EMPLOYEE BENEFITS PROGRAMS COMMITTEE

The Employee Benefits Programs Committee has statutory jurisdiction over legislative measures that affect retirement, health insurance, and retiree health insurance programs of public employees. Under North Dakota Century Code (NDCC) Section 54-35-02.4, the committee is required to consider and report on legislative measures and proposals over which it takes jurisdiction and which affect, actuarially or otherwise, retirement programs and health and retiree health plans of public employees. Section 54-35-02.4 also requires the committee to take jurisdiction over any measure or proposal that authorizes an automatic increase or other change in benefits beyond the ensuing biennium which would not require legislative approval and to include in the report of the committee a statement that the proposal would allow future changes without legislative involvement. The committee is allowed to solicit draft measures from interested persons during the interim and is required to make a thorough review of any measure or proposal it takes under its jurisdiction, including an actuarial review. A copy of the committee's report must accompany any measure or amendment affecting a public employee's retirement program, health plan, or retiree health plan which is introduced during a legislative session. The statute provides that any legislation enacted in contravention of these requirements is invalid and benefits provided under that legislation must be reduced to the level in effect before enactment. In addition, Section 54-52.1-08.2 requires the committee to approve terminology adopted by the Public Employees Retirement System (PERS) Retirement Board to comply with federal requirements; Section 18-11-15 requires the committee to receive notice from a firefighters' relief association concerning service benefits paid under a special schedule.

Pursuant to NDCC Section 54-06-31, the Legislative Council assigned the committee the responsibility to receive periodic reports from the Office of Management and Budget Human Resource Management Services on the implementation, progress, and bonuses provided under state agency recruitment and retention bonus programs. The Legislative Council chairman also directed the committee to study employee benefits provided by state agencies which are not specifically authorized by law or if authorized by law are not consistent among agencies.

Committee members were Representatives Bette Grande (Chairman), Eliot Glassheim, Jim Kasper, Matthew M. Klein, and Joe Kroeber and Senators Ralph L. Kilzer, Karen K. Krebsbach, Curtis Olafson, and Harvey D. Tallackson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

CONSIDERATION OF RETIREMENT AND HEALTH PLAN PROPOSALS

The committee established April 1, 2008, as the deadline for submission of retirement, health, and retiree health proposals. The deadline provided the committee and the consulting actuary of each affected retirement, health, or retiree health program sufficient time to discuss and evaluate the proposals. The committee allowed only legislators and those agencies entitled to the bill introduction privilege to submit retirement, health, and retiree health proposals for consideration.

The committee reviewed each submitted proposal and solicited testimony from proponents, retirement and health program administrators, interest groups, and other interested persons.

Under NDCC Section 54-35-02.4, each retirement, insurance, or retiree insurance program is required to pay, from its retirement, insurance, or retiree health benefits fund, as appropriate, and without the need for a prior appropriation, the cost of any actuarial report required by the committee which relates to that program.

The committee referred every proposal submitted to it to the affected retirement or insurance program and requested the program authorize the preparation of actuarial reports. The PERS used the actuarial services of The Segal Company in evaluating proposals that affected retirement programs and the services of Gallagher Benefit Services, Inc., and Blue Cross Blue Shield of North Dakota in evaluating proposals that affected the public employees health insurance program. The Teachers' Fund for Retirement (TFFR) Board of Trustees used the actuarial services of Gabriel, Roeder, Smith and Company in evaluating proposals that affected the Teachers' Fund for Retirement.

The committee obtained written actuarial information on each proposal. In evaluating each proposal, the committee considered the proposal's actuarial cost impact; testimony by retirement and health insurance program administrators, interest groups, and affected individuals; the impact on state general or special funds and on the affected retirement program; and other consequences of the proposal or alternatives to it. Based on these factors, each proposal received a favorable recommendation, unfavorable recommendation, or no recommendation.

A copy of the actuarial evaluation and the committee's report on each proposal will be appended to the proposal and delivered to its sponsor. Each sponsor is responsible for securing introduction of the proposal in the 61st Legislative Assembly.

Teachers' Fund for Retirement

Former NDCC Chapter 15-39 established the teachers' insurance and retirement fund. This fund, the rights to which were preserved by Section 15-39.1-03, provides a fixed annuity for full-time teachers whose rights vested in the fund before July 1, 1971. The plan was repealed in 1971 when the Teachers' Fund for Retirement was established with the enactment of

Chapter 15-39.1. The plan is managed by the TFFR Board of Trustees.

The Teachers' Fund for Retirement became effective July 1, 1971. The state investment board is responsible for the investment of the trust assets in accordance with the asset allocation policy established by the TFFR Board of Trustees. The Retirement and Investment Office is the administrative agency for TFFR. The Teachers' Fund for Retirement is a qualified governmental defined benefit retirement plan. For Governmental Accounting Standards Board (GASB) purposes, it is a cost-sharing, multiple-employer public employee retirement system.

Every certified teacher of a public school in the state participates in TFFR. This includes teachers, supervisors, principals, and administrators. Noncertified employees, such as teacher's aides, janitors, secretaries, and drivers are not allowed to participate in TFFR. Eligible employees become members on the date of employment.

An active member contributes 7.75 percent of salary per year. The employer may "pick up" the member's assessments under Internal Revenue Code Section 414(h). The member's total earnings are used for salary purposes, including overtime, and including nontaxable wages under a Section 125 plan, but excluding certain extraordinary compensation, such as fringe benefits or unused sick or vacation leave.

The district or other employer that employs a member contributes 7.75 percent of the member's salary. Effective July 1, 2008, 0.5 percent of the member's salary was added to the employer contribution, making it 8.25 percent. However, the contribution will revert to 7.75 percent once the funded ratio reaches 90 percent, measured on the actuarial value of assets. Employees receive credit for service while members. A member also may purchase credit for certain periods, such as time spent teaching at a public school in another state, by paying the actuarially determined cost of the additional service. Special rules and limits govern the purchase of additional service.

Members who join TFFR by June 30, 2008, are Tier 1 members, while members who join after that date are Tier 2 members. If a Tier 1 member terminates, takes a refund, and later joins TFFR after June 30, 2008, that member is in Tier 2 after being reemployed. Final average compensation is the average of the member's highest three plan year salaries for Tier 1 members or five plan year salaries for Tier 2 members. Monthly benefits are based on one-twelfth of this amount.

Tier 1 members are eligible for a normal service retirement benefit at age 65 with credit for three years of service, or if earlier, when the sum of the member's age and years of service is at least 85--the Rule of 85. A Tier 2 member is eligible for a normal service retirement benefit at age 65 with credit of five years of service, or if earlier, when the sum of the member's age and years of service is at least 90--the Rule of 90. The monthly retirement benefit is 2.00 percent of final average compensation (monthly) times years of service. Benefits are paid as a monthly life annuity, with a guarantee that if the payments made do not exceed the members' contributions plus interest, determined as of the date of retirement, the balance will be paid in a lump sum to the member's beneficiary.

A Tier 1 member may retire early after reaching age 55 with credit for three years of service, while a Tier 2 member may retire early after reaching age 55 with credit for five years of service. In this event, the monthly benefit is 2.00 percent of final average compensation times years of service, multiplied by a factor that reduces the benefit 6 percent for each year from the earlier of age 65 or the age at which current service plus age equals 85 for Tier 1 members or 90 for Tier 2 members.

A member is eligible for disability retirement benefits provided the member has credit for at least one year of service. The monthly disability retirement benefit is 2.00 percent of final average compensation times years of service with a minimum 20 years of service. The disability commences immediately upon the member's retirement. Benefits cease upon recovery or reemployment. Disability benefits are payable as a monthly life annuity with a guarantee that, at the member's death, the sum of the member's contributions plus interest as of the date of retirement that is in excess of the sum of payments already received will be paid in a lump sum to the member's beneficiary. All alternative forms of payment (except for a nonlevel annuity designed to provide a level total income when combined with the member's Social Security benefit) and a partial lump sum option also are permitted in the case of disability retirement. Disability benefits are converted to a normal retirement benefit when the member reaches normal retirement age or age 65, whichever is earlier. A Tier 1 member with at least three years of service or a Tier 2 member with at least five years of service, who does not withdraw the member's contributions from the fund, is eligible for a deferred termination benefit. The deferred termination benefit is a monthly benefit of 2.00 percent of final average compensation times years of service. The final average compensation and service are determined at the time the member leaves active employment. Benefits may commence unreduced at age 65 or when the sum of the member's age and service is 85 for Tier 1 members or 90 for Tier 2 members. Reduced benefits may commence at or after age 55 if the member is not eligible for an unreduced benefit. The form of payment is the same as for normal retirement. A member who dies after leaving active service but before retiring is entitled to receive a death benefit.

