

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
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ROLL NUMBER

DESCRIPTION

2413

2005 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2413

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2413

**Senate Government and Veterans Affairs**

Business and Conference Committee

Hearing Date March 24, 2005

Tape Number	Side A	Side B	Meter #
1	x		0-250
	x		5000-6200
		x	0-2265
Committee Clerk Signature <i>Shane Davis</i>			

**Chairman Krebsbach** opens the hearing on SB 2413.

**Relating to participation by employees of the department of career and technical education in the public employees retirement system.**

**Senator Cook** - District 34 - Introduced the bill.- Submitted letter written to him signed by employees of Dept. Of Career and Technical Education. Urged a favorable consideration. He believes there is an inequity issue and it has been building for some time. The matter to be addressed is whether these individuals are teachers or state employees. He said when policy is passed that benefits teachers, they are considered state employees, when policy is past that benefits state employees, they are considered teachers. He hopes to get this issue solved.

Recessed

(meter #5000, tape 1, side A)

**Garry Freier** - State Employee - In favor of this bill - See written testimony.

(meter #6085)

**Senator Nelson** - Asked why did they wait till after April 1st to bring in this bill.

(meter #0, tape 1, side B)

**Freier** - Replied, he only works there. He has limitations as to what he can do before he gets the support of others around him.

**Deb Huber** - CTE - On behalf of an employee who couldn't be there because of flu, she would like to address the reason for the lateness of the bill. She said they did raise this issue with Senator Cook last October in an e-mail, but somehow the e-mail didn't get opened. It wasn't discovered till sometime later. They apologized for the lateness but hopes the blame wouldn't lie entirely with the employees because they thought things were moving along.

(meter #180)

**Senator Lee** - Mentioned, someone should have followed that e-mail with a phone call.

**Huber** - Appreciated the comment and apologizes for the lateness and hopes it won't detract from consideration of the bill.

(meter #280)

**Fay Kopp** - Deputy Executive Director ND Retirement and Investment Office - See written testimony. The board would not be in favor of this bill.

**Senator Brown** - Asked how many employees we are talking about on this transfer.

**Kopp** - Replied, 16 employees today.

**Senator Brown** - Asked her to speculate how many more employees could be interested in doing this in the future potentially.

**Kopp** - Maybe 100 people.

**Senator Brown** - Asked what is unfunded actuarial accrued liability.

**Kopp** - TFFR carries unfunded liability of about 355 million dollars of which those costs are amortized over a 30 year period. The total assets of TFFR as of last year 1.4 billion dollars.

**Senator Lee** - Says its kind of like being bitten by a duck. Each nibble isn't a fatal wound but as its accrued the wound becomes a little more serious.

**Kopp** - Agreed. Good example to what the fund is experiencing.

(meter #1075)

**Joe Westby** - Director of ND Education Association - His concern is that every time they let a group out of the fund it raises the costs for those left in the fund. He said they are sensitive right now to money issues relative to protecting the fund.

**Sparb Collins** - PERS actuary went through the bill as it relates to the retiree health credit program. If the transfer was to take place the amount for the PERS Plan would be transferred from TFFR to PERS, about 2.2 million for the benefit that had been accrued to date. That should actuarially make it neutral for PERS. Secondly they would get credit in the retirees health credit program as well, there isn't a transfer available for that and so the bill provides that there will be an increase in contributions from 1% to 3.4% for a period of 8 years to pay for the cost of that past liability and 1% for future liability.

**Senator Krebsbach** - Asked who the increase would be applied to.

**Collins** - Responded that it would be applied to the salaries of those members.

**Senator Krebsbach** - So it would be up to the Dept of Career and Technical Education to pay the increase.

**Collins** - Replied yes, but in the TFFR system the employer is paying 7.75 % in to TFFR and they are picking up the 4% employee contribution so its 11.75 on behalf of the members in the system. PERS contributions are less, even if you add on an additional amount to pay this past liability the amount would be 11.46. The fiscal note prepared shows there would be a decrease in employer contributions as a result of the transfer for a series of 2 years, that would continue for 8 years then the contribution would drop to 9.12.

**Senator Nelson** - Asked if 2 people were to retire this year then would you take that whole value over 14 people and up the ante for Career and Technical.

**Collins** - It his understanding that when the actuary came up with 8 years they took a look at what they thought would be the average working career of all the people and came up with 8.

