

2011 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1398

2011 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee
Fort Union Room, State Capitol

HB 1398
February 11, 2011
14452

☐ Conference Committee

Committee Clerk Signature

Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to definitions under the teachers' fund for retirement, and to calculation of final average salary, and provide for application

Minutes:

Vice Chairman Randy Boehning opened the hearing on HB 1398.

Rep. Mike Schatz, District 36, appeared as a sponsor of this bill. **Attachment 1.**

Rep. Ron Guggisberg: Do you think that this bill could possibly prevent somebody from wanting that job as a principal? If they are a teacher and they realize they have to work eight years as a principal to earn their full retirement and they only plan on working for five more years, could we be limiting our pool of potential candidates?

Rep. Mike Schatz: Absolutely not.

Rep. Karen Rohr: Is this modeled after some other state plan?

Rep. Mike Schatz: Not that I know of.

Rep. Karen Rohr: This is new?

Rep. Mike Schatz: Yes.

Rep. Lisa Meier: You picked the magic number 8. I am wondering why you picked 8 years.

Rep. Mike Schatz: I didn't really pick it. It was picked during an interim study this summer, and so I just basically picked up on the interim study bill which got a neutral recommendation.

Rep. Vicky Steiner: Do you want to elaborate on why you think there would be this disparity in that system?

Rep. Mike Schatz: I look at the system and I see that if you only put so much in and then you get to take quite a large amount out at the end, there is going to be problems with the fund. That is the disparity for me. Is this something we can correct? Yes. That is basically my motivation behind the bill.

Neutral:

Fay Kopp, Deputy Director, Retirement and Investment Office, which is the agency that administers the teachers' fund for retirement program, appeared in a neutral position. **Attachment 2.**

Rep. Roscoe Streyle: Could you provide the committee with the average service years of all the retired administrators right now?

Fay Kopp: We would not have a breakdown of the average salaries or average retirement benefits being paid by any subgroup. For TFFR purposes all employees are treated equally whether they are an administrator or a teacher. Once a year we do receive a data dump from the Department of Public Instruction that will tell us at least what they were classified on the MISO3s and at least gives us a hint as to what their position title is as of that year. We guess and we do some analysis based on that data dump, but we could not base benefits on that method.

Rep. Roscoe Streyle: You would have no way of telling us what the annual withdrawn amount out of the fund is of the administrators and what the annual is what the teachers are taking out? You don't separate that in any way?

Fay Kopp: No. For TFFR purposes under current statutes it has no bearing on the amount of their retirement benefits. The benefits are calculated based on their salaries that are earned by the employee without regard to what their position is in the school district.

Vice Chairman Randy Boehning: When you are looking at teachers, what is the average service of a teacher? Do you know the average time served as an administrator?

Fay Kopp: TFFR does not again keep that information. We don't keep that sort of data. I am sorry that we don't. It is something that we would have to collect in the future if something like this would be provided. Again, we treat all employees equally and whatever their salaries are is what their benefit is based on.

Opposition:

Dr. Doug Johnson, Executive Director, North Dakota Council of Educational Leaders, appeared in opposition. **Attachment 3.**

Vice Chairman Randy Boehning: Do you have any information on the average length of how long a teacher teaches and how long an administrator is an administrator?

Dr. Doug Johnson: I do not have that information. If I do, it would just be anecdotal. I can you tell two things. Elementary principals tend to stay in positions longer.

Superintendents tend to move a little more frequently, but can be in positions for a long time. We just had our Secondary Principals Conference this last Monday and Tuesday, and we did an awards ceremony for the very first time recognizing people for 10 years, 15 years, 25 years, and 35 years of service. For the very first time, we polled all our administrators and looked at when they began their administrative services. Of those 225 members of our association of secondary principals, 78% were new to the profession as of 2000. We are talking on the secondary level a lot of principals that would be impacted by this at the high school and middle school level.

Rep. Roscoe Streyle: Isn't this bill just basically trying to—I agree there are some flaws—isn't the jest of this bill just to say you can't be a superintendent for four years and draw off that much higher salary? In Rep. Sanford's case, of course, I agree that he should get the full with that many years of service. There is definitely an issue. I don't know that it is a mass issue but to say that this exposes the flaw of the whole defined benefit system too.