A Tier 1 member leaving covered employment with fewer than three years of service and a Tier 1 member leaving covered employment with fewer than five years of service are eligible to withdraw or receive a refund benefit. Optionally, a vested member may withdraw the member's contributions plus interest in lieu of the deferred benefit otherwise due. A member who withdraws receives a lump sum payment of the member's employee contributions plus interest credited on these contributions. Interest is credited at 6 percent per year.

To receive a death benefit, death must have occurred while an active or inactive nonretired member. Upon the death of a nonvested member, a refund of the member's contributions and interest is paid. Upon the death of a vested member, the beneficiary may elect the refund benefit; payment for 60 months of the normal retirement benefit, based on final average compensation and service determined at the date of death; or a life annuity of the normal retirement benefit, "popping-up" to the original life annuity based on final average compensation and service as of the date of death, but without applying any reduction for the member's age at death.

There are optional forms of payment available on an actuarial equivalent basis. These include a life annuity payable while either the participant or the participant's beneficiary is alive, "popping-up" to the original life annuity if the beneficiary predeceases the member; a life annuity payable to the member while both the member and beneficiary are alive, reducing to 50 percent of this amount if the member predeceases the beneficiary, and "popping-up" to the original life annuity if the beneficiary predeceases the member; a life annuity payable to the member, with a guarantee that, should the member die before receiving 60 payments, the payments will be continued to a beneficiary for the balance of the five-year period; a life annuity payable to the member with a guarantee that, should the member die before receiving 240 payments, the payments will be continued to a beneficiary for the balance of the 20-year period; a life annuity payable to the member, with a guarantee that, should the member die before receiving 120 payments, the payments will be continued to the beneficiary for the balance of the 10-year period; or a nonlevel annuity payable to the member, designed to provide a level total income when combined with the member's Social Security benefit. The option to receive a life annuity payable to the member with a guarantee that should the member die before receiving 60 payments, the payments will be continued to a beneficiary for the balance of the five-year period is not available to employees who retire on or after August 1, 2003. Retirees who elected this option before that date are unaffected. In addition, members may elect a partial lump sum option at retirement. Under this option, a member receives an immediate lump sum equal to 12 times the monthly life annuity benefit and a reduced annuity. The reduction is determined actuarially. The member can then elect to receive the annuity benefit in one of the other optional forms, except that members who receive a partial lump sum option may not elect the level income option. The partial lump sum option is not available to disabled retirees or retirees who are not eligible for an unreduced retirement benefit. Actuarial equivalence is based on tables adopted by the board of trustees.

From time to time, TFFR statutes have been amended to grant certain postretirement benefit increases. However, TFFR has no automatic cost-of-living increase features.

Since 1991 there have been several plan changes in TFFR. Effective July 1, 1991, the benefit multiplier was increased from 1.275 percent to 1.39 percent for all future retirees. The Legislative Assembly also provided a postretirement benefit increase for all annuitants receiving a monthly benefit on June 30, 1991. The monthly increase was the greater of a 10 percent increase or a level increase based on years of service and retirement date of $3 per year of service for retirements before 1980, $2 per year of service for retirements from 1980 to 1983, and $1 per year of service for retirements from 1984 through June 30, 1991. The minimum increase was $5 per month and the maximum increase was $75 per month.

In 1993 the benefit multiplier was increased from 1.39 percent to 1.55 percent for all future retirees. The Legislative Assembly also provided a postretirement benefit increase for all annuitants receiving a monthly benefit on June 30, 1993. The monthly increase was the greater of a 10 percent increase or a level increase based on years of service and retirement date of $3 per year of service for retirements before 1980, $2.50 per year of service for retirements from 1980 to 1983, and $1 per year of service for retirements from 1984 through June 30, 1993. The minimum increase was $5 per month and the maximum increase was $100 per month. The minimum retirement benefit was increased to $10 times years of service up to 25, plus $15 times years of service greater than 25. Previously, it had been $6 up to 25 years of service, plus $7.50 over 25 years of service. The disability benefit also was changed at this time to 1.55 percent of final average compensation times years of service using a minimum 20 years of service.

In 1997 the benefit multiplier was increased from 1.55 percent to 1.75 percent for all future retirees, the member assessment rate and employer contribution rate were increased from 6.75 percent to 7.75 percent, and a $30 per month benefit improvement was granted to all retirees and beneficiaries.

In 1999 the vesting requirement was reduced from five years of service to three years of service. The early retirement reduction factor was changed to 6 percent per year from the earlier of age 65 or the date as of which age plus service equals 85 rather than from 65 in all cases. An ad hoc cost-of-living adjustment was provided for all retirees and beneficiaries. This increase was equal to an additional $2 per month for each year of service plus $1 per month for each year since the member's retirement. Finally, the benefit multiplier was increased from 1.75 percent to 1.88 percent.

In 2001 an ad hoc cost-of-living adjustment was provided for all retirees and beneficiaries. The ad hoc cost-of-living adjustment increase was equal to an additional $2 per month for each year of service plus $1 per month for each year since the member's retirement. Retirees and beneficiaries were also eligible to receive the two conditional annual benefit adjustments equal to .75 percent times the monthly benefit, payable July 1, 2001, and July 1, 2002. The benefit multiplier was also increased from 1.88 percent to 2.00 percent.

In 2003 the partial lump sum option was adopted, equal to 12 times the monthly life annuity benefit. However, this option is not available if the level income option is elected and is not available for the reduced retirement or disability retirement. The 5-year certain and life option was replaced with the 20-year certain and life option. However, this provision did not impact retirees who retired under the 5-year certain and life option. Employer service purchase was authorized. Active members of the Department of Public Instruction were permitted to make a one-time irrevocable election to transfer to PERS in fiscal year 2004. Both assets and liabilities for all TFFR system service was transferred for electing employees. Transferred assets were based on the actuarial present value of the member's accrued TFFR benefit or the member's contribution account balance if larger.

In 2007 the Legislative Assembly established a Tier 2 membership for active members hired after June 30, 2008. Tier 2 members are eligible for an unreduced retirement benefit when they reach age 65 with at least five years of service, rather than three years of service for Tier 1 members, or if earlier, when the sum of the member's age and service is at least 90, rather than 85 for Tier 1 members. Tier 2 members are eligible for a reduced early retirement benefit when they reach age 55 with five years of service, rather than three years of service for Tier 1 members. Tier 2 members are fully vested after five years of service rather than three years of service for Tier 1 members. Final average compensation for Tier 2 members is the average of the member's highest five plan year salaries, rather than the average of the three highest salaries for Tier 1 members. The employer contribution rate was increased from 7.75 percent to 8.25 percent effective July 1, 2008. The employer contribution rate will be reset to 7.75 percent once the fund reaches a 90 percent funded ratio, measured using the actuarial value of assets. If the funded ratio rate falls below 90 percent, the contribution rate will not automatically return to 8.25 percent. Employer contributions were required on the salary of reemployed retirees. Active members of the Department of Career and Technical Education were permitted to make a one-time irrevocable election to transfer to the Public Employees Retirement System in fiscal year 2008. Both assets and liabilities for all TFFR service were transferred for electing employees. Transferred assets were the actuarial present value of the member's accrued TFFR benefit, or the member's contribution account balance if larger.

The latest available report of the consulting actuary was dated July 1, 2008. The primary purposes of the valuation report are to determine the adequacy of the current employer contribution rate, to describe the current financial condition of TFFR, and to analyze changes in TFFR's condition. In addition, the actuarial report provides information required by TFFR in connection with GASB Statement No. 25 and provides various summaries of the data. Valuations are prepared annually, as of July 1 of each year, the first day of TFFR's plan and fiscal year. The contribution rates are intended to be sufficient to pay TFFR's normal cost and to amortize the fund's unfunded actuarial accrued liability over a period of 30 years from the valuation date. A 30-year period is the maximum amortization period allowed by GASB No. 25 in computing the annual required contribution. The 30-year period is in common use for public sector plans and is considered reasonable by the actuary.

