NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

EMPLOYEE BENEFITS PROGRAMS COMMITTEE

Wednesday, June 21, 2006
Harvest Room, State Capitol
Bismarck, North Dakota

Representative Matthew M. Klein, Chairman, called the meeting to order at 10:00 a.m.

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

Others present: See attached appendix

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

RETIREMENT PROGRAMS

Mr. Scott Miller, Assistant Attorney General, Attorney General's office, presented information on constitutional issues relating to retirement program changes included in the bill drafts submitted to the committee. Mr. Miller distributed a sample teaching contract and identified provisions making reference to retirement benefits included as part of the contract.

Mr. Miller said both the federal and state constitutions include a contract clause which precludes the state from passing laws impairing the obligation of contracts.

Mr. Miller said a teacher fulfills the teacher's obligation under the contract by teaching pursuant to the terms of the contract; therefore, the state has an obligation to fulfill its contract provisions by providing the retirement benefits outlined in the contract.

Mr. Miller believes the North Dakota Supreme Court would follow the "California Rule" if the court would be asked to decide the constitutionality of retirement benefits changes. He said the "California Rule" provides that a governing body may make retirement plan changes but any change that disadvantages an employee must be accompanied by comparable advantageous changes. Mr. Miller said that any law passed by the Legislative Assembly is presumed to be constitutional unless four of the five Supreme Court justices determine it to be unconstitutional. He said the Attorney General would defend any law passed by the Legislative Assembly.

Mr. Miller said provisions included in the bill drafts submitted to the committee reducing the number of hours retired teachers are eligible to teach and still receive retirement benefits would be problematic under the "California Rule." He said provisions included in the bill drafts making changes to critical shortage areas for teachers could probably be made because the current law relating to critical shortage areas is not specific to the types of areas a teacher may return to teach. However, Mr. Miller said that if a specific course is identified as a critical shortage area in statute, it may be problematic if a future Legislative Assembly would wish to change the specific course identified.

Mr. Miller said the provisions included in the bill drafts changing contribution rates for teachers would be problematic under the "California Rule" for current members; however, the contribution rates may be changed for new members entering the system.

In response to a question from Representative Svedjan, Mr. Miller said when multiplier changes are made, only retirement benefits for those retirees who retire under that multiplier are affected. He said benefits of teachers who retired under a previous multiplier are not changed. A copy of the report is on file in the Legislative Council office.

In response to a question from Representative Wald, Mr. Miller said that although oral employment contracts are more difficult to enforce, they are still a contract.

Ms. Fay Kopp, Deputy Executive Director, Retirement and Investment Office, provided information on the number of retired teachers returning to work under various statutory provisions. Since 1965 or possibly earlier, Ms. Kopp said a retiree under the Teachers' Fund for Retirement was allowed to earn the maximum earnings amount allowed by Social Security and continue to receive Teachers' Fund for Retirement benefits. She said statutory changes were made in 1997, 2001, and 2003 changing the limit from the Social Security maximum to a maximum number of hours that the retiree may work each year and not lose benefits.

Ms. Kopp said for the 2005-06 school year, 157 retirees returned to work part-time under the general rule which sets the maximum number of hours the retiree may work in a year.

In response to a question from Representative Klein, Ms. Kopp said the courses taught by most retirees who return to teach include special education, science, and English. She said most retirees return under a nine-month contract.

Ms. Kopp said the 1997 Legislative Assembly authorized retirees to return to work full-time in critical shortage areas as determined by the Education Standards and Practices Board. Ms. Kopp said that for the 2005-06 school year, the Education Standards and Practices Board identified all areas of teaching as critical shortage areas, except elementary education and physical education. Ms. Kopp said nine retirees returned to work under the critical shortage area provision, including four in music education and two in English. A copy of the report is on file in the Legislative Council office.

Ms. Janet Placek Welk, Executive Director, Education Standards and Practices Board, provided information on the process used by the board to determine critical shortage areas for teachers in the state.