Dr. Doug Johnson: You also have to consider that those more highly paid administrators are putting more into that system, so they don't get to get that benefit of that. Maybe if you are going to do this, you would suggest that if they are going to do that, they can take that additional money that goes into it and put it in their own investment account, draw the money off that, and not have that come out as part of the benefit that is going out. That would equalize that to some extent. I think the bottom line is this though. We do have trouble getting administrators. Applications we have particularly for superintendents in small school districts are few. A good draw on applications for a smaller school district, I'll take Richland County as example is looking for a superintendent right now, they had seven applications from which to choose. It does reduce the number of people that may apply for it, and I think this would reduce it much lower. The other thing you do need to remember too is that contractually superintendents for the first two years of their contract do not have any rights to a hearing at all.

Rep. Roscoe Streyle: Are you advocating a defined contribution? You would be in support of that then as a fairness issue?

Dr. Doug Johnson: No I am not advocating that all.

Rep. Lisa Meier: Explain to me. Bismarck just hired a superintendent from Minnesota, and let's say she works in Bismarck as a superintendent for six years and decides to retire, how does that all work now for her payout for benefits?

Dr. Doug Johnson: My understanding by this bill right now wouldn't affect them, because she was probably never a teacher in North Dakota.

Rep. Roscoe Streyle: Somebody comes in out of state, works six years, and draws for 30 years on paying on the six years, is that how it works? Say they live 30 years after retirement.

Dr. Doug Johnson: No that it is not how that works. They can buy out their years or they can carry over years from the other state if they would like to buy out those years from that but generally they are going to base it on their six years, and then they have to meet the

rule of 90 and all those other rules to do that before they could get the retirement. It would only be based on the years of service in the state.

Chairman Bette Grande: It would be based on salary x years of service so that amount that they would get would be very small because the years of service is going to play into that multiplier.

Bev Nielson, North Dakota School Boards Association, appeared in opposition. From a school board's perspective I would like to tell you that over the last many years with many districts struggling to think of ways to encourage good people within your own system to move toward administration because we have such a hard time finding administrators. A lot of teachers don't want to work 12 months. They don't want the added responsibilities, and they are happy and effective in the classroom, and we like them there too. We are required for approval and accreditation, like Doug was saying, to have principals on site and the same with superintendents. These are people we are trying to recruit, not dissuade from going into administration. One of the things we tell them is to think of it as a promotion. That is what it is. You are going to work more hours a day. You are going to work more days a year, and you are going to be paid for those days. If we want to be able to recruit and retain people, we can't have things like HB 1398 literally being punitive to a person who goes into administration. You are going to have to work eight years for any of those administration salary dollars to count. It isn't gradual. We think it is discriminatory because the contributions both from the employer and the employee side will be computed on the higher salary, but the benefits will not be. That is just wrong. When our organization made some agreements for HB 1139(?) to not challenge a change in benefits, it didn't include anything like this. It was just for 1134.

Vice Chairman Randy Boehning: What I am getting from the testimony that most administrators aren't there for eight years. You are saying that because it is going to be punitive they don't want to take the job because they have to be there for eight years. Did you and Doug say that most administrators aren't there that long?

Bev Nielson: I wouldn't say that none of them are there that long. Moving into administration is a career ladder type of thing. They are in teaching for several years before they might move on to be principal, at principal for a few years, and if they choose to move on to be superintendent. We have superintendents that may be someplace for 20 years. They don't necessarily stay in the same school. This is another career ladder thing. If you are in a very small school but you would like to move forward and increase your income and other things, you might apply in a larger school, and so they move around. They probably teach longer than they administrate. I think where the punitive part comes is you don't know for sure. Anything can happen. The point of this defined benefit plan is that you can sort of count on retirement. If you are a principal for several years and you are thinking about getting a superintendent's credential which is not an easy thing to do—it is a lot of time and money involved in getting there but maybe you are at a point in your career where it would be only six or seven years that you might actually serve as a superintendent. To have an arbitrary cutoff like that is an interesting thing to begin with. Then you have the fact that if something were to happen to you, if you pass after you had only been a superintendent or a principal for six years, your death benefit is also reduced by that amount. I guess from our standpoint other than it appearing to be punitive it has

literally no effect on the fund. We really don't see the purpose other than to kind of punish administrators for getting a better job.

