NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

EMPLOYEE BENEFITS PROGRAMS COMMITTEE

Thursday, January 8, 2009
Fort Union Room, State Capitol
Bismarck, North Dakota

Representative Bette B. Grande, Chairman, called the meeting to order at 2:45 p.m.

Members present: Representatives Bette B. Grande, Eliot Glassheim, Jim Kasper, Matthew M. Klein, Joe Kroeber; Senators Ralph L. Kilzer, Karen K. Krebsbach, Carolyn Nelson, Curtis Olafson

Others present: See Appendix A

It was moved by Representative Klein, seconded by Representative Glassheim, and carried on a voice vote that the minutes of the December 1, 2008, meeting be approved as distributed.

At the request of Chairman Grande, Mr. Sparb Collins, Executive Director, Public Employees Retirement System, reviewed House Bill No. 1121 [90112.0300], which relates to employer contributions, cost-of-living adjustments, and supplemental retiree payments under the Highway Patrolmen's retirement system, old-age and survivors' insurance trust fund, and the Public Employees Retirement System. He also reviewed recent market results (Appendix B) and their impact on the Public Employees Retirement System. He said that as of June 30, 2008, the Public Employees Retirement System was 92 percent funded based upon the actuarial value of assets. At market value, he said, the system was 101 percent funded as of June 30, 2008. He said investment markets have experienced a significant downturn since October 2008. However, he noted the 1973-74 recession was followed by a 69-month period of 12 percent per year annualized returns. He said the panic of 1987 was followed by a period of 23 months of 24 percent per year annualized returns. However, he said the future is uncertain. He said the Retirement and Investment Office estimates that the year to date return through December 2008 is a negative 20.50 percent. He said if the Public Employees Retirement System experiences a negative 20 percent return for fiscal year 2009 it will result in a drop in the market value of assets from a 101 percent funded ratio to a 75 percent funded ratio. He said a return of negative 20 percent will result in a drop in the funded ratio based on the actuarial value of assets from 92 percent to 88 percent. He said if the Public Employees Retirement System experiences a negative 26 percent return for fiscal year 2009 and an 8 percent return each year after 2009, the projected funded ratio drops from 69 percent to 66 percent by the year 2013 based on the market value of assets and from 87 percent in 2009 to 60 percent by the year 2013 based on the actuarial value of assets.

Mr. Collins said if the market return for fiscal year 2009 is a negative 20 percent on June 30, 2009, the projected margin will be a negative 2.97 percent. If the market return for fiscal year 2009 is a negative 20 percent and the market return after fiscal year 2009 is 8 percent, he said, the projected margin still decreases from a negative 2.97 percent on June 30, 2009, to a negative 7.84 percent on June 30, 2013. He said the Public Employees Retirement System Board has learned that substantial contribution increases are required to return the plan to 100 percent funded status in 10 or 20 years and that waiting can increase the cost of recovery.

Mr. Collins said that based upon historical information, the historical range of returns for the Public Employees Retirement System has been between approximately 9.5 percent and 10.25 percent. Over a 10-year timeframe, he said, investment returns at the historical level will not return the plan to 100 percent status if the system experiences a 26 percent loss for fiscal year 2009. However, he said, over a 20-year timeframe the plan would return to a 100 percent funded status even if the plan experiences a 20 percent loss for fiscal year 2009. He said the Public Employees Retirement System Board noted that with a 10 percent return and a goal of returning the fund to a 100 percent funded level at market value in 10 years, the system would need an increase in employer contributions of between 2 percent and 6.1 percent depending on the loss for fiscal year 2009. With a 10 percent return and a goal of returning to a 100 percent funded level at market value within 20 years, he said, the Public Employees Retirement System would need an increase in the employer contribution of between 0 percent and 1.8 percent, depending upon the loss for fiscal year 2009.

Mr. Collins said the Public Employees Retirement System Board reviewed four options and is recommending an amendment to House Bill No. 1121 (Appendix C) to increase the employer contribution to the actuarially required level for the next two years or 3.41 percent for the main system, .82 percent for the judges' retirement system, 2.55 percent for the Highway Patrolmen's retirement system, and 3.41 percent for the defined contribution plan. He said this increase would only be a first step and future returns would indicate future actions. He said the

Public Employees Retirement System Board is recommending that the increase become effective January 1, 2010, to enable political subdivisions to plan for the increased employer contribution. He said the increase will expire in June 2011, and the 62nd Legislative Assembly could determine if the increase in the employer contribution should be continued, increased, decreased, or discontinued.

In response to a question from Senator Olafson, Mr. Collins said the cost of the amendment is $21,250,275--$10,432,587 in general funds and $10,816,097 in other funds.

Chairman Grande recognized Mr. Steve Cochrane, Executive Director, Retirement and Investment Office, who presented a State Investment Board update (Appendix D). He said 2008 was the worst year for financial markets since the Great Depression. He said the Teachers' Fund for Retirement has experienced an estimated 23.1 percent decline through December 31, 2008, and the Public Employees Retirement System has experienced an estimated 20.5 percent decline through the same period. He said the Retirement and Investment Office is observing what other states are doing in this investment climate and there is no clear trend. He said some states are considering employer increases while other states are delaying employer contribution increases to see when and to what extent the markets recover.

Chairman Grande recognized Representative Glassheim. He said he is concerned that if the Legislative Assembly does not enact an employer contribution increase at this time, the funding problem will become worse in the future.

In response to Representative Glassheim's comments, Representative Grande said that based upon historical evidence, sharp, deep market declines were followed by years with significant market increases which returned the retirement trust funds to a 100 percent funded level and even allowed benefit enhancements.

