NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

EMPLOYEE BENEFITS PROGRAMS COMMITTEE

Wednesday, May 17, 2006
Harvest Room, State Capitol
Bismarck, North Dakota

Representative Matthew M. Klein, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Matthew M. Klein, Al Carlson, Joe Kroeber, Francis J. Wald; Senators Ray Holmberg, Ralph L. Kilzer, Carolyn Nelson

Members absent: Representative Ken Svedjan; Senator Karen K. Krebsbach

Others present: See attached appendix

It was moved by Representative Carlson, seconded by Senator Holmberg, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

RETIREMENT PROGRAMS

Teachers' Fund for Retirement

Ms. Fay Kopp, Deputy Executive Director, Retirement and Investment Office, reviewed Employee Benefits Programs Committee Bill No. 68 [70068.0100]. Ms. Kopp said the proposed bill draft affects the Teachers' Fund for Retirement (TFFR) program. She reviewed the major provisions of the bill draft, including provisions that:

1. Incorporate federal tax law changes to comply with Internal Revenue Service requirements.
2. Create a new tier (Tier 2) of reduced member benefits for TFFR members employed on or after July 1, 2007.
3. Increase employer retirement contribution rates by 1 percent, from 7.75 to 8.75 percent of active members' salaries. The employee contribution remains at 7.75 percent.
4. Modify normal retirement benefit eligibility for new members (Tier 2) to age 65 and five years of service or the Rule of 90 rather than the eligibility for current members (Tier 1) of age 65 and three years of service or the Rule of 85.
5. Modify the final average salary calculation for new members (Tier 2) to provide for a five-year final average salary calculation rather than the three-year final average salary calculation for current members (Tier 1).
6. Modify the vesting schedule for new members (Tier 2) to five years of service rather than the vesting schedule of three years of service for current members (Tier 1).
7. Modify the early retirement eligibility for new members (Tier 2) to age 55 and five years of service rather than age 55 and three years of service for current members (Tier 1).
8. Provide that if a refunded member returns to teaching after June 30, 2007, the teacher becomes a Tier 2 member.
9. Require employer contributions of 16.5 percent of a reemployed retiree's salary.
10. If a member elects a refund, the member waives any right to participate in the fund under the same membership provisions that existed when the refund was taken.
11. Modify the employer service purchase conditions for new members (Tier 2) to age 55 and five years of service and a Rule of 82 rather than age 55 and three years of service with a Rule of 77 for current members (Tier 1).

A copy of the testimony is on file in the Legislative Council office.

Representative Klein asked why TFFR is proposing that employers pay both the employee and the employer share of retirement contributions for retired teachers returning to work. Ms. Kopp said that based on information received from the Attorney General's office, it is not constitutional to require a retired teacher returning to work to pay the employee's share because at the time of the teacher's retirement, statutory provisions allowed the teacher to return to teaching without paying the retirement contribution.

Representative Kroeber asked for the estimated funding that will be generated by increasing the employer retirement contribution by 1 percent, from 7.75 to 8.75 percent. Ms. Kopp estimated annual active teachers' salaries statewide total approximately $400 million, therefore, a 1 percent increase may generate approximately $4 million per year for the fund.

At the request of Representative Carlson, Chairman Klein said the Attorney General's office will be invited to provide information to the committee at its next meeting regarding constitutional issues relating to retirement program changes.

Representative Klein reviewed Employee Benefits Programs Committee Bill No. 84 [70084.0100]. Representative Klein said the proposed bill draft increases the employer and employee contribution rate for the Teachers' Fund for Retirement by .25 percent, from 7.75 to 8 percent.

Representative Klein reviewed Employee Benefits Programs Committee Bill No. 67 [70067.0100].

Representative Klein said the proposed bill draft reduces the number of hours a retired member of the Teachers' Fund for Retirement may work each year and still receive retirement benefits under the Teachers' Fund for Retirement. Representative Klein said the proposed bill draft also limits the areas in which a retired member of the Teachers' Fund for Retirement may return to teach under the critical shortage area to only mathematics and science courses as determined by the Education Standards and Practices Board rather than any area determined by the Education Standards and Practices Board.

Representative Kroeber suggested the committee receive additional information on the number of retired teachers who are returning to work under these statutory provisions.

Mr. Wayne Kutzer, Director, State Board for Career and Technical Education, reviewed Employee Benefits Programs Committee Bill No. 73 [70073.0100]. Mr. Kutzer said the proposed bill draft allows employees of the State Board for Career and Technical Education currently participating in the Teachers' Fund for Retirement to participate in the Public Employees Retirement System.