Vice Chairman Randy Boehning: Rep. Schatz handed out a spreadsheet with his testimony. The average teacher salary in North Dakota makes \$37,764 and the school administrator's is at \$85,000. Administrators' salaries are 17th in the country where teachers are at 49th in the country. I think what he is trying to get at with this bill was to maybe try to even some of this out.

Bev Nielson: Is the purpose of the bill to reduce their retirement benefit or to make them stay on as administrators longer or to try to control the salaries that boards negotiate with their administrators in order to be able to recruit and retain them?

Vice Chairman Randy Boehning: I think it is a combination of all of the above.

Bev Nielson: If the purpose of it is to reduce what we pay administrators in salary, we won't have anybody go into administration. If you look at the difference between the salaries and you compute the additional time and hours and months that they work and responsibilities, yes they make more for being promoted to administration, but most of that is eaten up in additional time that they work over a classroom teacher.

Chairman Bette Grande: I believe if we go back to the intent of the original bill sponsor, his point was strictly that you would have a teacher who worked 27 years and they had another parallel teacher next to him that worked 25 years but went into administration the final two, their retirement dollars were different. Their benefit became very different because of the bump in the last couple years. This was to kind of equalize out that since there wasn't as much pay in and yet increased benefit. It was that disparity between and it came out as a scenario of two teachers actually in his district that ran into this issue.

Bev Nielson: I understand that. I think it is interesting that you take two teachers, one chooses to stay in teaching and one chooses to go into administration. That is a career choice. Every teacher has the option of going into administration. It takes time, effort, money, and they are rewarded at the other end.

Rep. Roscoe Streyle: Is your position just on recruiting only? Why would you care what their retirement is?

Bev Nielson: These are employees and we care that they are treated fairly for sure. Probably the larger issue—I mean we have all the other issues that others have talked about—from our standpoint it is encouraging people to go into administration and being able to recruit them.

Rep. Ron Guggisberg: When you become an administrator, you are going to be working three more months. There are additional responsibilities. I am assuming there are obviously additional education requirements for even applying for a job like that. Is it a separate contract? Does each administrator negotiate their contract?

Bev Nielson: Superintendents for sure, yes. I know in Fargo when I was on the board, our principals can organize if they want, and they have the same nonrenewal rights as teachers and they have the same benefits and contract. As far as their salaries, I know in Fargo we had a whole point system for the principals. Maybe you would call it merit pay. They earn points for certain types of things and so that was laid out and we didn't go to impasse over it or anything. They have a right to organize but there aren't too many administrative negotiating units in the state collectively bargaining.

Rep. Ron Guggisberg: If this did become an issue where you had teachers trying to work the system and bump up their retirement quite a bit, that is something you could work through contract negotiations then locally?

Bev Nielson: I am not sure I understand the question. Are you saying that we could solve someone's perception of a problem by offering our administrators lower salaries?

Rep. Ron Guggisberg: Correct. I don't think it is a problem, because I think you are having a hard time finding people to apply for those positions but rather than legislate it, it is something you could take care of locally.

Bev Nielson: I don't see that as our responsibility to take care of. We have to offer salaries that help us recruit and retain good employees. From my perspective it doesn't have a big impact on the fund. I don't see why they would is my answer.

The hearing was closed.

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Committee Clerk Signature

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Explanation or reason for introduction of bill/resolution:

Relating to definitions under the teachers' fund for retirement, and to calculation of final average salary, and provide for application

Minutes:

Chairman Bette Grande opened the discussion on HB 1398. This is the bill that came out of the interim. It was Rep. Wald's bill put in by Rep. Schatz. The administrators and school boards are interpreting this that unless you work as an administrator for eight full years, none of your administrative salary works towards the benefit. Rep. Schatz thought it was a combination of whatever you did in your last eight years. The first interpretation is correct?

Jeff Nelson, Legislative Council, Committee Counsel for the Interim Employee Benefits Programs Committee appeared. Yes. The bill provides that unless the individual serves eight full years as an administrator then none of the years served as an administrator count or are used in calculating final average salary.

Chairman Bette Grande: That explains some of the consternation then from the groups. In speaking with Rep. Schatz what he was hoping to be doing was counting it as a combination of the eight final years. Currently we take the final three and we average out and make a figure there. He is saying he would like to use the average eight. In final discussion with him, he thought the final five. Is Tier 2 final 5?