He said anytime you make an assumption there is always the risk it will vary positive or negative.  
(meter #1665)

**Close the hearing on 2413**

Discussion

**Senator Nelson** - Moved for do not pass

**Senator Brown** - Seconded

**Senator Brown** - Would like to see this go to the Employee Benefits Committee but not to ask for a study. He wanted to know how you would get to the point to move them all over at one time.

Said we shouldn't do this piece meal.

**Senator Krebsbach** - Said they did have ample opportunity to get this done in the interim and nothing was done. Someone needs to bring this forward before the Employee Benefits Committee.

**Senator Nelson** - Said sooner or later their all going to move.

**Senator Krebsbach** - Said that some people in Career and Technical Ed hold their license but some have given it up.

**Senator Brown** - Still believes a do not pass is the way to go. Have Employee Benefits Committee look at to move everybody then after that cut it off.

**Senator Syverson** - Said you send a message that if you want to do it you do it now. There was discussion on who should be allowed to transfer.

Committee voted do not pass

**Senator Brown** will carry.

(meter #2265, side B, tape 1)

**FISCAL NOTE**  
 Requested by Legislative Council  
 03/22/2005

Bill/Resolution No.: SB 2413

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			(\$2,910)	\$1,434	(\$2,910)	(\$1,566)
Appropriations			(\$2,910)	\$1,434	(\$2,910)	(\$1,566)

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.*

SB 2413 affects three agencies in different ways:

Fiscal impact: SB 2413 decreases the total amount of retirement contributions paid by the Department of Career and Technical Education (CTE) in the amount of \$4,476 for the 2005-07 and 2007-09 bienniums.

Fiscal impact: SB 2413 increases expenditures by the Public Employees Retirement System (PERS) in the amount of \$3,000 for the 2005-07 biennium for system programming modifications.

Actuarial impact: SB 2413 increases TFFR's funded cost because TFFR would receive less employer and member contributions in the future since there would be a smaller number of members over which to spread the cost of amortizing TFFR's unfunded actuarial accrued liability. Therefore, there is an actuarial loss of about \$81,561 to TFFR. This loss is considered immaterial by the Fund's actuary. There is no fiscal impact on TFFR.

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.*

\$ (4,476) decrease in salary expenditures for Dept of Career and Technical Education for retirement contribution reduction from TFFR to PERS. Net difference from TFFR rates to PERS rates is based on total salaries of \$1,543,512 X 0.29% = \$4,476. Of total, general funds of \$1,003,283 X 0.29% = \$2,910 general fund, and federal funds of \$540,229 X 0.29% = \$1,566 other funds.

\$3,000 increase in expenditures for PERS system programming modifications for unique contribution rate schedule for Dept of Career and Technical Education.

**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.

\$(4,476) decrease in appropriations for Dept. of Career and Technical Education for retirement contribution reduction from TFFR to PERS. Net difference from TFFR rates to PERS rates is based on total salaries of \$1,543,512 X 0.29% = \$4,476. Of total, general funds of \$1,003,283 X 0.29% = \$2,910 general fund, and federal funds of \$540,229 X 0.29% = \$1,566 other funds.

\$3,000 increase in appropriations to PERS for system programming modifications for unique contribution rate schedule for Dept of Career and Technical Education.

<b>Name:</b>	Fay Kopp	<b>Agency:</b>	ND Retirement & Investment Office/Teachers' Fund for Retirement
<b>Phone Number:</b>	328-9895	<b>Date Prepared:</b>	03/23/2005

Date: 3/24/05  
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2413

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

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

Action Taken Do NOT PASS

Motion Made By Senator Nelson Seconded By Senator Brown

Senators	Yes	No	Senators	Yes	No
Karen K. Krebsbach, Chairman	X		Carolyn Nelson	X	
Richard L. Brown, Vice Chairman	X				
Judy Lee	X				
John O. Syverson	X				

Total (Yes) 5 No 0

Absent 0

Floor Assignment Senator Brown

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

**REPORT OF STANDING COMMITTEE (410)**  
March 24, 2005 11:23 a.m.

**Module No: SR-54-6019**  
**Carrier: Brown**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2413: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman)**  
recommends **DO NOT PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
SB 2413 was placed on the Eleventh order on the calendar.