Mr. Kutzer said that the bill draft provides that for those employees who choose to switch plans, the State Board for Career and Technical Education pay 2.85 percent of each employee's salaries and wages rather than 1 percent paid by other state agencies for the retiree health credit for a period of eight years. He said this will allow the retiree health credit fund to have the additional funding necessary to provide the retiree health credit for the potential 16 employees that may transfer from the Teachers' Fund for Retirement to the Public Employees Retirement System. Mr. Kutzer distributed a schedule showing that even with the additional 1.85 percent being paid by the agency during the first eight years, total retirement contributions made by the agency if the proposed bill draft is approved will be less than being paid currently as part of the Teachers' Fund for Retirement.

A copy of the chart is on file in the Legislative Council office.

In response to a question from Senator Holmberg, Ms. Kopp said that all employees of the Department of Public Instruction, when authorized by the Legislative Assembly to choose participation in either the Teachers' Fund for Retirement or the Public Employees Retirement System, chose to switch to the Public Employees Retirement System.

Public Employees Retirement System

Mr. Sparb Collins, Director, Public Employees Retirement System, reviewed Employee Benefits Programs Committee Bill No. 75 [70075.0100]. Mr. Collins said the purpose of the proposed bill draft is to provide benefit adjustments for the 2007-09 biennium for retirees of the Public Employees Retirement System, the judges' retirement system, and the Highway Patrolmen's retirement system. He said under provisions of the bill draft, a retiree of the Public Employees Retirement System defined benefit retirement plan will receive an additional one-time benefit equal to 75 percent of the retiree's monthly retirement benefit in either January 2007 or January 2008 if the total return of the fund is 9.16 percent or more in the preceding actuarial report. He said similar provisions are included for the Highway Patrolmen's retirement system. Mr. Collins said under the judges' retirement system, retirees would receive a benefit adjustment of 2 percent of their retirement benefit in January 2008 and January 2009. He said the increase will be paid only if the Public Employees Retirement System determines there is sufficient actuarial margin to pay for the increase.

Mr. Collins reviewed Employee Benefits Programs Committee Bill No. 76 [70076.0100]. Mr. Collins said the proposed bill draft provides technical corrections to the calculation of final average salary, allows an alternate payment method for those who delay taking retirement benefits after the normal retirement date, updates federal compliance provisions, and makes technical changes to sick leave conversion provisions.

Mr. Collins reviewed Employee Benefits Programs Committee Bill No. 80 [70080.0100]. Mr. Collins said the purpose of this proposed bill draft is to provide a 2 percent increase in retirement benefits to retirees of the Public Employees Retirement System and the Highway Patrolmen's retirement system in 2009 and fully pay for the increase within two years by increasing the employer contribution. Mr. Collins said under provisions of the bill draft, the employer contributions for employees under the Highway Patrolmen's retirement system will increase by 5 percent, from 16.7 to 21.7 percent. He said the employer contribution for employees of the Public Employees Retirement System will increase by 1 percent, from 4.12 to 5.12 percent in order to pay for the 2 percent increase over two years. Mr. Collins said this bill draft becomes effective on August 1, 2009.

Mr. Collins reviewed Employee Benefits Programs Committee Bill No. 77 [70077.0100]. Mr. Collins said the purpose of the proposed bill draft is to set up an automatic enrollment process for new employees for the deferred compensation program at $25 per month unless the employee elects not to participate.

Mr. Collins reviewed Employee Benefits Programs Committee Bill No. 79 [70079.0100]. Mr. Collins said the purpose of the proposed bill draft is to increase the retiree health credit from $4 to $5 and to pay for the increase by increasing the retiree health credit employer contribution by .15 percent, from 1 to 1.15 percent.

Mr. Brian Bergeson, attorney representing the North Dakota Association of Counties, reviewed, on behalf of Senator Krebsbach, the sponsor, Employee Benefits Programs Committee Bill No. 71 [70071.0100]. Mr. Bergeson said the proposed bill draft authorizes employees of the North Dakota Association of Counties to participate in the Public

Employees Retirement System, the uniform group insurance program, and the deferred compensation program.

In response to a question from Representative Klein, Mr. Bergeson said the Association of Counties has 29 employees that would be allowed to join the Public Employees Retirement System if the bill draft is approved by the Legislative Assembly.