Ms. Placek Welk said the board primarily determines critical shortage areas based upon the ratio of regularly licensed teachers in the state who are qualified for the position to the number of schools with open positions requesting alternative access licensure. In cases where near shortages areas exist, she said, the board gives additional consideration to whether the hiring school has made a diligent effort to attract and hire regularly licensed teachers.

Ms. Placek Welk said to help document shortage areas, the board reviews:

1. Program completers by college or university;
2. United States Department of Education shortage area designations;
3. The number of classrooms starting school without a teacher as documented by the Department of Public Instruction; and
4. School districts requesting alternate access licensure.

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

Mr. Sparb Collins, Executive Director, Public Employees Retirement System (PERS), provided information on preliminary estimates of health insurance premium costs for the 2007-09 biennium.

Mr. Collins said the board is currently estimating a 10 percent **annual increase** in costs of health insurance under the PERS plan during the 2005-07 biennium. He said based on this trend, the current monthly premium of $553.94 would increase by $146 to $699.94 per month, a 26.4 percent increase. He said the premium increase for the 2005-07 biennium was 13.3 percent. He said the board is currently not projecting any available plan surplus which could be used to reduce the monthly premium. For the 2005-07 biennium, he said, the available surplus was used to reduce the premium by $24.52 per month. A copy of the report is on file in the Legislative Council office.

In response to a question from Representative Carlson, Mr. Collins said the plan provides maximum lifetime coverage for an individual of $2 million.

In response to a question from Representative Wald, Mr. Collins said the estimated cost of the $146 per month premium increase for the 2007-09 biennium excluding higher education is $27.6 million, of which $12.7 million is from the state general fund and $14.9 million of other funds.

Ms. Bev Nielson, North Dakota School Boards Association, commented on the Teachers' Fund for Retirement. Ms. Nielson said she does not believe the nine teachers who returned to work full-time under the critical shortage area statutory provision are having a negative impact on the actuarial soundness of the Teachers' Fund for Retirement. She said it is important for school districts to have flexibility in how they fill certain positions that are difficult to fill. She said the state requires schools to offer certain courses. If the school is unable to hire a teacher to fill a required position, she said, this is a critical situation for the school. Therefore, she suggested the committee not limit a school's ability to hire full-time teachers under the critical shortage area provision.

Regarding retirees returning to work under the general rule on a part-time basis, Ms. Nielson said it is important for school districts to have the ability to hire part-time teachers as the number of students declines, especially in rural areas of the state where it is difficult to recruit part-time teachers. She said it is important for school districts to have the ability to hire these retirees on a part-time basis.

Ms. Nielson asked that the Legislative Assembly, if it increases the employer's share of retirement contributions, not also mandate minimum teacher salary increases.

Mr. Doug Johnson, North Dakota Council of Educational Leaders, expressed support for increasing retirement benefits for members of the Teachers' Fund for Retirement. He suggested the state continue to offer the defined benefits plan rather than a defined contribution plan and to allow retirees to return to teach as authorized under current law.

The committee recessed for lunch at 12:10 p.m. and reconvened at 1:00 p.m.

STATE EMPLOYEE COMPENSATION STUDY

Ms. Laurie Sterioti Hammeren, Director, Human Resource Management Services, commented on employee compensation issues within the Office of Management and Budget. Ms. Sterioti Hammeren said the Office of Management and Budget overall turnover rate is 6 percent; however, within the Facility Management Division, the turnover rate is 12 percent. She said the majority of employees leave Facility Management for salary reasons. She said a custodian's beginning salary is $1,250 per month.

Ms. Sterioti Hammeren said the Office of Management and Budget currently has 16 employees eligible to retire and by July 2009 will have 28 employees eligible for retirement.

Ms. Sterioti Hammeren said that salaries of the department's trades employees are not equitable with similar positions of private sector employers, Bismarck State College, or the Bismarck school system.