In order to determine the adequacy of the 8.25 percent statutory employer contribution rate, it is compared to the GASB No. 25 annual required contribution. The annual required contribution is equal to the sum of the employer normal cost rate and the level percentage of pay required to amortize the unfunded actuarial accrued liability over a 30-year period. For this calculation, payroll is assumed to increase 2.00 percent per annum. As of July 1, 2008, the annual required contribution is 9.24 percent, decreased from 10.15 percent on July 1, 2007. This is greater than the 8.25 percent rate required by law. The shortfall, the negative margin, between the rate mandated by law and the rate necessary to fund the unfunded actuarial accrued liability in 30 years is -0.99 percent.

The plan had a net asset loss of $63 million from previous years which has not yet been recognized in the actuarial value of assets because of the five-year smoothing mechanism. This unrecognized asset loss is due to a large market loss in fiscal year 2008.

The funded ratio, the ratio of the actuarial value of assets to the actuarial accrued liability, increased from last year. The funded ratio on July 1, 2008, was 81.9 percent, while it was 79.2 percent as of July 1, 2007. Based on market value rather than actuarial values of assets, the funded ratio decreased to 79.2 percent from 91.9 percent on July 1, 2007.

The Teachers' Fund For Retirement is required to report in its Comprehensive Annual Financial Report for the current fiscal year ending June 30, 2008, that actual contributions received in fiscal year 2008 were less than the annual required contribution. The fiscal year 2008 7.75 percent statutory rate was 76.4 percent of the 10.15 percent annual required contribution determined by the last valuation. Next year, the Comprehensive Annual Financial Report for fiscal year 2009 will show the 8.25 percent statutory rate is only 89.3 percent of the 9.24 percent annual required contribution. Because TFFR is a cost-sharing, multiple-employer retirement system, there are no other accounting consequences for the state or the other school districts that sponsor TFFR.

In addition to increasing the employer contribution rate, the Legislative Assembly in 2007 created a new tier of benefits for members hired on or after July 1, 2008. These future hires are called Tier 2 members. In fiscal year 2008, 16 employees of the Department of Career and Technical Education transferred to the Public Employees Retirement System. In conjunction with this transfer, $3.2 million in assets was transferred to the Public Employees Retirement System at the same time. This transfer did not materially affect TFFR.

Actuarial assumptions and methods are set by the board of trustees based upon recommendations made by the plan's actuary. These assumptions and procedures were last changed in 2005 following an analysis of plan experience for the five-year period ending June 30, 2004. The board adopted the assumptions and methods recommended by the actuary. The actuarial consultant reported that it believes the assumptions are internally consistent and are reasonable based on the actual experience of TFFR. These actuarial assumptions and methods comply with the parameters for disclosure in GASB No. 25.

The fund had 17,566 members on July 1, 2008. Of this total, 9,561 were active members, 6,317 were retirees and beneficiaries, 1,459 were inactive vested members, and 229 were inactive nonvested members. The total payroll was $417.7 million. The average salary was $43,684, the average age was 44.6 years, and average service was 14.4 years.

The assets at market value were $1,846.1 million with an actuarial value of $1,909.5 million. The return on the market value of assets was -7.0 percent for the period ending June 30, 2008. This compares to 20.4 percent for the period ending June 30, 2007. The return on the actuarial value of assets was 11.6 percent for the period ending June 30, 2008. This compares to 14.4 percent for the period ending June 30, 2007. The ratio of actuarial value to market value was 103.4 percent and external cashflow was -2.3 percent. The consulting actuary reported that the normal cost percentage is 10.26 percent, the unfunded actuarial accrued liability decreased from $459.2 million to $421.2 million and the funded ratio, actuarial assets divided by actuarial accrued liability, increased from 79.2 percent to 81.9 percent. The funding period decreased from infinite to 57 years. The benchmark contribution requirement is 9.24 percent and thus the available margin is -.99 percent (8.25 percent - 9.24 percent = -.99 percent). The available margin on July 1, 2007, was -2.40 percent.

The following is a summary of the proposals affecting TFFR over which the committee took jurisdiction and the committee's action on the proposals:

Bill No. 100

Sponsor: Board of Trustees

Proposal: Provides for technical and administrative changes to the TFFR program relating to incorporation of federal law changes, procedure relating to benefit limitations, annual hour limit for retiree reemployment, and disclosure of confidential records.

Actuarial Analysis: The consulting actuary reported that the bill has no cost effect. The bill does not increase the plan's liabilities; does not change the plan's funded status, funding, or contribution margins; and does not have any material administrative implications.

Committee Report: Favorable recommendation.

Bill No. 109

Sponsor: Senator David O'Connell

Proposal: Provides for a special one-time payment for annuitants for TFFR. Under the bill each annuitant, retiree, disabled retiree, or beneficiary receiving a benefit as of June 30, 2009, would receive a one-time payment equal to the sum of $48 times the member's years of service and $36 times the number of years the member has been retired. The payment would be made in December 2009. The bill also contains an appropriation of $11 million from the general fund to TFFR to fund this special benefit.

The committee amended the bill at the request of the sponsor to provide that each annuitant--retiree, disabled retiree, or beneficiary receiving a benefit--who retired before January 1, 2009, and who is still receiving benefits as of December 1, 2009, would receive a special one-time payment equal to the sum of $24 times the member's years of service and $18 times the number of years the member has been retired. The payment would be limited to no more than the larger of 10 percent of the member's annual retirement benefit or $750. The payment would be made in December 2009. The revised bill also provides for a second payment, determined under the same formula with the same maximum to be made in December 2010 to the member's who retired before January 1, 2009, and who are still receiving payments as of December 1, 2010. The bill provides for a transfer from the general fund for up to $11 million to TFFR, intended to pay for these two special payments.

Actuarial Analysis: The consulting actuary reported that the payments should be no more than approximately $10.9 million for the two years combined making the $11 million appropriation sufficient. Therefore, there would be no effect on the unfunded actuarial accrued liability of TFFR and no effect on the funded ratio or margin since the special payments would be covered by the appropriation.

Committee Report: No recommendation.

Public Employees Retirement System

The Public Employees Retirement System is governed by NDCC Chapter 54-52 and includes the PERS main system, judges' retirement system, National Guard retirement system, law enforcement with prior main service, law enforcement without prior main service, and an optional defined contribution retirement plan; Highway Patrolmen's retirement system; Job Service North Dakota retirement plan; and retiree health benefits fund. The plan is supervised by the Retirement Board and covers most employees of the state, district health units, and the Garrison Diversion Conservancy District. Elected officials and officials first appointed before July 1, 1971, can choose to be members. Officials appointed to office after that date are required to be members. Most Supreme Court and district court judges are members of the plan but receive benefits different from other members. A county, city, or school district may choose to participate on completion of an employee referendum and on execution of an agreement with the Retirement Board. Political subdivision employees are not eligible to participate in the defined contribution retirement plan. The Retirement Board also administers the uniform group insurance, life insurance, flexible benefits, deferred compensation, and Chapter 27-17 judges' retirement programs. The Chapter 27-17 judges' retirement program is being phased out of existence except to the extent its continuance is necessary to make payments to retired judges and their surviving spouses and future payments to judges serving on July 1, 1973, and their surviving spouses as required by law.

Members of the main system and judges are eligible for a normal service retirement benefit at age 65 or when age plus years of service is equal to at least 85--the Rule of 85. Members of the National Guard retirement system are eligible for a normal service retirement at age 55 and three consecutive years of service. Members of the law enforcement retirement system are eligible for a normal service retirement at age 55 and three consecutive years of service or when age plus service is equal to at least 85--the Rule of 85. The retirement benefit for a member of the main system is 2.00 percent of final average salary multiplied by years of service. The retirement benefit for a member of the judges' retirement system is 3.50 percent of final average salary for the first 10 years of service, 2.80 percent for each of the next 10 years of service, and 1.25 percent for service in excess of 20 years. The retirement benefit for members of the National Guard and law enforcement retirement systems is 2.00 percent of final average salary multiplied by years of service. A member of the main system is eligible for an early service retirement at age 55 with three years of service, a member of the judges' retirement system is eligible for early service retirement at age 55 with five years of service, and members of the National Guard and law enforcement retirement systems are eligible for early service retirement at age 50 with three years of service. The retirement benefit for a member who elects early service retirement is the normal service retirement; however, a benefit that begins before age 65, or Rule of 85, if earlier, is reduced by one-half of 1 percent for each month before the earlier of age 65 or the age at which the Rule of 85 is met. The early service retirement benefit for a member of the judges' retirement system is the normal service retirement; however, a benefit that begins before age 65, or Rule of 85, if earlier, is reduced by one-half of 1 percent for each month before age 65. The early service retirement benefit for a member of the National Guard retirement system is the normal service retirement benefit; however, a benefit that begins before age 55 is reduced by one-half of 1 percent for each month before age 55. The early service retirement benefit for a member of the law enforcement retirement system is the normal service retirement benefit; however, a benefit that begins before age 55, or Rule of 85, if earlier, is reduced by one-half of 1 percent for each month before age 55.