Uniform Group Insurance Program

Mr. Collins reviewed Employee Benefits Programs Committee Bill No. 78 [70078.0100]. Mr. Collins said the proposed bill draft creates a tax-exempt trust into which an employee's unused annual leave and 10 percent of the employee's unused sick leave would be deposited into and used for qualified health care expenses during the employee's retirement. Mr. Collins said the bill draft increases the term life insurance policy provided for employees by the state from a minimum of $1,000 to a minimum of $5,000; allows a separate prescription drug plan to be provided for retirees due to the establishment of the federal Medicare Part D prescription drug program; allows the retiree health credit for employees and spouses, who are also state employees, to be combined; requires temporary employees to work a minimum of 20 hours per week and at least 20 weeks per year to be eligible to participate in the uniform group insurance program; and allows the temporary employee's employer to determine whether the temporary employee or the employer will pay the monthly premium for the health insurance coverage.

Representative Carlson asked the chairman to set aside Employee Benefits Programs Committee Bill No. 52 [70052.0100] relating to the uniform group insurance program which he had sponsored because he will be suggesting changes to the bill draft at a future meeting.

Mr. Jeffrey N. Nelson, Counsel, Legislative Council, reviewed Employee Benefits Programs Committee Bill No. 62 [70062.0100] on behalf of Representative Clara Sue Price, the sponsor of the bill draft. Mr. Nelson said the proposed bill draft authorizes public health districts to participate in the uniform group insurance program under the same terms and conditions as a state agency.

In response to a question from Representative Klein, Mr. Collins said although health districts are required to participate in the Public Employees Retirement System, they may choose whether to participate in the uniform group insurance program. Mr. Collins said the public health districts have been paying the blended state rate for health insurance premiums which is a combination of the single and family rate based on the number of single and family policies of all state agency employees. He said other political subdivisions pay a separate single rate and family rate. He said the Attorney General has determined that the public health districts are political subdivisions; therefore, the public health districts should be participating in the same manner as other political subdivisions. He said the public health districts are not in support of the proposed bill draft because it will be more costly for the majority of health districts to pay the separate single and family rates. He said the Retirement Board has decided to continue allowing the public health districts to pay the blended rate until after the 2007 legislative session.

Mr. Nelson reviewed Employee Benefits Programs Committee Bill No. 30 [70030.0200] on behalf of Senator Tim Mathern, the sponsor of the bill draft. Mr. Nelson said the proposed bill draft expands the uniform group insurance program to allow participation by members of the North Dakota National Guard.

Mr. Nelson reviewed Employee Benefits Programs Committee Bill No. 31 [70031.0100] on behalf of Senator Mathern, the sponsor of the bill draft. Mr. Nelson said the proposed bill draft expands the uniform group insurance program to allow participation by permanent employees of nonprofit organizations exempt from federal taxes under Section 501(c)(3) of the Internal Revenue Code.

Mr. Nelson reviewed Employee Benefits Programs Committee Bill No. 32 [70032.0100] on behalf of Senator Mathern, the sponsor of the bill draft. Mr. Nelson said the proposed bill draft expands the uniform group insurance program to allow participation by permanent employees of private sector employers in the state employing 50 or fewer employees.

Mr. Nelson reviewed Employee Benefits Programs Committee Bill No. 100 [70100.0100] on behalf of Senator Mathern, the sponsor of the bill draft. Mr. Nelson said the proposed bill draft expands the uniform group insurance program to allow participation by permanent employees of private sector employers in the state, by temporary employees of private sector employers, and to other residents of the state who do not have health insurance coverage through a private insurer or through a public benefits plan provided by a governmental entity.

State Investment Board

Mr. Steve Cochrane, Executive Director, Retirement and Investment Office, reviewed Employee Benefits Programs Committee Bill No. 82 [70082.0100]. Mr. Cochrane said that although the Retirement and Investment Office plans to change the proposed bill draft, its intent is to clarify the investment powers of the State Investment Board in order to meet more stringent requirements of investment brokers.

Mr. Doug Vannurden, State Board for Career and Technical Education, commented on bill draft No. 73 allowing employees of the board to participate in the Public Employees Retirement System. Mr. Vannurden encouraged the committee to support the bill draft and said that teachers employed by the State Board for Career and Technical Education provide services more similar to other state employees than to teachers because they are not actively involved in teaching like teachers employed by other state agencies, such as the School for the Deaf, North Dakota Vision Services - School for the Blind, Youth Correctional Center, and the Division of Independent Study.

The committee recessed for lunch at 12:00 noon and reconvened at 1:00 p.m.