In response to a question from Representative Carlson, Ms. Sterioti Hammeren said that in order to address salary concerns of lower-paid employees, the Legislative Assembly should provide for a minimum salary increase as part of a compensation package. She also stressed the importance of increasing the salary range midpoints to 95 percent of market.

Mr. Eric Hardmeyer, President, Bank of North Dakota, provided information on employee compensation issues of the Bank of North Dakota.

Mr. Hardmeyer said the Bank staff totals approximately 175 full-time equivalent positions, including 24 unclassified positions. He said being a part of state government limits the Bank's flexibility to develop and manage a compensation package that competes with private financial institutions. He said typical salary increases range from 7 to 10 percent per year at private financial institutions.

Mr. Hardmeyer said a recent salary comparison of the Bank's unclassified employees indicated that the salaries of these employees were 22 percent below market-level salaries.

Mr. Hardmeyer said since 2003 the Bank has experienced 17 resignations. He said entry-level general office positions are generally filled with applicants from the Bismarck-Mandan area, while hiring paraprofessional, professional, manager, and executive-level positions, the Bank competes locally, statewide, regionally, and nationally.

Mr. Hardmeyer said currently the Bank has 12 employees eligible to retire under the Rule of 85 and during the 2007-09 biennium another 10 employees will become eligible.

Mr. Hardmeyer made recommendations for the Legislative Assembly to consider in developing a compensation system for state employees. A copy of the report is on file in the Legislative Council office.

In response to a question from Representative Wald, Mr. Hardmeyer said the Bank would be in a better position to provide competitive salaries if all its employees were unclassified.

Mr. Dean Mattern, Human Resources Director, Department of Human Services, presented information on employee compensation issues of the Department of Human Services. Mr. Mattern said the state's compensation system is effective in evaluating jobs, assigning jobs to a classification and grade, and for assuring that all jobs in the state are compared to each other using the same criteria across all agencies. He said the system ensures equality among state jobs. He said concerns with the system include:

1. Inadequate funding to allow for competitive salaries with other employers; and
2. Internal equity issues resulting from the inability of agencies to move employees through their assigned salary ranges.

Mr. Mattern said most organizations move employees to or beyond the midpoint of their salary range within six years of employment. He said currently 63 percent of state employees are below the midpoint of the salary range. He said the average length of employment for state employees is 13 years. He said the Department of Human Services has 75 percent of its employees below the midpoint of their assigned salary range.

Regarding turnover, Mr. Mattern said the State Hospital turnover rate for 2005 was 13.7 percent, the majority of which were mental health care specialists and registered nurses. At the Developmental Center, he said, the 2005 turnover rate was 17.3 percent with the majority of turnover relating to direct training technicians.

Mr. Mattern said the Southeast Human Service Center had a 2005 turnover rate of 15.5 percent, the majority of the turnover relating to mental health case managers and office assistants.

Mr. Mattern said trends that are of concern to the department relating to the recruiting of new employees include:

1. From 2004-05 the department experienced a 24 percent reduction in the number of applicants for job openings; and
2. Recently, 27 percent of job offers made by the department to job applicants have been refused.

Regarding potential retirements, Mr. Mattern said that based on eligibility, the department could experience an 18 percent turnover rate from retirement alone over the next three years.

Mr. Mattern said over 60 percent of the department's staff are professionals, which the department recruits in a regional market.

Regarding salary equity issues within the department, Mr. Mattern said the department avoids hiring new employees at a higher salary than existing staff in similar positions. He said while this policy has minimized internal inequities, it has resulted in the Department of Human Services salaries being lower as compared to other agencies.

Mr. Mattern made suggestions for the Legislative Assembly to consider to address compensation issues. A copy of the report is on file in the Legislative Council office.

Representative Svedjan asked that the committee receive information on the projected cost of increasing salary range midpoints to 90 percent of market, 95 percent of market, and 100 percent of market. Chairman Klein asked Human Resource Management Services to provide this information to the committee at its next meeting.

