / 175 days X 100% = 0.99 service
175 days (3 hrs) / 175 days X 75% = 0.75 service
90 days (8 hrs) / 175 days X 100% = 0.51 service

- Beginning July 1, 1987, TFFR members began accruing service credit based on the **HOURS** worked in each plan year. If a member is paid for 700 hours or more during a year, then the member earns one year of credit. If the member is paid for fewer than 700 hours, the member earns a pro-rata portion of a year of service credit, based on the ratio that the actual hours bear to 700. Therefore, a member who teaches four hours per day for the entire school year (175 days+) will receive one year of service credit, as will a member who teaches all day each day for half of the year.

Examples (1987-88 to present):

175 days X 4 hours / 700 hours = 1.00 service

173 days X 8 hours / 700 hours = 1.00 service

175 days X 3 hours / 700 hours = 0.75 service

90 days X 8 hours / 700 hours = 1.00 service

KINDERGARTEN TEACHERS

Since July 1, 1987, the kindergarten teachers in most arrangements (half-day, full year; full-day, full year; or full-day, half year) receive 1.0 year of service credit, since they are all employed for 700 hours or more. But prior to July 1, 1987, when service was based on days taught, kindergarten teachers working half-days in full year programs received 1.0 year of service credit, while kindergarten teachers working full-days in half year programs only received 0.50 year of credit. Kindergarten teachers received service credit like other teachers who worked fewer days, or fewer hours than a full school year.

PROPOSED BILL

HB 1457 allows current non-retired members of TFFR who taught kindergarten prior to July 1, 1987, to receive service credit based on the 700-hour standard. For example, a teacher who taught full-day kindergarten classes for half the year and who received 0.50 year of service credit could receive an additional 0.50 year of service, since the teacher would have received 1.00 year of service under the 700-hour standard. Members who already received a full year's service credit would not benefit under the bill. The bill requires members who want additional service credit for those years to apply to TFFR and to provide records documenting service hours worked each year.

ACTUARIAL REVIEW

TFFR's actuarial consultant, Gabriel, Roeder, and Smith (GRS) reviewed the bill and provided actuarial and technical comments. However, due to the absence of data, the actuary is unable to calculate the cost of the bill. The cost of the bill is clearly a function of how many teachers receive how much additional service. It is unknown how many teachers this bill would affect and how much retroactive service credit would be granted.

The actuary did, however, provide a range of results. On average, a member with service prior to July 1, 1987, who would receive an additional year of service adds approximately \$8,700 to the unfunded actuarial accrued liability (UAAL). If the member receives three additional years of service, the UAAL would increase by 3 X \$8,700, or about \$26,000.

The table below shows a spread of possible results:

1. Number of affected teachers	50	150	250
2. Average addl. years of service/teacher	3	3	3
3. Total additional years of service	150	450	750
4. Avg. cost per additional year	\$8,700	\$8,700	\$8,700
5. Total increase in UAAL	\$1.3 million	\$3.9 million	\$6.5 million
6. Increase in employer contrib. rate	0.03%	0.10%	0.17%

The actuary also noted other technical considerations. Kindergarten teachers are not the only ones who may have received less service under the day-counting method used prior to 1987. Passage of this bill may encourage other groups to ask for the same benefit. NDRIO has identified about 2,500 active members who received less than 1.00 year of service for at least one year prior to July 1, 1987. If all of those members received an increase to a full year of service credit for each of those years, approximately 2,700 additional years of service would be granted, or 1.08 years of service per member affected. Based on the \$8,700 average cost per year of service, this would add about \$23.5 million to the UAAL.

Additionally, it is possible that many districts and teachers will be unable to produce adequate records of their hours worked 18 or more years ago. If so, there may be a few lucky teachers who petition for and receive the additional service, but many more who, knowing they are entitled, will be unable to muster sufficient proof. This may cause ill feelings and resentfulness among the membership who played by the rules of the time and felt no need to maintain records for decades.

Finally, the bill is limited to current kindergarten teacher who are not yet retired. This group includes active members and members who have terminated but who left their contributions on deposit and are awaiting a deferred retirement benefit. The bill excludes members who left TFFR at some point in the past, taking a refund, and it excludes members who retired prior to the bill's effective date. Adding these members to the eligible group under the bill would increase the bill's cost. It would also raise issues about whether any additional service should result in a retroactive increase in their benefits or just a prospective increase.

*North Dakota
Retirement
and Investment
Office*

LEGAL REVIEW

We have also reviewed the provisions of the bill with TFFR's legal counsel in the Attorney General's Office. Legal concerns have been brought to our attention.

First, there is concern with the bill's disparate treatment of similarly-situated individuals, which would implicate the equal protection clause of the Constitution. While former kindergarten teachers would potentially receive an increase in their service credit, other teachers who taught other programs part-time during that time period, would not receive that increase. Further, members who would have received that increase, but because they are retired, they would not receive anything. Discriminating between the different classes of individuals could present constitutional issues.

Second, there is concern with the gift the bill seems to be giving to a certain class of teachers. The giving of that gift seems contrary to article X, section 18 of the North Dakota Constitution, which prohibits the state from giving gifts, except in certain circumstances.

Third, allowing current teachers to receive the increase in their service credit while excluding retired teachers seems to implicate the ADEA, the Age Discrimination in Employment Act. Since the majority of the retired members will, by definition, be older than those currently working, there appears to be a facial violation of the Act.

Finally, the use of fund monies to pay for the credit would seem to implicate the exclusive benefit rule of the Internal Revenue Code. In order to be a "qualified" plan, the fund monies must be used for the exclusive benefit of the fund's members. While the teachers that would receive a benefit increase are, in fact, members; prior to the legislation they were receiving everything to which they were entitled based on the law at the time. Using fund monies to give them a benefit to which they were not entitled at the that time could cause the IRS to re-evaluate their position that we are, in fact, complying with the exclusive benefit rule, and could risk possible plan disqualification.

TFFR BOARD CONCERNS

Due to actuarial, legal, and fairness concerns, the TFFR Board opposes ~~SB~~ 1457.

The TFFR Board has been firm in its commitment to not support any legislative proposals that could negatively impact the fund. While we can't identify the exact cost of the bill because we don't know who and how much retroactive service credit would be granted, we do know that this bill will increase TFFR's unfunded actuarial liability since more teachers will receive more service credit. Consequently, they will be entitled to a higher retirement benefit which would allow them to retire sooner. Benefit payouts would then be higher because of payments being made for a longer period of time. The Board does not support providing benefit improvements without funding their cost, and is concerned about a precedent being set.