STATE EMPLOYEE COMPENSATION STUDY

Mr. Ken Purdy, Compensation Manager, Human Resource Management Services, provided information on significant classified state employee turnover by job type and by agency during the first year of employment. Mr. Purdy said in 2005, of the 123 employees who left state employment during their first year of employment, 57, or 46 percent, were in social services-related jobs; 16, or 13 percent, in medical or health-related jobs; 15, or 12 percent, in miscellaneous administrative positions; and the remaining 35, or 28 percent, in other jobs.

Mr. Purdy said the agencies in which most of the employees who left during the first year were located include the Department of Human Services with 60 percent, the Veterans Home with 9 percent, and Job Service North Dakota with 7 percent.

In response to a question from Representative Klein, Mr. Dean Mattern, Human Resources Director, Department of Human Services, said the majority of social services-related employees leaving during the first year are lower-paid, direct-care staff at the State Hospital and the Developmental Center.

In response to a question from Senator Nelson, Mr. Mattern said it is costly to train these employees and if the employee leaves during the first year, there is minimal benefit received by the department.

Mr. Purdy said the following state agencies employ a human resource director--Bank of North Dakota, Department of Corrections and Rehabilitation, Department of Public Instruction, State Department of Health, Department of Human Services, Information Technology Department, Job Service North Dakota, and Department of Transportation.

Mr. Purdy said the following agencies have functional human resource officers--Adjutant General, Attorney General, Game and Fish Department, Highway Patrol, Parks and Recreation Department, Tax Commissioner, and State Water Commission.

Mr. Purdy presented the following consensus items discussed by human resources personnel of state agencies:

1. It is important to continue state funding of health insurance premiums.
2. State employee salaries lag market pay significantly and need to be addressed before a pay for performance compensation system is implemented.
3. Pay range midpoints should be adjusted to 95 percent of market, possibly through transitional steps at the minimum of the ranges.

Mr. Purdy said that a pay range consisting of the midpoint at 95 percent of market would have a maximum salary calculated at 25 percent more than the midpoint and a minimum salary that is 25 percent less than the midpoint. He said based on current salaries, if the salary range midpoints were set at 95 percent of market, 763 employees' salaries would be at less than the minimum of the salary range resulting in the need for an additional $900,000 per year of additional salary funding to increase those employees' salaries to the minimum of the salary ranges.

Mr. Purdy said if the minimum of the salary range was set at 30 percent less than the midpoint, 184 employees' salaries would be lower than the salary range minimum and an additional $200,000 per year of additional salary funding would be needed to increase these employees' salaries to the minimum of the salary range.

Mr. Purdy provided information on options for the development of a pay for performance compensation system for state employees. Mr. Purdy said two models could be considered. He said under the first model, performance increases may be provided as a percentage of salary followed by a flat equity dollar increase. Under the second model, he said, a percentage equity increase may be provided followed by a flat dollar amount for a performance increase. A copy of the report is on file in the Legislative Council office.

Mr. Purdy provided sample performance evaluation reports from the Department of Corrections and Rehabilitation, Department of Transportation, State Department of Health, Department of Human Services, and the Information Technology Department. A copy of the report is on file in the Legislative Council office.

Representative Carlson asked for the effect on the compensation system of agencies providing additional salary increases from savings made available from vacant positions. Mr. Purdy said that although agencies may at times provide additional increases, an employee's salary must remain within the assigned salary range. Mr. Purdy said when the Legislative Assembly provided market equity salary pools to the Office of Management and Budget, it allowed salary adjustments to be made for employees in agencies who were lower in their salary ranges compared to other agencies.

Mr. Tom Freier, Department of Transportation, commented on the department's "career pathing" plan and "performance-driven" pay system.

Mr. Freier said the department will be fully implementing its "career pathing" plan by May 31, 2006. He said the plan provides career opportunities within an organization which meet organizational needs and offer promotion and professional growth for employees. Mr. Freier provided examples of career pathing options for employees of the department. He said the department believes this plan will assist in motivating and retaining employees.

Mr. Freier suggested a model for performance increases. He said the model is based on each employee's performance and salary within the pay range. He said performance increases should be provided in addition to any general salary increase to reward employees for their performance and advancing the employees within their salary range. A copy of the report is on file in the Legislative Council office.

In response to a question from Senator Kilzer, Mr. Freier said the department does provide financial assistance for its employees to obtain additional education relating to their job. He said the department budgets approximately $60,000 per biennium for scholarships. He said the maximum amount an individual may receive is $10,000.