Jeff Nelson: Yes.

Chairman Bette Grande: We want to match up to that type of language so combination of salary last five years. Really this would only affect those until Tier 2 is old enough to be retiring. How do I amend this to say that?

Jeff Nelson: Right now for Tier 1 members it is 3 years and for Tier 2 members it is 5 years.

Chairman Bette Grande: This would just be an amendment to Tier 1 because Tier 2 will already be no matter what you do it will be 5 years. Right?

Jeff Nelson: Yes. If I understand your concept here, what you would like to do is for Tier 1 members employed as administrators to say that the final average salary is based upon the average of the final five years of service.

Chairman Bette Grande: He would like the intent to at least be that. He wasn't trying to say you don't get paid to be an administrator. That is not what Rep. Schatz was trying to say.

Jeff Nelson: I think we can do that.

Rep. Ron Guggisberg: Essentially this amendment would change it from a high 3 to high 5 plan?

Chairman Bette Grande: Correct. Final 5. This would only deal with Tier 1 since Tier 2 is already in that situation.

Vice Chairman Randy Boehning: Would this just apply then to the administrators?

Chairman Bette Grande: Yes. Teachers are already in that situation. I would resist a motion to make that leap. It would be just those that move into administrative in what is considered kind of that spike situation.

Rep. Lonny Winrich: It would be any administrative employment during that last five years and not require that all five years be administrative?

Chairman Bette Grande: Correct. That way if you only are an administrator for three years you would get to count the two teaching years and your three administrative years. I don't want them to lose the fact that they didn't administer for five or eight years. We don't want to punish you for going into that. Right now as it is written it is almost like you are punished for going in to administration because if you didn't do it for eight years, you don't get to count all those added years. How do we smooth out that increase and smooth it out five years.

Rep. Lonny Winrich: Must you retire as an administrator? What if you have a principal or something who for the last two years goes back into the classroom?

Chairman Bette Grande: Whatever those last five years are.

Rep. Glen Froseth: Then that administrator if he had been in administration for 30 years and then went into teaching for 2 years and uses his last 5 years, he would be penalized.

Chairman Bette Grande: That is how it currently is.

Rep. Glen Froseth: It would basically discourage any former administrator to go back into teaching.

Rep. Lisa Meier: If you have an individual that let's say if the individual came from Minnesota and becomes an administrator in the city of Bismarck and maybe works for four years and then retires, what would be the effect?

Chairman Bette Grande: He is not vested for one.

Jeff Nelson: I think the special provision at the end would come into play that for purposes of calculating final average salary the member who has a break in service by teaching outside this state may use service teaching outside the state in the calculation of final average salary. That is for a person that leaves North Dakota and teaches in Minnesota for a period and then returns to North Dakota as an administrator. Your scenario where someone is recruited from outside the state and comes in they would be treated as an entirely new first time employee into the teachers' fund for retirement.

Chairman Bette Grande: If they only work for three years, they are not vested. They would have to work for five years because they would be a Tier 2.

Jeff Nelson: We need to back up here and work our way through this. Rep. Schatz introduced this bill. He had some constituents that were concerned about the issue of spiking where an individual leaves teaching, becomes an administrator for a short period of time, and then retires with that higher final average salary. The longer I think about this if we change the calculation to the final three or five years, then they are going to get some of those years of—under the current bill the individual has to serve as an administrator for eight years. Under the scenario we are talking about now using the final five years so the individual leaves teaching, is an administrator for five years, then they use the average of their final five years final average salary. All those years are as an administrator. That is really current law. I think under that scenario the bill wouldn't be needed.

Chairman Bette Grande: This is only meant to capture those that are administrators for less than five. This would promote people to stay as administrators for longer.

Rep. Lonny Winrich: Under current law if someone is a teacher a long time and then becomes an administrator for say two years just before they retire, what is used to calculate their final average salary?

Jeff Nelson: It is the final three years. That's the scenario that some constituents of Rep. Schatz pointed out that they really didn't feel was fair that an individual would spend their career teaching and then spend a year or two at the end of their career as an administrator at a higher salary and essentially spike or influence the calculation of final average salary. This was an attempt to address that situation.

Rep. Lonny Winrich: Basically what extending that averaging period to five years does is it would encourage to spend more time as an administrator but it doesn't require it as the original bill?

Chairman Bette Grande: Correct.