2005 TESTIMONY

SB 2413

March 9, 2005

Dear Senator Cook:

Kindly take immediate action to correct the disparity of treatment regarding retirement benefits granted to professional employees of the Department of Public Instruction vs. professional employees of the Department of Career and Technical Education. (See enclosed request by Doug Vannurden.)

The Equal Protection Clause contained in Article I of North Dakota's Constitution forbids arbitrary special treatment to those who are "similarly situated". Professional employees of the ND Department of Career and Technical Education are indeed, "similarly situated" to professional employees of DPI. Therefore, to treat them differently with regard to choice of retirement plans appears to be in violation of Article I of the North Dakota Constitution. (See enclosed.)

Deferring action on this issue will only serve to deepen the current disparity.

We urge you to take whatever action is necessary to correct this problem.

Thank you very kindly for your consideration.

*Debra Huber*  
328-2678  
223-0895

*Doug Vannurden*  
328-3179  
400-6037

*Benjamin*  
328-3162  
250-6761

*Tom*  
328-3163  
843-7076

*Don Roberts*  
328-3183  
471-8861

Testimony in support of SB 2413  
Senate Government and Veterans Affairs Committee  
Karen Krebsbach, Chairperson  
March 24, 2005

Chairperson Krebsbach and Members of the Committee

My name is Garry Freier, and I am in my 17<sup>th</sup> year of service as an employee of the North Dakota Department of Career and Technical Education (CTE). I support Senate Bill 2413 for the following reasons:

**1. Intradepartmental equity:**

There are professional and support staff employees in CTE who are members of the PERS retirement system, and professional employees who are in TFFR. Those in PERS enjoy a take-home pay that is 3.75% higher due to the difference in retirement plans. TFFR requires an employee benefit contribution (3.75%) that PERS does *not* require. For me, that represents \$142.00 per month I would have in take-home pay under the PERS system, or \$1704 per year. Across 17 years of service, that comes to \$28,968 that I would have had – and that other departmental employees **do** have as members of the PERS plan.

**1. Interdepartmental Equity:**

Professional non-teaching employees of the Department of Public Instruction were provided the option to join the PERS

retirement plan during the 2003 legislative session by an amendment to the DPI budget bill, which resulted in many employees switching. Offering an option resulting in financial advantage for professional employees of DPI, but not for professional employees of CTE is not only disparate treatment, but may be in violation of the Equal Protection Clause contained in Article I of the North Dakota Constitution, which provides that a law must operate alike upon all who are in like situations.

A concern has been raised regarding employees of the Division of Independent Study, the School for the Blind, the School for the Deaf, and the Youth Correctional Center who also participate in TFFR. Would providing a choice of retirement plans for CTE employees cause disparate treatment to professional employees of those departments who also belong to TFFR? For the latter three, the answer is no. Employees of these departments are treated similarly to the majority of the state's teachers who received significant wage increases during the last session. Through a special arrangement with OMB, these teachers hold contracts and received raises based upon an OMB Teacher Salary Survey. Consequently, they are more similarly situated to the state's contracted teachers than non-contracted, non-teaching employees of CTE.

The sole department with a similar concern is the Division of Independent Study which employs professionals who belong to TFFR while other employees of the Division are enrolled in PERS. They are also treated as state employees when it comes to raises.

**2. Wage issue: teachers vs. professional staff of CTE:**

While professional CTE employees enrolled in TFFR received no wage adjustments by the North Dakota legislature, teachers statewide did.

**3. Negotiated agreements**

Teachers are contracted employees with negotiated salaries and benefits. CTE employees have neither contracts nor negotiating privileges. Consequently, they should not be compelled to participate in a plan designed for contracted teachers.

**4. Board Support**

At their September 2004 meeting, the State Board for Career and Technical Education approved the agency to proceed with drafting a bill that would provide an option for employees currently enrolled in TFFR to switch to PERS.

## 5. Benefits: PERS vs. TFFR

- a) Health insurance benefit -\$4.50 per month X years of service towards health insurance. 30 years of service X \$4.50 comes to \$135.00 towards the retiree's health insurance.
- b) Full vesting in the employer's contribution and the employee's contribution after 3 years of service.
- c) Monthly retirement benefits are equal or very similar.