Ms. Irish Linnertz, Department of Public Instruction, commented on employee compensation issues of the Department of Public Instruction. Ms. Linnertz said the department has developed a fair and equitable salary system for its employees within the agency; however, when compared to the private sector or to other state agencies, the department's employees are not paid equitably. She said hiring individuals for the department's education classifications continues to be the most difficult area of recruitment, especially positions that require a master's degree and three to five years of administrative experience.

Ms. Linnertz said the department's Bismarck staff experienced an 11 percent turnover rate during the past year.

Regarding retirements, Ms. Linnertz said that although several of the department's top management staff meet the Rule of 85, the department is not aware of any that plan on retiring in the foreseeable future.

Ms. Linnertz made suggestions for the Legislative Assembly to consider to address compensation issues. A copy of the report is on file in the Legislative Council office.

Ms. Linda Houfek, Human Resources Director, Department of Corrections and Rehabilitation, provided information on employee compensation issues of the Department of Corrections and Rehabilitation. Ms. Houfek said 87 percent of the Department of Corrections and Rehabilitation staff salaries are below the midpoint of their assigned salary ranges. She said the department's turnover rate for last year was 11 percent, the majority of which relates to correctional officers, treatment staff, and administrative support staff.

By June 2009, Ms. Houfek said 63 employees of the department will be eligible for retirement.

Regarding the market in which the department competes for employees, Ms. Houfek said administrative support staff, service, and maintenance staff are recruited at the local level, while correctional officers, parole officers, juvenile direct-care staff and community case managers, teachers, treatment staff, information technology staff, skilled trades, and upper-level managers are recruited at a statewide level. She said medical professionals, some treatment staff, and upper-level managers are recruited at a regional level, while medical professionals and division directors are recruited at a national level.

Ms. Houfek said the department does have some internal equity concerns among a number of its positions, including correctional officers, parole officers, and community juvenile correction specialists. Ms. Houfek said the salaries of the department's employees continue to be less than those paid by other state agencies as well as other employers in the area.

Ms. Houfek made suggestions for the Legislative Assembly to consider to address compensation issues. A copy of the report is on file in the Legislative Council office.

Mr. Kerry Olson, Human Resources Director, State Department of Health, provided information on employee compensation issues of the State Department of Health.

Mr. Olson said the department's 2005 turnover rate was 12.8 percent. He said occupations experiencing the highest turnover include health facility surveyors, environmental engineers and scientists, program administrators, laboratory professionals, and epidemiologists. He said a number of employees leaving the department received salaries that were over $10,000 more per year in their new position.

Currently, Mr. Olson said 6 percent of the department's employees are eligible for retirement. During the 2007-09 biennium, 13 percent will be eligible.

Mr. Olson said the environments in which the department competes for employees include:

- Local level - Office support, accountants, environmental engineers, environmental scientists, nurses, health facility surveyors, laboratory professionals, food and lodging inspectors, chemists, program administrators, and epidemiologists.
- Statewide level - Accountants, environmental engineers, environmental scientists, nurses, health facility surveyors, laboratory professionals, food and lodging inspectors, chemists, program administrators, and epidemiologists.
- Regional - Environmental engineers, environmental scientists, nurses, health facility surveyors, laboratory professionals, chemists, program administrators, and epidemiologists.
- National - Environmental engineers and program administrators.

Mr. Olson said the department has internal equity issues for environmental scientists and has state salary equity issues in the positions of environmental engineers, nurses, and human service program administrators.

Mr. Olson said although the state's compensation system provides many tools, improvements are needed to keep pace with market demands, including:

1. Adjust pay range midpoints to 95 percent of market.
2. Adjust compensation levels to reflect market demand.
3. Provide additional funding to eliminate pay equity issues among the agencies.