Jeff Nelson: There are maybe unintended consequences because it is going to lower your final average salary because rather than your final two years or three years it is going to be your final five years.

Chairman Bette Grande: I just chose five. If they would like to continue at eight, I don't have ownership to any of this. I was trying to see what number seemed to fit in and since we were dealing with a five for the Tier 2 already, I thought that matched language better. I don't know how many years it is going to take until they are in Tier 1, but once that is in place this bill basically becomes null and void.

Jeff Nelson: You are talking about five years of service as an administrator, not using five years as your calculated final average salary?

Chairman Bette Grande: Eight to five.

Rep. Gary Paur: When we were talking about this before, it occurred to me that if we would just classify teachers and administrators—now there is no classification. Then if a person served five years as an administrator, you would be vested at that rate. If you serve 30 years as a teacher you would be vested at that rate. Is that a viable alternative?

Jeff Nelson: I think it would be. I think the teachers' fund for retirement under current law the definition of teacher is pretty broad encompassing and as far as vesting and the multiplier and all of that is the same for administrators and teachers. That would be a policy question for the legislature if they wanted to have a different vesting schedule and here a calculation of final average salary for administrators. The multiplier is the same.

Rep. Gary Paur: Do you think that would be a more viable option?

Jeff Nelson: To me that implies that I should take a position on that and that is really a policy question or a philosophical question for you and the committee and the legislature. I think it could be done if that is the bottom line.

Rep. Mark Sanford: With the five years what you are suggesting is that when you make these amendments and if somebody was an administrator for one year, you would then go from a three year vesting to a five year vesting. You would go to a five year final average salary rather than a three year final average salary. As Jeff was suggesting, it would probably depress the salary a little bit. I think if that is there that is not discouraging somebody too much anyway. The question I would have are the Tier 1 folks grandfathered? Have they got any special protections under the current system?

Jeff Nelson: That is a very good question. The reason why the Tier 2 was established leaving a Tier 1 in place because those members are vested in the system. They have contractual rights. This was an attempt to tweak that a little bit. The actuary did not identify any legal or technical or drafting issues with the bill. However, you are correct that the committee is on that spectrum moving toward affecting vested people so that probably is an issue. I don't know the answer to that. It is somewhere on that spectrum between yes we are able to change or amend benefits for certain employees. No these employees are vested. We can't change those and if we attempt to do so would be a violation of contract.

Rep. Mark Sanford: I know that spiking has been an issue. I will give you a couple of examples that this might cause some distress. Say you are in a smaller community and your superintendent leaves, particularly the superintendent leaves in June. Now you are looking for somebody to be the superintendent. I know when Northwood hired their current superintendent they had three applicants. One of them was a retired administrator living in the community and one was from Minnesota. I can't remember where the other one was from. Essentially they had probably one candidate that was still active in the field so to speak and fortunately worked out for them. Let us say that you had a teacher who you asked to go and be the interim or be able to take this for one year because of the timing kind of an issue. That says to them we are going to take five years of salary where they were three before. Whatever advantage they get there, there would be two lower salaries that would be coming into it. I know what I would say. I'll keep teaching math, thank you.

Vice Chairman Randy Boehning: Could we put language in that would say if you retire when you are an administrator, we will count the five years but if you go back in, it would count the three years?

Jeff Nelson: If that is a question, yes you could. At some point again the formula gets pretty cumbersome if you talk about doing this, moving back, moving forward, moving back so that is the only downside of it.

Vice Chairman Randy Boehning: If we are going to do something like this to the five years, you have to have been an administrator in the last year when you retire in order for the five years to count. Otherwise it is the three years in Tier 1.

Chairman Bette Grande: Rep. Sanford, do you think that captures that scenario where they come in for that emergency piece?

Rep. Mark Sanford: Yes. I don't mean to pick on anybody. I will give you an example of where somebody might view it as spiking but is absolutely an essential operational decision and that is Bismarck. Last year they had opening for superintendent. They advertised. They made the decision that they didn't have the right fit for the candidate. They went to an interim, an assistant superintendent in the district, who has told them he is going to retire after this year. His last year he is going to be superintendent. Before that he was assistant superintendent. There is a little bit of difference in those salaries there, fairly significant in fact. Some might view that as spiking, but for the Bismarck school district it was a great move and here was a highly capable individual ready to step up and say I'll do this for one.