A member of the main system, National Guard, or law enforcement retirement system with six months of service who is unable to engage in any substantial gainful activity is eligible for a disability benefit of 25 percent of the member's final average salary at disability with a minimum of $100 per month. A member of the judges' retirement system with six months of service who is unable to engage in any substantial gainful activity is eligible for a disability benefit of 70 percent of the member's final average salary at disability minus Social Security and workers' compensation benefits paid. A member of the main system, National Guard, or law enforcement retirement system is eligible for deferred vested retirement at three years of service, and a member of the judges' retirement system is eligible for deferred vested retirement at five years of service.

For a member of the main system or judges' retirement system, the deferred vested retirement benefit is the normal service retirement benefit payable at age 65 or the Rule of 85, if earlier. Reduced early retirement benefits may be elected upon attainment of age 55. The deferred vested retirement benefit for a member of the National Guard retirement system is the normal service retirement benefit payable at age 55. Reduced early retirement benefits may be elected upon attainment of age 50. The deferred vested retirement benefit for a member of the law enforcement retirement system is the normal service retirement benefit payable at age 55 or the Rule of 85, if earlier. Reduced early retirement benefits may be elected upon attaining age 50.

The surviving spouse of a deceased member of the main system, the National Guard, or law enforcement retirement system who had accumulated at least three years of service before normal retirement is entitled to elect one of four forms of preretirement death benefits. The preretirement death benefit may be a lump sum payment of the member's accumulated contributions with interest; the member's accrued benefit payable for 60 months to the surviving spouse; 50 percent of the member's accrued benefit, not reduced on account of age, payable for the surviving spouse's lifetime; or continuation portion of a 100 percent joint and survivor annuity, only available if the participant was eligible for normal retirement. The surviving spouse of a deceased member of the judges' retirement system who had accumulated at least five years of service is entitled to elect one of two forms of preretirement death benefits. The preretirement death benefit may be a lump sum payment of the member's accumulated contribution or 100 percent of the member's accrued benefit, not reduced on account of age, payable for the spouse's lifetime.

Terminated vested members who choose a refund and terminated nonvested members are entitled to a refund of member contributions. Member contributions through June 30, 1981, accumulate with interest at 5 percent, member contributions from July 1, 1981, through June 30, 1986, accumulate with interest at 6 percent, and member contributions after June 30, 1986, accumulate with interest at .5 percent less than the actuarial interest rate assumption.

The standard form of payment for members of the main, National Guard, and law enforcement systems is a monthly benefit for life with a refund to the beneficiary at death of the remaining balance, if any, of accumulated member contributions. The standard form of payment for members of the judges' retirement system is a monthly benefit for life, with 50 percent payable to an eligible survivor. Optional forms of payment are life annuity for judges, a 50 percent joint and survivor annuity for members of the main, National Guard, and law enforcement systems; a 100 percent joint and survivor annuity with "pop-up" feature; a 5-year certain and life annuity; a 10-year certain and life annuity; or a level Social Security income annuity. The final average salary is the average of the highest salary received by a member for any 36 months employed during the last 120 months of employment.

Except for the employer contribution rate for the National Guard and the law enforcement retirement systems, contribution rates are specified by statute. The contribution rate for a member of the main system is 4 percent, and the employer contribution is 4.12 percent. The employee contribution for the judges' retirement system is 5 percent, and the employer contribution is 14.52 percent. The contribution rate for a member of the National Guard retirement system is 4 percent, and the employer contribution is 8.33 percent. The contribution rate for a member of the law enforcement retirement system with prior main service is 4 percent, and the employer contribution is 8.31 percent. The contribution rate for a member of the law enforcement retirement system without prior main service is 4 percent, and the employer contribution is 6.43 percent. A part-time employee in the main system contributes 8.12 percent with no employer contribution. Effective January 1, 2000, a member's account balance includes vested employer contributions equal to the member's contributions to the deferred compensation program under NDCC Chapter 54-52.2. The vested employer contributions may not exceed $25 or 1 percent of the member's salary, whichever is greater, for months 1 through 12 of service credit; $25 or 2 percent of the member's monthly salary, whichever is greater, for months 13 through 24 of service credit; $25 or 3 percent of the member's monthly salary, whichever is greater, for months 25 through 36 of service credit; and $25 or 4 percent of the member's monthly salary, whichever is greater, for service exceeding 36 months. The vested employer contributions may not exceed 4 percent of the member's monthly salary and are credited monthly to the member's account balance. The fund may accept rollovers from other qualified plans under rules adopted by the board for the purchase of additional service credit. For many employees, no deduction is made from pay for the employee's share. This is a result of 1983 legislation that provided for a phased-in "pickup" of the employee contribution in lieu of a salary increase at that time.

In 1989 the Legislative Assembly established a retiree health insurance credit fund account with the Bank of North Dakota with the purpose of prefunding hospital benefits coverage and medical benefits coverage under the uniform group insurance program for retired members of PERS and the Highway Patrolmen's retirement system receiving retirement benefits or surviving spouses of those retired members who have accumulated at least 10 years of service. The employer contribution under PERS was reduced from 5.12 percent to 4.12 percent, under the judges' retirement system from 15.52 to 14.52 percent, and under the Highway Patrolmen's retirement system from 17.07 percent to 16.07 percent or 1 percent of the monthly salaries or wages of participating members, including participating Supreme Court and district court judges, and the money was redirected to the retiree health insurance credit fund.

The latest available report of the consulting actuary is dated July 1, 2008. According to that report, the combined net assets of PERS and the Highway Patrolmen's retirement system were $1,816,810,807 at market value. This compares to $1,939,134,759 on July 1, 2007. This year's combined market value represents a decrease of 6.31 percent over the market value one year earlier. The rate of return on the market value basis for the PERS fund was -5.21 percent for the year ended June 30, 2008. The actuarial value of assets is determined by spreading market appreciation and depreciation over five years beginning with the years of occurrence. Interest and dividends are recognized immediately. This procedure results in recognition of all changes in market value over five years. This procedure is applied to the combined assets of PERS and the Highway Patrolmen's retirement system income funds to determine the combined actuarial value of the systems. The combined actuarial value was $1,660,619,226 as of June 30, 2008. There is approximately $156 million of appreciation that will be recognized in future years. For the 10-year period ending June 30, 2008, the combined investment results yielded earnings of $953,822,100 on an actuarial value basis representing an average annual return of 8.25 percent. For the 2007-08 year, the actuarial rate of return on the combined value of assets was 8.51 percent. The actuarial consultant reported that assets have increased consistently from year to year, although the amount of the increase has varied with fluctuations in investment income. Benefit payments have also increased consistently over the period, with the exception of one year. Benefit payments and expenses continue to exceed contributions. However, over the past 10 years, investment income has offset this deficit and served to increase the assets of the system.

The Public Employees Retirement System had 19,296 active members on July 1, 2008. Of this total, 19,042 were active members of the main system, 47 were active members of the judges' retirement system, 31 were active members of the National Guard retirement system, 136 were active members of the law enforcement retirement system with prior main service, and 30 were active members of the law enforcement without prior main service system. The total payroll was $640,684,587 and average salary was $33,203. There were 2,154 inactive members as of July 1, 2008, with vested rights to deferred retirement benefits. The average deferred monthly benefit for this group was $361. There were also 25 members from the main system and 5 members from the National Guard on leave of absence. For these groups, a liability is carried for their deferred retirement benefits. There were 1,995 inactive members that are due refunds.