Mr. Olson said the current system provides agencies with the tools and flexibility needed to address performance measurement, performance increases and bonuses, and poor performance.

Mr. Olson made suggestions for the Legislative Assembly to consider to address compensation issues. A copy of the report is on file in the Legislative Council office.

Mr. Tom Freier, Deputy Director, Department of Transportation, provided information on employee compensation issues of the Department of Transportation. Mr. Freier said although the state's compensation system provides much functionality, the pay range midpoints should more closely reflect market salaries. He said salary compression within ranges needs to be addressed.

Mr. Freier provided examples of engineering position salaries within the department being less than the average salary of engineers based on a survey of central states' salaries.

Mr. Freier said the department experiences the most turnover in the following occupations--engineering technicians, regulatory, information technology, and transportation technicians.

Regarding retirements, Mr. Freier said of the department's 1,025 employees, 153 are currently eligible for retirement and within five years, an additional 169 will be eligible for retirement.

Mr. Freier said when recruiting employees, the department competes locally with oil companies and cities and counties, statewide with private engineering firms and energy and utility companies, and at a regional level primarily with the state of Minnesota.

Mr. Freier made suggestions for the Legislative Assembly to consider to address compensation issues. A copy of the report is on file in the Legislative Council office.

Ms. Ardyth Pfaff, Human Resources Director, Information Technology Department, provided information on employee compensation issues of the Information Technology Department. Ms. Pfaff reviewed the characteristics of an effective compensation program, including how the plan addresses internal equity, external competitiveness, affordability, flexibility, and the ability of the system to meet each organization's unique needs.

Ms. Pfaff said job types within the Information Technology Department experiencing the highest turnover include programmer analysts/application developers, systems administrators, business analysts, and project managers.

During 2005, Ms. Pfaff said 18 employees left employment of the Information Technology Department for a number of reasons, including salary issues, retirements, and career changes.

Ms. Pfaff said that currently eight employees of the department are eligible for retirement and by June 2009 an additional eight employees will be eligible.

Ms. Pfaff provided information on the recruitment area for potential employees of the Information Technology Department which included local, state, regional, and national markets.

Ms. Pfaff said concerns of the department, when hiring new employees, is that the competitive salary needed to attract a new employee is similar to or more than an existing employee's salary who has a number of years of experience with the department.

Ms. Pfaff made suggestions for the Legislative Assembly to consider to address compensation issues. A copy of the report is on file in the Legislative Council office.

Representative Carlson asked for copies of the Human Resource Management Services administrative guidelines relating to employee compensation and for information on salary comparisons, including fringe benefits, within the competitive markets for state employees.

Ms. Sheila Vetter, Human Resources Director, Job Service North Dakota, provided information on employee compensation issues of Job Service. Ms. Vetter said Job Service receives 98 percent of its budget from federal funds. She said because of federal budget reductions, the department has had to eliminate approximately 60 positions statewide. During 2006, she said, 56 positions were eliminated--43 through attrition and 13 as a result of a reduction in force.

Ms. Vetter said in program year 2005, the department had a turnover of 62 employees or 18 percent. Of the 62 employees, she said, 24 left for other employment, 19 were due to retirements, 13 were the result of the reduction in force, 3 relocated, and the remaining 3 were for other reasons.

Ms. Vetter said currently 28 employees, or 9 percent of the department's workforce, are eligible for retirement.

Ms. Vetter said Job Service is experiencing internal equity issues when hiring new employees, especially in its customer service staff because of the higher salary levels needed to attract new employees.

Ms. Vetter said the department generally competes statewide for employees. She said Job Service has 17 offices across the state.

Ms. Vetter suggested the state develop a consistent salary administration strategy from year to year. A copy of the report is on file in the Legislative Council office.

The committee adjourned subject to the call of the chair at 4:10 p.m.

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Allen H. Knudson
Assistant Legislative Budget Analyst and Auditor

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Jim W. Smith
Legislative Budget Analyst and Auditor

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