## 6. Financial Impact

- a) Retirement contributions paid by the CTE department decrease in the amount of \$4776 for the 2005—2007 and the 2007-2009 bienniums.
- b) SB 2413 increases expenditures by the PERS System in the amount of \$3000 for the 2005-2007 biennium for system programming modifications.
- c) Actuarial impact to TFFR is calculated at \$81,561, by the fund's actuary, who considers the loss to be **"immaterial"**.

## 7. Failure to act

Should the legislature choose not to take action on SB 2413 in lieu of further study, the disparity between similarly situated employees in DPI and CTE will simply deepen over time.

We urge a vote of yes on SB 2413. It is the right and equitable thing to do.

#2413

## TESTIMONY ON SB 2413

### Senate Government and Veterans Affairs Committee March 24, 2005

Fay Kopp, Deputy Executive Director  
ND Retirement and Investment Office

- **Background Information on TFFR Participation**

State statutes define teachers for TFFR membership purposes. Teachers are *“all persons who are licensed by the Education Standards and Practices Board who are contractually employed in teaching, supervisory, administrative, or extracurricular services by a state institution, special education unit, school board, or other governing body of a school district of this state. This includes superintendents, assistant superintendents, business managers, principals, assistant principals, classroom teachers, and special teachers.”*

In addition, other specified persons or positions are also defined as teachers, and included as TFFR members: *“the superintendent of public instruction, assistant superintendents of public instruction, county superintendents, supervisors of instruction, the professional staff of the department of career and technical education, the professional staff of the division of independent study...”*. There are other small, closed groups of education employees who also participate in TFFR.

To summarize, current statutes provide for TFFR membership by both teachers and administrators on both a state and local level.

- **Recent Legislative History Relating to TFFR Participation**

In 1999, new DPI employees hired after January 6, 2001 were allowed to join PERS instead of TFFR. In 2003, current nonteaching DPI employees were allowed to transfer their retirement account and participation to PERS. At that time, TFFR's actuarial consultant analyzed the bill and indicated that the net impact would be a small actuarial loss to TFFR. The loss is not the result of the actual asset transfer amount of the actuarial present value for this group of employees, but would result because TFFR would no longer receive the mandated 7.75% in future employee and employer contributions that TFFR would have expected to receive without this transfer option. Therefore, there becomes a smaller payroll over which to spread the cost of amortizing TFFR's unfunded actuarial accrued liability. The amount of potential loss to the system (\$129,000 for the DPI election) was not considered to be material by the actuary since it increased the funded cost by less than 0.01%.

- **TFFR Participating State Agencies and State Institutions**

Prior to the 2003 legislation, there were six state agencies and state institutions that employed TFFR members. They were the Department of Public Instruction, Department of Career and Technical Education, Division of Independent Study, School for the Blind, School for the Deaf, and Youth Correctional Center. Now there are five that employ TFFR members.

At the time the DPI transfer option was being considered in 2003, we indicated that TFFR members employed in other state agencies or state institutions might also want the option to transfer all of their TFFR credit and participation to PERS. The actuary stated that should this transfer option be expanded to include TFFR members from other state agencies, the amount of potential loss would increase.

TFFR is not in a position to determine whether or not other state employed teachers or administrators might prefer being treated as a "teacher" or a "state employee" with regard to their salary, benefits, and retirement plan participation. However, we recognize that it is certainly a possibility that employees might request a change if they feel it would benefit them.

- **Actuarial Impact of CTE Transfer**

SB 2413 allows employees of the Department of Career and Technical Education to transfer their retirement account and future participation to PERS. According to the fund's actuary (March 15, 2005 letter), this bill results in a potential small loss of about \$82,000 which is considered to be an immaterial amount. But when combined with the DPI transfer loss in 2003 (approximately \$129,000), the total cost to TFFR increases. Bit by bit, these transfers reduce the active member population over which the cost of funding the TFFR plan are spread. Due to declining student enrollment, school closures and consolidations, the TFFR active member population is already decreasing. SB 2413 potentially removes a few more.

While the TFFR Board has not had an opportunity to discuss the provisions of SB 2413, the Board has indicated that it does not support any proposals that have the potential for negative financial impact. Consequently, I believe the Board would not be in favor of this bill due to its small, but growing, actuarial impact on the TFFR plan.