The contribution requirements consist of the normal cost and an administrative expense allowance, plus the cost of amortizing the unfunded liability over a scheduled period of years. The Retirement Board has adopted an open amortization schedule of 20 years with increasing payments. The statutory contribution rate is 4.12 percent of payroll. The actuarial consultant determined the total employer contribution requirement for the main system is 6.26 percent. Thus, statutory contributions are less than the actuarial contribution requirement by 2.14 percent of payroll. The statutory contribution rate for the judges' retirement system is 14.52 percent of payroll. The actuarial consultant determined the total employer contribution requirement is 8.99 percent. Thus, statutory contributions exceed the actuarial contribution requirement by 5.53 percent of payroll. The contribution rate set by the Retirement Board for the National Guard retirement system is 6.50 percent of payroll. The actuarial consultant determined the total employer contribution requirement is 3.44 percent. Thus, contributions exceed the actuarial contribution requirement by 3.06 percent of payroll. The contribution rate set by the Retirement Board for the law enforcement with prior main service plan is 8.31 percent of payroll. The actuarial consultant determined the total employer contribution requirement is 9.04 percent. Thus, contributions are less than the actuarial contribution requirement by .73 percent of payroll. The contribution rate set by the Retirement Board for the law enforcement without prior main service system is 6.43 percent of payroll. The actuarial consultant determined the total employer contribution requirement is 7.15 percent. Thus, contributions are less than the actuarial contribution requirement by .72 percent of payroll.

A member of the Highway Patrolmen's retirement system is eligible for a normal service retirement at age 55 with at least 10 years of eligible employment or with age plus service equal to at least 80--the Rule of 80. The normal service retirement benefit is 3.6 percent of final average salary for the first 25 years of service and 1.75 percent for service in excess of 25 years. A member is eligible for an early service retirement at age 50 with 10 years of eligible employment. The early service retirement benefit is the normal service retirement benefit; however, a benefit that begins before age 55 or the Rule of 80, if earlier, is reduced by one-half of 1 percent for each month before age 55. A member is eligible for a disability benefit at six months of service and an inability to engage in substantial gainful activity. The disability benefit is 70 percent of the member's final covered salary at disability less workers' compensation, with a minimum of $100 per month. A member is eligible for deferred retirement benefits upon 10 years of eligible employment. The deferred retirement benefit is the normal service retirement benefit payable at age 55 or the Rule of 80, if earlier. Vested benefits are indexed at a rate set by the Retirement Board based upon the increase in final average salary from the date of termination to the benefit commencement date. Reduced early retirement benefits may be elected upon attainment of age 50.

Preretirement death benefits are available to a surviving spouse of a deceased member of the Highway Patrolmen's retirement system who had accumulated at least 10 years of eligible employment. The preretirement death benefit is available as a lump sum payment of accumulated contributions with interest; monthly payment of the member's accrued benefit for 60 months for the surviving spouse; or 50 percent of the member's accrued benefit, not reduced on account of age, for the surviving spouse's lifetime. If the deceased member had accumulated fewer than 10 years of service or if there is no surviving spouse, then a death benefit is a lump sum payment of the member's accumulated contributions with interest.

The normal form of benefit for the Highway Patrolmen's retirement system is a monthly benefit for life with 50 percent of the benefit continuing for the life of the surviving spouse, if any. Optional forms of payment are 100 percent joint and survivor annuity, 10-year certain and life annuity, and a 20-year certain and life annuity. A partial lump sum payment in addition to one of the annuity options is available. Final average salary is the average of the highest salary received by the member for any 36 months employed during the last 120 months of employment. Members contribute 10.30 percent of monthly salary and the state contributes 16.70 percent of the monthly salary for each participating member. A member's contributions earn interest at an annual rate of 7.50 percent compounded monthly.

The latest available report of the consulting actuary for the Highway Patrolmen's retirement fund is dated July 1, 2008. According to that report, the Highway Patrolmen's retirement fund had net assets with an actuarial value of $55,587,776. This compares to $60,209,892 as of July 1, 2007. The rate of return on the market value basis for the Highway Patrolmen's retirement system fund was -5.22 percent for the year ended June 30, 2008. The actuarial value of assets for the Highway Patrolmen's retirement system as of July 1, 2008, was $50,808,884. The actuarial value of assets was $48,167,914 on July 1, 2007. Thus, on an actuarial basis, the rate of return for the Highway Patrolmen's retirement system fund was 8.78 percent for the year ended June 30, 2008. Total active membership was 130, and an employer contribution of 15.76 percent of payroll was necessary to meet the normal cost of the Highway Patrolmen's retirement fund. The statutory contribution rate is 16.70 percent of payroll. Thus, the actuarial margin is .94 percent of payroll.

The latest available report of the consulting actuary for the retiree health insurance credit fund is dated July 1, 2008. According to that report, the fund had net assets with a market value of $40,423,019 and an actuarial value of $42,543,140. The rate of return on the market value basis was -14.04 percent for the year ending June 30, 2008. On an actuarial basis, the rate of return was 5.16 percent for that year. Total active membership was 19,659--7,750 males and 11,909 females. The statutory contribution rate is 1.00 percent of payroll. An employer contribution of .88 percent of payroll is required to fund the plan. This results in an actuarial margin of .12 percent of payroll. Members are required to participate in the uniform group insurance program and the current benefit amount is $4.50 times years of service.

The consulting actuary also reviewed the retirement plan for employees of Job Service North Dakota. The PERS Retirement Board assumed administration of this plan from Job Service North Dakota pursuant to legislation enacted in 2003. This is a closed retirement plan for employees of Job Service North Dakota. As of July 1, 2008, the plan had 38 fully vested active employees with total annual salaries of $1,762,644. There were 4 inactive employees as of July 1, 2008, with vested rights. There were 118 pensioners and beneficiaries as of July 1, 2008, and 98 pensioners and beneficiaries receiving annuities from the Travelers Plan as of July 1, 2008. Thus, there were 258 plan participants as of July 1, 2008. The scheduled contribution at the end of the year ending June 30, 2008, was zero, and thus the normal cost was zero. The July 1, 2008, actuarial valuation reported the actuarial value of assets at $77,020,934 and the actuarial present value of projected benefits at $71,828,872. The total market value of assets was $89,913,883. Effective July 1, 1999, the scheduled contribution is zero as long as the plan's actuarial value of assets exceeds the actuarial present value of projected benefits. If, in the future, the liabilities of the plan exceed its assets, a "scheduled contribution" will be determined based on the funding policy adopted by the employer.

The following is a summary of the proposals affecting PERS over which the committee took jurisdiction and the committee's action on each proposal:

Bill No. 111

Sponsor: PERS Retirement Board

Proposal: Allows the PERS Retirement Board to appoint as one if its three members on the North Dakota State Investment Board a nonelected board member, such as the board chairman, who is appointed by the Governor, the Attorney General's appointee, or the State Health Officer's designee. Under current law the PERS Retirement Board is authorized to appoint three of its four elected members to the North Dakota State Investment Board. The bill authorizes payment of employee contributions on a pretax basis, instead of on an aftertax basis, for the Highway Patrolmen's retirement system and the judges' retirement system via employer pickup under Internal Revenue Code rules for compensation earned after August 1, 2009. The bill allows members of the hybrid plan and the Highway Patrolmen's retirement system to select a nonspouse beneficiary as a joint annuitant for the joint and survivor benefit option. The actuarial consultant refers to the main system as a hybrid plan because it incorporates some features of a defined contribution plan. The bill allows members of the hybrid plan and the Highway Patrolmen's retirement system to designate a subsequent beneficiary, either after the death of the original beneficiary or upon divorce of the member, for retirees who elected a joint and survivor benefit option. The bill allows members of the hybrid plan and the Highway Patrolmen's retirement system to elect a new monthly benefit that provides a graduated increase of 1 percent or 2 percent. A monthly retirement benefit would be actuarially adjusted to provide for the postretirement increases. The bill eliminates the 60-month option as a form of payment for surviving spouses in the hybrid plan. The bill allows members of the hybrid plan and the Highway Patrolmen's retirement system to purchase up to 10 years of service credit instead of 5 years, unrelated to other eligible service. A maximum of 5 years of service credit purchased under this provision would count toward retirement eligibility for the Rule of 80 for the Highway Patrolmen's retirement system or the Rule of 85 under the hybrid plan. The bill updates federal compliance provisions of the hybrid plan and the Highway Patrolmen's retirement system, including additional language to comply with Internal Revenue Code Section 415(d) and related regulations. Under present law, members of the PERS plan may run for election to the PERS Retirement Board. The bill broadens the election to include members of the Highway Patrolmen's retirement system, Job Service North Dakota retirement plan, and the defined contribution plan, which are also administered by the board.

The committee amended the bill at the request of the PERS Retirement Board to eliminate the provision allowing members in the Highway Patrolmen's retirement system and PERS to purchase an additional five years of service credit in addition to the five years presently authorized, except the purchase would not apply toward eligibility for the Rule of 85, the provision allowing a member to designate someone other than the spouse as the beneficiary with the consent of the spouse, and the provision allowing a member to choose a new joint and survivor beneficiary if the existing beneficiary passes away.