Chairman Grande recognized Representative Kasper. He said the United States is in uncharted waters and the precipitous decline in the markets could be followed by a recovery that is just as fast and steep.

Chairman Grande recognized Representative Kasper. He said another method of returning the investment funds to a 100 percent funded level would be to increase employee contributions.

Chairman Grande recognized Mr. Aaron Webb, Assistant Attorney General. He said the Public Employees Retirement System plan document, which is the contract between the state and its employees, does not expressly provide or allow for increases in employee contributions. He said the Constitution of North Dakota prohibits the Legislative Assembly from enacting a law impairing a contract, and, thus, the Legislative Assembly would not be able to increase the employee contributions for current members of the Public Employees Retirement System. Under North Dakota law, he said, public employer obligations are contract obligations. He said North Dakota Century Code Section 54-52-14.3 provides that "[a]ny provision of law relating to the use and investment of public employee retirement funds must be deemed a part of the employment contracts of the employees participating in any public employee retirement system. All moneys from any source paid into any public employee retirement system fund created by the laws of this state must be used and invested only for the exclusive benefit of the members, retirees, and beneficiaries of that system, including the payment of system administrative costs." He said the North Dakota Supreme Court has ruled that retired vested employees are entitled to the retirement benefits provided by the state at retirement and these benefits cannot be reduced. He said it is the view of the Attorney General's office that Section 54-52-14.3 extends the same protection to active employees. He said active employees are entitled to fulfillment of the promise the state made the employee in return for the labor of that employee. He said this view is the modern trend among courts that have addressed the issue.

In response to a question from Representative Kasper, Mr. Webb said the Legislative Assembly could establish a separate retirement plan for new employees or a separate tier with different benefits for new employees without violating the contract clause.

Chairman Grande recognized Senator Olafson. He said that increasing the employer contribution at this time would be acting in haste and the Legislative Assembly should wait and assess market changes between now and the 2011 legislative session.

It was moved by Representative Klein, seconded by Senator Kilzer, and carried on a roll call vote that the committee give the proposed amendment to House Bill No. 1121 an unfavorable recommendation. Representatives Grande, Kasper, and Klein and Senators Kilzer and Olafson voted "aye." Representatives Glassheim and Kroeber and Senator Nelson voted "nay."

Chairman Grande recognized Representative Klein. He reviewed a bill draft [90535.0100] relating to rural fire department firefighters relief associations. He said the bill draft would allow rural fire departments to establish firefighters relief associations.

Chairman Grande recognized Ms. Lois Hartman, North Dakota Firefighters Association.

In response to a question from Senator Nelson, Ms. Hartman said the bill draft will not have an actuarial impact. She said alternate firefighters relief associations are funded from a portion of the fire insurance premium tax.

Chairman Grande recognized Mr. Donavan Voeller, Bismarck Rural Fire Department, Bismarck. Mr. Voeller said the Bismarck Rural Fire Department is the entity that requested Representative Klein to submit the bill to the Legislative Assembly.

In response to a question from Representative Grande, Mr. Voeller said the bill draft states that a firefighters relief association plan must be an Internal Revenue Service-approved plan. He said the bill draft also deletes the requirement that a member have 20 years of active duty and be a member for 10 years before the date of retirement in order to receive a benefit. He said these provisions would be established by the relief association in its bylaws.

Representative Grande recognized Representative Klein. He said the bill draft should be allowed to move forward and be reviewed by a standing committee.

It was moved by Representative Glassheim, seconded by Representative Kroeber, and carried on a roll call vote that the committee waive jurisdiction over the bill draft relating to rural fire department firefighters relief associations. Representatives Grande, Glassheim, Klein, and Kroeber and Senators Kilzer, Nelson, and Olafson voted "aye." No negative votes were cast.

Representative Grande recognized Representative Glassheim. He reviewed a bill draft [90621.0100] relating to metropolitan planning organizations. He said the bill draft establishes metropolitan planning organizations in state law thus making them eligible to participate in the Public Employees Retirement System. He said that the city of Grand Forks recently joined the Public Employees Retirement System and a determination was made at that time that employees of the metropolitan planning organization were not eligible to participate in the Public Employees Retirement System. He said the final determination that employees of metropolitan planning organizations were not eligible to participate in the Public Employees Retirement System was not made until long after the April 1, 2008, deadline for submission of proposals to the Employee Benefits Programs Committee, but he is requesting that the committee review the bill draft at this time for purposes of allowing it to be submitted to the 61st Legislative Assembly. He said there are four employees of the metropolitan planning organization in Grand Forks, seven in Fargo, and two or three in Bismarck. He said the proposal will not have an actuarial impact on the Public Employees Retirement System.

At the request of Chairman Grande, committee counsel distributed an e-mail (Appendix E) from Melanie Walker, Vice President, The Segal Company, Greenwood Village, Colorado. He said the e-mail states that it appears that to the extent that metropolitan planning organizations fit the definition of governmental plan under Internal Revenue Code Section 414(b) there should be no effect on the status of the Public Employees Retirement System.

It was moved by Representative Klein, seconded by Senator Nelson, and carried on a roll call vote that the committee accept jurisdiction over the proposal. Representatives Grande, Glassheim, Klein, and Kroeber and Senators Kilzer, Nelson, and Olafson voted "aye." No negative votes were cast.

It was moved by Senator Nelson, seconded by Representative Kroeber, and carried on a roll call vote that the bill draft be given a favorable recommendation. Representatives Grande, Glassheim, Klein, and Kroeber and Senators Kilzer, Nelson, and Olafson voted "aye." No negative votes were cast.

No further business appearing, Chairman Grande adjourned the meeting at 4:10 p.m.

____

Jeffrey N. Nelson
Assistant Code Revisor

ATTACH:5