**GABRIEL, ROEDER, SMITH & COMPANY**  
Consultants & Actuaries

5605 N. MacArthur Blvd. • Suite 870 • Irving, Texas 75038-2631 • 469-524-0000 • fax 469-524-0003

March 15, 2005

Ms. Fay Kopp  
Deputy Executive Director  
North Dakota Retirement & Investment Office  
P.O. Box 7100  
Bismarck, ND 58507-7100

Dear Fay:

**Subject: Actuarial Impact of CTE Transfers**

As requested, we have analyzed the effect if all of the active TFFR members employed by the Department of Career and Technical Education (CTE) transfer to PERS. This has been proposed by a draft bill, using the same transfer methodology as in the DPI transfer. This would be a transfer of the actuarial present value (APV) of the member's accrued benefit based on current final average compensation and current service, or if larger, his or her employee contribution account (including interest).

### Background

Sixteen employees of Department of Career and Technical Education are active members of TFFR, and we prepared our analysis under the assumption that all 16 would elect to transfer to PERS, as permitted by the proposed bill. For each member who elects to transfer, TFFR would transfer to PERS the larger of (i) the employee's account balance (member contributions plus interest), or (ii) the actuarial present value (APV) of the member's accrued benefit.

The bill does not indicate how to determine the APV, but based on decisions made during the DPI transfer, and the recent experience studies that we did for TFFR, we have used the following assumptions:

Interest rate	8.00% per annum, compounded annually
Post-retirement mortality	UP-94 mortality tables (males set back three years, females set back two years)
Retirement	When first eligible for unreduced retirement, assuming member remains in service
Other pre-retirement decrements	None

In preparing our calculations, we relied on the data provided with your e-mail sent on March 11, 2005. Our calculations resulted in an anticipated transfer of assets equal to \$2,380,177, as of June 30, 2004. Because the actual transfer will be around August 2005, the actual transfer amount would be approximately \$2,600,000.

#### **Effect on TFFR**

The net impact of transferring these members from TFFR to PERS is the difference in future liability versus future assets. This is equal to:

- The APV of all future benefits for the 16 transfers (\$2,958,150), minus
- The APV of future 7.75% member contributions for those 16 transfers (\$329,767), minus
- The APV of future 7.75% employer contributions for those 16 transfers (\$329,767), minus
- The assets transferred to PERS (\$2,380,177)

If this amount is positive, TFFR is better off on a net basis. If it is negative, TFFR is worse off. The results of this analysis in this case is that TFFR is worse off by \$81,561 under this asset-transfer procedure. This is illustrated in the attached Exhibit.

Actuaries often use the terms 'actuarial gain' or 'actuarial loss' as a measure of the change in the unfunded actuarial accrued liability (UAAL). The use of the term in the analysis above, however, is intended to be broader. If we had just focused on the impact on the UAAL, then for TFFR, removing these CTE employees and transferring the assets (with the member contribution account minimum) would produce a \$97,577 decrease in the UAAL, i.e., an actuarial gain. However, we believe this is misleading, because it does not factor in the mandated 7.75% member and employer contributions that TFFR could expect to receive.

Removing the CTE employees from TFFR decreases the UAAL, but it also increases the 30-year funding cost (from 10.88% to 10.90%), because TFFR would receive less employer and member contribution dollars in the future. For the same reason, there would also be a slight increase in the funding period, although it is now infinite.

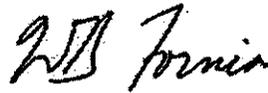
Although the transfer of these 16 employees does produce a slight loss for TFFR, in the context of the entire system—over \$2 billion in the present value of future benefits—we consider the loss immaterial.

Ms. Fay Kopp  
March 15, 2005  
Page 3

If you have any questions about our analysis, please feel free to call.

Sincerely,

Gabriel, Roeder, Smith & Company



William B. Fornia  
Senior Consultant

klb

Enclosure

c: Ms. Shelly A. Schumacher

J Christian Conradi

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## North Dakota Teachers' Fund for Retirement

### Impact on TFFR if 16 Current CTE Employees Transfer to PERS Measured as of June 30, 2004

1. Actuarial Present Value (APV) of Future Benefits	2,958,150
2.a. APV of Future Member Contributions (7.75%)	329,767
2.b. APV of Future Employer Contributions (7.75%)	329,767
3. Assets to be Transferred	2,380,177
4. Net Gain/(Loss) to TFFR [1.-2.a.-2.b.-3]	(81,561)