Actuarial Analysis: The consulting actuary reported that the proposal, as amended, will have no actuarial impact. The reported actuarial cost impact of the proposal as submitted had an actuarial impact on the hybrid plan and the Highway Patrolmen's retirement system. Because the normal form of retirement for the Highway Patrolmen's retirement system and the judges' retirement system is a 50 percent joint and survivor annuity, and the bill allowed nonmarried members to receive an unreduced joint and survivor benefit, the cost of this change to the Highway Patrolmen's retirement system was .29 percent of covered compensation. The cost of this change for the judges' retirement system was .54 percent of covered compensation.

Committee Report: Favorable recommendation.

Bill No. 112

Sponsor: PERS Retirement Board

Proposal: Allows the PERS Retirement Board to provide for a one-time postretirement payment equal to 50 percent, 75 percent, or 100 percent of the member's or beneficiary's current monthly payment amount in January 2010 if the trust fund's total annual return on investment is greater than 8 percent, 9 percent, or 10 percent, respectively, and the funding ratio based on the market value of assets is greater than 105 percent, 110 percent, or 115 percent, respectively, for the fiscal year ending June 2009. If none of these financial thresholds are met, no additional payment will be made. This would be a potential one-time payment in the biennium, applicable to both the hybrid plan and the Highway Patrolmen's retirement system. The bill also allows the PERS Retirement Board to provide for a postretirement increase of 2 percent of monthly benefits for members and their beneficiaries in both the hybrid plan, except the judges' retirement system, and the

Highway Patrolmen's retirement system, beginning in January 2011. The bill also increases the employer contribution rate from 16.70 percent to 22.60 percent of salary for the Highway Patrolmen's retirement system and from 4.12 percent to 5.44 percent of salary for the hybrid plan and the defined contribution plan from July 1, 2009, through June 30, 2011. The employer contribution rate increase and 2 percent monthly postretirement benefit increase are optional for political subdivision employers in the hybrid plan who must elect to participate in the benefit before July 1, 2009, or be presumed not to participate. The bill also allows the PERS Retirement Board to provide for an increase of 2 percent of monthly retirement benefits for Supreme Court and district court judges who are retirees and their beneficiaries beginning January 1, 2011, if the board determines there is a sufficient actuarial margin to pay the increase. The bill changes the normal form of benefits for the Highway Patrolmen's retirement system from a 50 percent joint and survivor benefit to a 100 percent joint and survivor benefit for surviving spouses. The bill allows participants in the deferred compensation plan who have vested employer contributions in the hybrid plan to purchase up to three years of service credit by paying only the employer plus employee contribution rate, 9.12 percent of salary for each month purchased, rather than the full actuarial cost of the service. The purchased service credit will not count toward retirement date eligibility.

The committee amended the bill at the request of the sponsor to reflect the appropriate required employer contribution, remove the change of the normal form of benefit for the Highway Patrolmen's retirement system from a 50 percent joint and survivor benefit to a 100 percent joint and survivor benefit for surviving spouses, more clearly define who is eligible for the 2 percent increase for PERS and the Highway Patrolmen's retirement system retirees in January of 2011, delete the incentive provision for PERS members to engage in supplemental retirement savings in the 457 deferred compensation plan, provide a late election opportunity for political subdivisions, clarify that employer elections are made for each plan in which the employer participates, and provide an appropriation to fund the benefit increases contained in the bill.

Actuarial Analysis: The proposal, as amended, has no actuarial cost impact as the appropriation is sufficient to fund the enhanced benefit. The consulting actuary reported the bill, as submitted, would have had an actuarial impact on the hybrid plan and the Highway Patrolmen's retirement system. The provision allowing for a one-time postretirement payment equal to 50 percent, 75 percent, or 100 percent of the member's or beneficiary's current monthly benefit payment amount would increase the plan's unfunded liability if the necessary conditions are met. For example, if the return on investment is at least 10 percent and the market value ratio is at least 115 percent for the fiscal year ending June 2009, then the unfunded liability is expected to increase by $7.4 million. Although this additional liability will be fully offset to some degree by the necessary investment gain, the plan surplus will still be $7.4 million lower than it would have been if this provision were not adopted. The surplus that is required for the 13th check to be paid will ensure the plans still have a surplus on a market value basis even after the check is paid. The 100 percent joint and survivor benefit as the normal form for the Highway Patrolmen's retirement system would increase the actuarially determined contribution rate by 3.02 percent of payroll.

The extent to which the purchase of service incentive for participants in the deferred compensation program has a cost impact depends upon the size of the affected groups, the demographic makeup, and utilization rate of the incentive. The consulting actuary reported that if participation were to increase to 50 percent, and if everyone eligible to purchase service were to purchase one year on average, then the actuarially determined contribution rate for the main retirement plan would increase by about .30 percent of payroll.

The estimated actuarial cost of a one-time, 2 percent benefit increase for retirees and beneficiaries in pay status as of January 1, 2011, for members of the hybrid plan, except the judges' retirement plan, and Highway Patrolmen's retirement system is 1.30 percent for the main system, .49 percent for the National Guard system, .80 percent for the law enforcement with prior main service system, .03 percent for the law enforcement without prior main service system, and 5.34 percent for the Highway Patrolmen's retirement system.

The actuarial consultant reported that a 2 percent monthly benefit increase for retired judges will increase the plan actuarial accrued liability by approximately $33,000 and will increase the actuarially determined contribution rate by .41 percent of active payroll.

Committee Report: No recommendation.

Bill No. 118

Sponsor: Senator Stanley W. Lyson

Proposal: Establishes a supplemental defined contribution retirement plan for state correctional and peace officers. Under the plan an eligible employee who elects to participate in the optional plan would be required to contribute 2 percent of the eligible employee's monthly salary and the employer would contribute 3 percent of the eligible member's monthly salary to a defined contribution account. The employer contribution would cease the first day of the month next following the month in which the participating member attains the age of 60 or when the participating member has a combined total of years of service credit and years of age equal to 85. A participating member who continues to be employed as an eligible employee on the first day of the month in which the participating member attains the age of 60 or when the participating member has a combined total of years of service credit and years of age equal to 85 forfeits all employer contributions made to the participating member's account under the program.

Actuarial Analysis: The consulting actuary noted the Age Discrimination in Employment Act generally prohibits cessation of contributions to an employee's account in a defined contribution plan or other discrimination in benefits because the employee has attained a certain age. One exception to this general rule of law is where a governmental employer imposes a mandatory retirement age for public safety officers under a bona fide retirement plan. The consulting actuary was unsure whether the eligible employees under the new plan are subject to a mandatory retirement age rule from their employers. The consulting actuary noted the bill does not require the employer contributions be forfeited until after the bill stipulates they are 100 percent vested, after which point contributions cannot, by definition, be forfeited. The consulting actuary noted that because the provisions for payment in the proposed plan do not match the provisions for payment in the current plan, participants are not always able to receive benefits from both plans. In fact, in some cases, the participant must make a decision between receiving benefits from a defined contribution plan or a reduced benefit from the defined benefit plan.

The PERS Retirement Board noted no appropriation is contained in the bill and recommended that an appropriation be included to fund the required employer contributions.

Committee Report: No recommendation.

Bill No. 206

Sponsor: Representative Lawrence R. Klemin

Proposal: Allows the PERS Retirement Board to establish a trust health care savings plan for all Supreme Court and district court judges participating in PERS.

Actuarial Analysis: The costs of the proposal should be nominal and the proposal appears to meet Internal Revenue service requirements.

Committee Report: Favorable recommendation.

Uniform Group Insurance Program

Bill No. 113

Sponsor: PERS Retirement Board

Proposal: Changes the rate for a non-Medicare retiree single plan under the uniform group insurance program from 150 percent of the active member single plan rate to 125 percent of the active member single plan rate. The proposal expires June 30, 2011. The committee amended the proposal at the request of the sponsor to change the ratio from 125 percent to 130 percent.

Actuarial Analysis: The consulting actuary identified two impacts to the uniform group insurance program. First, the plan will need an increased subsidy to support the reduced rate, and second, the cost of the increased subsidy will increase the other postemployment benefits (OPEB) liability of the plan through the state. The actuarial consultant noted the expiration date will not affect the cost of the plan for the 2009-11 biennium; however, it could reduce the reported OPEB liability if this is done only one time.

