Chairperson Grande and members of the Employee Benefits Program Committee, I am Shelley Seeberg, Area Director for the American Federation of State, County and Municipal Employees also referred to as AFSCME.

AFSCME represents 80,000 correctional officers and another 20,000 correctional employees throughout the United States, included in this are COs that we represent at the ND State Penitentiary.

Today I am here to speak to the supplemental defined contribution retirement plan for State correctional and peace officers.

My remarks today are based upon an analysis from AFSCME's Employee Benefit Specialists in our Department of Research and Collective Bargaining and the needs of the members.

Corrections is dangerous work, perhaps more importantly, corrections is very physically demanding work. The ND system requires COs to work until age 65 (with limited exceptions), take early reduced pensions, or file for disability retirement or workers' compensation. North Dakota is one of a handful of States that continue to have an age 65 retirement for COs.

Most public pension systems recognize that Corrections is at least as physically demanding as public safety, and use financial incentives to maintain a young and vigorous workforce by allowing normal retirement at ages earlier than is allowed for general employees. Many States do this by enhancing retirement for COs under the general employees pension plan, but many others do it inclusion of COs in the public

safety (state and local police) plans, which was attempted in ND in the 2007 Legislative Session in Bill 2413 also sponsored by Sen. Lyson. During this time you heard from many of our members regarding the demands of the COs in the North Dakota system, since that time one of our members was assaulted at the maximum facility causing a lock down of the facility. Thankfully the CO has fully recovered.

COs in ND participate in the general employees' pension system, without enhancement. Publicly available information shows that normal retirement is not allowed until age 65 (or the Rule of 85, if earlier), and early, reduced retirement is not allowed until age 55 with 3 years vested.

The bill that you are now considering will establish a supplemental defined contribution (401K-style) plan allowing COs to supplement their retirement benefits. The stated purpose is to provide a tax-deferred mechanism for COs to save money to enable them to retire earlier than age 65. Although a supplementary defined contribution plan could be used to enhance retirement, it would not really offer a CO the opportunity to retire much earlier than now because the substantial penalties for per-age 65 retirements remain in place. A CO that now can't retire until age 65 (or rule of 85) might be able to save money under this new system to help enhance retirement, but he or she would suffer an actuarial reduction in the benefit because of early retirement that probably would not be offset by any enhancement achieved under this new DC plan.

The actuarial reduction for early retirement is 6% per year (0.5% per month earlier than age 65). Please note that this is a reduction to the benefit earned on the day of retirement, and not the benefit that would have been earned at age 65. Suppose, for example, that a CO earning $36,000 had salary/service that would entitle him or her to

receive $1,500 per month ($18,000 per year) at age 65 after 25 years of service (25 years @ 2% per year = 50% of average final salary). If this CO chose instead to retire at age 60, the benefit would be reduced because of five fewer years of service and five additional years of benefit payment, plus an additional 30% (6% per year) for early commencement. The $1,500 monthly benefit at age 65 would become a monthly benefit of $840 per month (40% X $36,000 X 0.7) instead of $1,500 per month, and this does NOT take into account that he or she probably would have received salary increases during the five years between ages 60 and 65. So the CO sees a reduction of $660 for the early retirement penalty.

A CO choosing to retire at age 60 instead of age 65, would suffer severe financial hardship unless the new supplemental plan could make up the pension reduction for the 20-30 years that he or she is actuarially projected to live, which is highly unlikely.

If the existing defined benefit plan is (or will be) amended to allow for unreduced normal retirement as early as age 55 then the proposed defined contribution plan will be more effective because it will be easier to supplement the defined benefit plan. Then retirement before age 65 will be reduced only by the affect of fewer years of participation, and not by the additional reduction due to retirement before age 65. A reduction in the normal (unreduced) retirement age to age 55 would eliminate the early retirement reduction (30% in the example I used earlier). The supplemental plan would still have to offset the reduction in the defined benefit plan incurred because of the lesser number of years of service.

The second issue is extremely important; and may render the law unacceptable as written.

The proposed bill establishing the defined contribution plan would require participating employees to contribute 2% of their salary (overtime excluded) and would require the employer to contribute 3%. Employer contributions would cease at age 60 or upon attainment of the Rule of 85. Please note that this language is not the same as the language of the defined benefit plan, which allows retirement either at age 65 (current pension provision) or age 55 (language discussed previously).

There are two aspects of this new plan that are unacceptable. First, an employee who elects to participate in this new defined contribution plan can't later terminate his or her participation. S54-52.7-02 clearly says that an election made by an eligible employee under this section is irrevocable. It might be acceptable to make someone who terminates participation to wait for a year to rejoin the plan, but it is not acceptable to make a voluntary plan irrevocable once it is made. A financial crisis could cause the CO great hardship. This plan could easily be amended to allow hardship withdrawals and/or the cancellation of participation. Forcing someone who joins the plan to stay in the plan until retirement may be a standard feature in public sector defined benefit plans, but it seems unreasonable in a voluntary, supplemental defined contribution plan.

S54-52.7-10 (Forfeiture) is far more troubling. This section clearly says that any CO who continues to be employed after he or she reaches age 60 (or rule of 85) forfeits all employer contributions, which are returned to the general fund. In other words, a CO who decides to delay his or her retirement beyond age 60 (or rule of 85) loses all employer contributions, which is unheard of.

A requirement that a CO must either retire at age 60 (or rule of 85) or suffer financial damages in unacceptable. Also, a forfeiture of employer contributions into the general fund could also violate federal tax regulations in that funds submitted into tax-qualified employee benefit trust are held in trust for the exclusive benefit of participants and beneficiaries. Returning "forfeited" contributions to an employer's general fund could violate requirements imposed on trust funds under IRS regulations. Moreover, I would also suggest that this provision doesn't comply with all applicable age discrimination statutes.

In conclusion, although the supplemental defined contribution plan may be well intended, the continuation of substantial pension reductions for pre age 65 (or rule of 85) retirement combined with ending of employer contributions and forfeiture of previous employer contributions if a CO continues employment past age 60 significantly impairs the intended benefit.

If the committee recommends the bill, AFSCME would propose amending the bill to provide for no penalty of the defined benefit for COs age 55 retirement, to allow for a hardship provision and to eliminate the forfeiture language for employment past age 60.