Mr. Wesley Matthews, Human Resources Director, Minot State University, presented a report of the State Board of Higher Education's Committee on Employee Compensation. A copy of the report is on file in the Legislative Council office. Mr. Matthews expressed concern regarding the salary levels of University System employees. He said most staff leave the University System due to salary issues. He said University System salaries are less than market salaries which make it difficult to recruit new employees and retain existing employees.

Mr. Matthews presented a schedule showing North Dakota ranking near the bottom of all states in average salaries for university employees.

Representative Wald expressed concern regarding the schedule indicating North Dakota's low ranking in average salaries. He said in other reports, North Dakota ranks ninth in the nation in per capita spending on higher education. He said the report cited by the University System also does not consider the lower cost of living in North Dakota compared to the majority of other states.

In response to a question from Representative Carlson, Mr. Matthews said the higher education compensation committee is recommending:

1. A total combined salary increase of at least 7.4 percent for faculty and 5.4 percent for staff at higher education institutions for each year of the 2007-09 biennium.
2. The state continue to fund 100 percent of the employee health insurance premiums with no changes to deductibles or copayments.
3. The state increase the retirement plan contribution from 10 to 12.5 percent and the employee contribution from 2 to 2.5 percent for employees with over 15 years of service.

Mr. Matthews said the State Board of Higher Education, in considering these recommendations, is recommending a salary increase of 5 percent for each year of the 2007-09 biennium.

Ms. Ardyth Pfaff, Human Resources Director, Information Technology Department (ITD), provided information on ITD's pay for performance compensation system. Ms. Pfaff reviewed the department's 2005 performance measures and distributed a copy of the department's annual report. She said it is important for pay for performance compensation systems to link employee goals to agency goals. Ms. Pfaff distributed a report explaining a model of linking performance increases to an employee's position in the employee's assigned salary range. A copy of the reports is on file in the Legislative Council office.

Ms. Arvy Smith, Deputy State Health Officer, State Department of Health, commented on compensation issues of the State Department of Health. Ms. Smith said the State Department of Health's highest turnover rate is with employees with 5 to 10 years of service. She said the growth of the energy industry in North Dakota is making it more difficult to recruit and retain employees.

Ms. Smith said turnover is costly both in terms of the cost of recruiting and training the new employee but also in the time spent by other staff performing duties while the position is vacant and in training the new employee.

Ms. Smith said the fully paid health insurance premium benefit is very important, especially for lower-paid staff. A copy of the report is on file in the Legislative Council office.

Mr. Mattern reported on the Department of Human Services employee turnover rate. He said the department had a 13.4 percent turnover rate in 2005 compared to 12.4 percent in 2004 and 12.2 percent in 2003.

Ms. Jodee Buhr, Executive Director, North Dakota Public Employees Association, commented on state employee compensation issues. Ms. Buhr said the association believes it is very important for the state to retain the fully paid health insurance premium for state employees. She suggested the state address the level of base pay for employees before implementing a pay for performance compensation system.

Ms. Buhr said that because it is difficult for agencies to recruit new employees at less than market salaries, it causes pay equity concerns when a new employee may be paid a salary similar to or higher than coworkers doing the same type of job with more experience.

Regarding pay for performance, Ms. Buhr said that agencies have the ability to implement these types of systems; however, funding is generally not available. Ms. Buhr also expressed concern that the growth of the energy industry in North Dakota will make it more difficult for the state to recruit and retain employees.

COMMITTEE DISCUSSION

Representative Carlson suggested that the Public Employees Retirement System and the Teachers' Fund for Retirement gather the cost of each actuarial review for the bill drafts being considered by the committee and report the information to the committee at a future meeting.

It was moved by Senator Nelson, seconded by Representative Kroeber, and carried on a roll call vote that the Employee Benefits Programs Committee assume jurisdiction over the 17 Employee Benefits Programs Committee bill drafts submitted to and reviewed by the committee and that the State Investment Board, Teachers' Fund for Retirement Board, and Public Employees Retirement System Board, as appropriate, be requested to obtain an actuarial analysis of each bill draft or, if a bill draft does not have an actuarial effect on a fund, to provide any other information that would assist the committee in making a recommendation concerning the bill draft. Representatives Klein, Kroeber, and Wald and Senators Holmberg, Kilzer, and Nelson voted "aye." Representative Carlson voted "nay."

Chairman Klein announced the next meeting will be tentatively scheduled for Wednesday, June 21, 2006, in Bismarck. The committee adjourned subject to the call of the chair at 3:15 p.m.

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ATTACH:1