Committee Report: Favorable recommendation.

Bill No. 114

Sponsor: PERS Retirement Board

Proposal: Increases the required monthly contribution to the retiree health benefits fund from 1.00 percent of monthly salary to 1.15 percent of monthly salary and increases the monthly retiree health credit from $4.50 per year of credited services to $5 per year of credited service. The committee amended the proposal at the request of the sponsor to reduce the required monthly contribution from 1.15 percent to 1.14 percent.

Actuarial Analysis: The consulting actuary calculated the additional contribution of .14 percent of salary will be sufficient to offset the cost of the additional monthly benefit of 50 cents per year of credited service.

Committee Report: Favorable recommendation.

Bill No. 33

Sponsor: Senator Tim Mathern

Proposal: Establishes the Healthy North Dakota health insurance plan. The proposal adds a new subgroup under the uniform group insurance plan for Healthy North Dakota insurance coverage; establishes a Healthy North Dakota authority board and executive director; offers coverage to every eligible individual in North Dakota under the age of 65 with some very limited exceptions; establishes a funding mechanism for employers, employees, and the self-employed, and other eligible individuals; establishes a standard Healthy North Dakota health benefit plan design, including prescription drugs, for all covered plan participants; establishes mandated individual health care provider network selection and reimbursement methodologies; and establishes an office of outreach, enrollment, and advocacy under the authority.

Actuarial Analysis: The consulting actuary determined the proposal will create a number of financial and administrative challenges for the PERS Retirement Board. The most critical financial issue would be the impact on PERS from the requirement that state and local governments participate in the funding of the Healthy North Dakota program. The Tax Department also identified several significant tax and compliance issues with the proposal in addition to a tight timeframe contained in the proposal.

Committee Report: Unfavorable recommendation.

Bill No. 84

Sponsor: Senator David O'Connell

Proposal: Establishes parity for health insurance coverage of prosthetics. The committee amended the proposal at the request of the sponsor to include a $190,090 appropriation to defray the cost of additional health insurance premiums necessary to provide the coverage under the proposal.

Actuarial Analysis: Blue Cross Blue Shield of North Dakota estimated that the cost is 90 cents per contract per month for the 2009-11 biennium.

Committee Report: No recommendation.

Bill No. 124

Sponsor: Representative Louise Potter

Proposal: Requires PERS insurance policies include colorectal cancer screening examinations and laboratory tests of asymptomatic individuals in accordance with guidelines established by the American Cancer Society or the American College of

Gastroenterology. The committee amended the proposal at the request of the sponsor to include an appropriation of $853,277 to defray the cost of additional health insurance premiums necessary to provide the coverage.

Actuarial Analysis: Blue Cross Blue Shield of North Dakota estimated the proposal would cost an additional $4.04 per contract per month for the 2009-11 biennium.

Committee Report: Unfavorable recommendation.

Bill No. 125

Sponsor: Senator Tim Mathern

Proposal: Expands the uniform group insurance program to allow participation by permanent and temporary employees of private sector employers and other individuals as well as allowing agents to sell the group insurance program and receive commissions.

Actuarial Analysis: The actuarial consultant reported that as long as PERS is allowed to separate private sector groups, temporary employees, and individual plan participants into their distinct rating subgroups, there should be no direct financial impact to the existing program.

Committee Report: Unfavorable recommendation.

Firefighters Relief Association Plans

Bill No. 144

Sponsor: Representative Bette Grande

Proposal: Incorporates changes by the Fargo Firefighters Relief Association into NDCC Chapter 18-11 relating to alternate firefighters relief association plan benefits.

Actuarial Analysis: The consulting actuary for the Fargo Firefighters Relief Association reported the benefit enhancements included in the proposal are actuarially sound.

Committee Report: Favorable recommendation.

ADDITIONAL COMMITTEE RESPONSIBILITIES

The PERS Retirement Board reported that no action by the committee was required under NDCC Section 54-52.1-08.2 to approve terminology adopted by the board to comply with the federal requirements. The committee was not notified by any firefighters relief association pursuant to Section 18-11-15(5) that requires the Employee Benefits Programs Committee to be notified by a firefighters relief association if it implements an alternate schedule of monthly service pension benefits for members of the association.

Pursuant to NDCC Section 54-06-31, the committee received periodic reports from Human Resource Management Services on the implementation, progress, and bonuses provided by state agency programs to provide bonuses to recruit or retain employees in hard-to-fill positions. The following schedule is a summary of the information presented:

	July 1, 2007, to October 31, 2008			
	Recruitment		Retention	
Agency	Number	Amount	Number	Amount
Information Technology Department	24	$35,750		
State Auditor			2	$4,500
Commission on Legal Counsel for Indigents	2	3,400		
Veterans Home				
Department of Human Services	293	134,701	8	77,652
Job Service North Dakota				
Department of Mineral Resources	2	4,800	101	116,150
Bank of North Dakota	2	5,000	13	64,702
Highway Patrol	1	500		
Department of Corrections and Rehabilitation	13	3,425		
Department of Transportation	67	191,687		
Totals	404	$379,263	195	$419,471

EMPLOYEE BENEFITS STUDY

Survey of State Agencies

The Legislative Council chairman directed the committee to study employee benefits provided by state agencies which are not specifically authorized by law or if authorized by law are not consistent among agencies. The committee conducted a benefits survey of state agencies. The survey asked whether agencies pay for employee service awards or employee recognition, reward, or incentive programs; whether agencies provide employer-paid tuition for higher education coursework for employees; whether agencies pay employee membership dues for professional organizations or service clubs, excluding membership dues for which an employee is required to be a member for the position the employee is filling, membership dues incidental to publications, and membership dues incidental to continuing education credits for licensure required by the employer for the position which the employee is filling; whether agencies provide employer-paid benefits under NDCC Sections 54-52-27, 54-52-29, and 54-52.6-09.2; and whether agencies provide family leave with pay under NDCC Section 54-52.4-02(5).

The committee learned that almost all agencies pay for employee service awards or employee recognition, reward, or incentive programs. Most agencies follow North Dakota Administrative Code Chapter 4-07-18, which requires agencies to recognize certain service anniversaries of classified employees by implementing a service award program. The committee learned that many agencies provide employer-paid tuition for higher education coursework for employees; however, the policies are not uniform. The committee learned that most agencies pay employee membership dues for professional organizations and some pay service club dues. The committee learned very few agencies provide employer-paid benefits under NDCC Sections 54-52-27, 54-52-29, and 54-52.6-09.2, and approximately one-half of agencies provide family leave with pay under Section 54-52.4-02(5).

Survey of Comparable States

Human Resource Management Services conducted a survey of other benefits in the 10 states comprising the Central States Compensation Association considered the most comparable to North Dakota's employment market--Colorado, Iowa, Kansas (which did not respond), Minnesota, Missouri, Montana, Nebraska, Oklahoma, South Dakota, and Wyoming.

Concerning service awards for length of service milestones, seven states have policies for providing plaques or gifts at service increments, four states have longevity pay increments, and one state is developing a policy.

Concerning recognition, reward, or incentive programs, seven states have some sort of recognition or reward program or policy for accomplishments, while two states have no statewide program.

Concerning employer-paid tuition for higher education coursework for employees, four states have tuition assistance policies administered statewide, four states have tuition assistance policies administered at the agency level, and one state does not have tuition assistance.

Concerning employee membership dues for professional organizations, three states have a general state policy or union agreements providing dues payments, three states have no state policy but agencies may determine dues payments, and three states have no policy and prohibit dues payments. A further question was asked that if the membership, licensure, or certification is not required but deemed beneficial to the performance of the job, is it allowable? Two states reported that the determination is made at the agency level, one state allows payments in union contracts, five states have no general state policy, and one state does not allow such payments.

Concerning employee membership dues for service clubs, one state indicated that such dues could be incorporated into its incentive award program, one state indicated that payment of such dues is permissible if it benefits the mission of the department, and seven states indicated that such dues are not paid.

Concerning paid leave for care of family members, seven states allow sick leave to be used for the care of family members, and two states do not allow sick leave for the care of family members.

Concerning purchase of retirement service credit, six states allow employees to purchase service credit, two states had sick leave to retirement service credit, one state allows sick leave to be converted to pay for retiree health insurance coverage, and one state has no provision for employees to purchase retirement service credit. Concerning whether employers are allowed to purchase retirement service credit for employees, one state allows agencies to purchase retirement credit if a reduction in force occurs and eight states have no provision for employer purchase of retirement credit.

Agency Training, Tuition, and Professional Dues Policies

The committee reviewed rules adopted by Human Resource Management Services effective July 1, 2008, relating to training and tuition reimbursement. The new training and tuition rules apply to all state and local government agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by Human Resource Management Services. The rules provide an appointing authority may adopt policies to provide training and education opportunities to its employees to learn new required skills or to enhance their current skills, to increase the opportunity for advancement within the agency or state service, to increase proficiency and productivity and improve work performance. The rules also provide that costs of training or educational courses, including tuition and fees, may be paid for by the agency or reimbursed to the employee in accordance with agency policy.

The committee reviewed Office of Management and Budget Policy 209, which governs professional membership dues. This policy provides that the state's payment of dues to professional organizations is not a fringe benefit for state employees. Wherever possible, a membership should be carried in the name of the state agency and not of an individual. The idea behind this approach is to promote transferability of the benefits of the membership. To justify the expenditure of funds, association memberships should be related to an employee's job duties or should be beneficial to the state.

The committee received information from the State Auditor's office that it would be prudent to ensure that guidance or requirements developed by the committee are not duly burdensome on state agencies or result in a loss of flexibility. The committee also learned the State Auditor's office is not finding the types of expenditures reported as unauthorized in a recent Workforce Safety and Insurance performance audit.

Committee Considerations

Service Awards, Tuition, and Dues

The committee considered two bill drafts relating to state employee service awards, employer-paid tuition, and employer-paid professional organization membership and service club dues. Both bill drafts addressed employer-paid tuition, employer-paid membership dues for professional organizations or service clubs, and contained a provision that expenditures made pursuant to rule or policy are not a criminal offense.

One bill draft would have established a specific schedule of state employee service awards based upon incremental years of service. The other bill draft established general authority whereby each state agency, department, or institution, may establish rules or policies for employee recognition and service award programs. Classified service agencies would be subject to rules adopted by Human Resource Management Services and approved by the State Personnel Board and the Legislative Council's Administrative Rules Committee. Any other agency, department, or institution of the executive, legislative, or judicial branch may adopt similar rules or policies to ensure uniformity and consistency in state government. Notwithstanding any other provision of law, each nonclassified state agency, department, or institution establishing rules or policies for employee recognition and service award programs would be required to submit the rules and policies to the Office of Management and Budget for review and comment and after addressing any comments of the Office of Management and Budget submit the rules and policies to the Legislative Council's Administrative Rules Committee. Within 60 days after the close of each biennial period, each state agency, department, or institution providing an employee service award would be required to file with the Office of Management and Budget a report indicating the individuals receiving a service award, the amount paid, and a statement of the public purpose or benefit of the expenditures. Within 90 days after the close of each biennial period, the Office of Management and Budget would be required to submit to the Legislative Council a report summarizing this information. Expenditures made pursuant to these provisions were deemed to be compensation for services provided to the state and made for a public purpose and not gifts for purposes of Article X, Section 18, of the Constitution of North Dakota.

Concerning employer-paid tuition, both bill drafts provided that each state agency, department, or institution may establish rules or policies to provide employer-paid costs of training or educational courses, including tuition and fees, within budgetary constraints. Classified service agencies would be subject to rules adopted by Human Resource Management Services and approved by the State Personnel Board and the Legislative Council's Administrative Rules Committee. Any other state agency, department, or institution of the executive, legislative, or judicial branch would be authorized to adopt rules or policies to ensure uniformity and consistency in state government. Notwithstanding any other provision of law, each nonclassified state agency, department, or institution establishing rules or polices for employer-paid costs of training or educational courses, including tuition and fees, would be required to submit the rules and policies to the Office of Management and Budget for review and comment and, after addressing any comments of the Office of Management and Budget, submit the rules and policies to the Legislative Council's Administrative Rules Committee. Within 60 days after the close of each biennial period, each state agency, department, or institution providing employer-paid costs of training or education courses, including tuition and fees, would be required to file with the Office of Management and Budget a report indicating the individuals receiving employer-paid costs of training or educational courses, including tuition and fees; the amount paid; and a statement of the public purpose or benefit of the expenditure. Within 90 days after the close of each biennial period, the Office of Management and Budget would be required to submit to the Legislative Council a report summarizing this information. Both bill drafts provided that an employee who receives employer-paid tuition who leaves employment with that employer within two years of receiving the tuition must repay tuition received on a prorated basis. Expenditures for employer-paid training or educational courses, including tuition and fees, were deemed to be made for a public purpose and not gifts for purposes of Article X, Section 18, of the Constitution on North Dakota.

Concerning employer-paid professional organization membership and service club dues, both bill drafts provided authorized agencies, departments, and institutions to pay employee membership dues for professional organizations and membership dues for service clubs when required to do business if membership is primarily for the state. Again, the provisions contained a reporting requirement and a provision that expenditures were not unconstitutional gifts. Finally, both proposals provided that an expenditure made pursuant to a rule or policy is not a criminal offense.

Representatives of Human Resource Management Services testified that nonclassified agencies should report directly to the Legislative Council rather than the Office of Management and Budget.

Employee Performance Bonuses

The committee reviewed the state employee performance bonus program. North Dakota Century Code Section 54-06-30 provides that a state agency may provide monetary performance bonuses to its employees if the agency has had a written employee performance policy in place for more than one year before paying the bonus, the written employee performance evaluation policy required must have at least three levels of performance criteria, and the agency performance bonus program adopted must be a written policy and must be communicated to each employee in the agency. State employees are eligible to receive a bonus only if the employee has held a position in state government for at least one year before a bonus is paid, the employee's overall annual performance evaluation satisfies the agency's performance bonus program criteria for receiving a bonus, and the employee is a full-time or part-time regular nonprobationary employee holding a regularly funded nontemporary position. The section provides that an employee may not receive more than one performance bonus per fiscal year and may not receive more than $1,000 in bonuses per biennium. The section limits agencies paying bonuses during a fiscal year to not more than the number of employees equal to 25 percent of the employees' employed by the agency on July 1 at the beginning of each state fiscal year.

The committee discussed whether the bonus amount should be increased from $1,000 per biennium to $1,000 per fiscal year and whether Human Resource Management Services should be authorized to approve paying bonuses above the 25 percent limitation in this section. The committee considered a bill draft that increased the performance bonus from $1,000 per biennium to $1,000 per fiscal year and that authorized Human Resource Management Services to approve paying bonuses above the 25 percent limitation upon a showing of special circumstances. Human Resource Management Services was required to report any exceptions granted to the Budget Section of the Legislative Council.

Representatives of Human Resource Management Services testified the bill draft may be problematic in that the exception authorization applies to all agencies and institutions, including agencies and institutions expressly excluded from Human Resource Management Services' jurisdiction. Evaluating exceptions for agencies over which Human Resource Management Services has no overall authority or involvement would be difficult as the agency does not have full understanding or base information for making these decisions. Representatives of Human Resource Management Services proposed that entities not under Human Resource Management Service's jurisdiction report their exceptions to the Legislative Council.

Employee Recruitment and Retention Bonuses

The committee reviewed the state employee recruitment and retention bonus program. North Dakota Century Code Section 54-06-31 authorizes state agencies to develop programs to provide bonuses to recruit or retain employees in hard-to-fill occupations. The committee noted that the section does not contain a definition of hard-to-fill occupation and would be strengthened by defining a hard-to-fill occupation as including an occupation or position in which demand exceeds supply, special qualifications are required, competition with other employers is the strongest, there is a risk of losing an incumbent with rare skills, the position is filled by a highly skilled employee who is in high demand in the marketplace, loss of the employee would result in significant replacement costs, or the position is filled by key personnel.

Representatives of Human Resource Management Services testified that the definition of hard-to-fill occupation would be improved if permissive language such as "or other unique recruitment or retention issue identified and documented by the appointing authority" were added to the definition.

Recommendations

The committee recommends House Bill No. 1029 to provide general authority for state employee service awards and statutory governance for employer-paid tuition and employer-paid professional organization membership and service club dues.

The committee recommends House Bill No. 1030 to increase state employee performance bonuses from $1,000 in bonuses per biennium to $1,000 in bonuses per fiscal year and to authorize Human Resource Management Services to approve paid bonuses above the 25 percent limitation contained in NDCC Section 54-06-30(4).

The committee recommends House Bill No. 1031 to define the term "hard-to-fill occupation" for purposes of the state employee recruitment and retention bonus program.