Rep. Lonny Winrich: I am getting kind of nervous about this bill. We seem to be grabbing numbers out of the air and whether we are going to use five years or three years and what happens if they only work one year as a superintendent and so on. I don't think this bill really has a great impact. It is not going to affect TFFR funding very much. I think I would, rather than tack on an amendment that seems to do something here, that we have a chance to really understand what it is and wait another session to do something about this. I recognize that spiking is an issue. It happens in the university system too. I am not sure we are necessarily doing something good in trying to pick some numbers here.

Chairman Bette Grande: I like the five year piece because it matches us up to the Tier 2s. It adds kind of a fairness to that and I think it does capture the essence of what Rep. Schatz is trying to do in that it does eliminate that spike of those short term ones. That emergency one where teacher-teacher, administrator-teacher-teacher, I understand what he is trying to do is capture out that one year in there, and it would be better if it was the administrator on that end and then they go into the five years still. I am fine with not worrying about capturing that one lone person where it is that emergency thing that they come in for the administrative piece, but I understand the fairness side of that and if we can adjust it for a Northwood type thing, but the rarity of it is just too rare to worry about it.

Rep. Lonny Winrich: I agree with that.

Rep. Mark Sanford: Truth in advertising. Getting what I did for a number of years I can't vote for the bill anyway.

Chairman Bette Grande: Would you be able to draft something for us to work with?

Jeff Nelson: Yes I would. Are you going to allow any of the years as an administrator in the calculation of final average salary for an individual who has not served eight years as an administrator?

Chairman Bette Grande: Eight years is out of the picture. I don't want any eight year language in there.

Jeff Nelson: Then five years. Unless you serve as an administrator for five years you cannot use any years as an administrator in calculation of final average salary.

Chairman Bette Grande: No. What I want to do is anyone who enters into an administrative position their final average salary moves to five years whether they work for one year or eight years.

Jeff Nelson: Okay.

Rep. Lonny Winrich: What happens to the person who takes an administrative job for one year as a temporary thing and then goes back to teaching for two years and retires?

Chairman Bette Grande: That would be the exemption that he was talking about and I am not sure how you want to word something like that.

Jeff Nelson: We could put in an exemption then that if they return to teaching and retire as a teacher I suppose they would just calculate under--would it be three years or five years?

Rep. Lonny Winrich: That is what I am asking.

Chairman Bette Grande: I don't necessarily agree with the exemption in that if you go to an administrator your final year, you still have to go to the five years. What difference does it make if you did it during one year here, here, or here? Just smooth it out. I realize it causes that consternation for the person who is doing the temp one, but like I said the rarity

of it I don't know it's—it complicates the law so much that I don't know that it is worth to try and write it in.

Rep. Lonny Winrich: My nervousness is returning.

Rep. Gary Paur: I was wondering if you would just say that somebody retiring as an administrator would use the previous five years, but then we get back to if you are an administrator for two years and a teacher for one, then you would only use the previous three years. I don't know if that would ever come into play very often.

Chairman Bette Grande: If you only worked for three years you are not vested for one.

Rep. Gary Paur: I didn't mean that—work for 30 years but then went for two years as an administrator and went back to one year as a teacher, then you would use three years.

Chairman Bette Grande: That is why I want to keep it simple.

Rep. Gary Paur: I was trying to keep it simple with just retiring as an administrator, but that was the only unintended that I could think of.

THE FOLLOWING IS THE CONTINUATION OF DISCUSSION ON THIS BILL LATER THE SAME AFTERNOON.

Chairman Bette Grande handed out the amendment. **Attachment 1.**

Vice Chairman Randy Boehning made a motion to adopt the amendment 1002.

Rep. Karen Rohr seconded the motion.

A voice vote was taken. Motion carried.

Rep. Vicky Steiner: Is this just cleanup language? Have we added an amendment?

Chairman Bette Grande: The reason why I think these amendments become a little more simplified is that we have moved to just the discussion of Tier 1, but I personally have not seen how it functions in here as it is written. I think Line 22 would have to be dealt with. Oh, it is being removed. We have gone to Tier 1 membership employed subject to and refers us back to a different paragraph. That refers you back to the Tier 2 language of five years. Tier 2 is already five year so if you are in the administrative then you rotate into the Tier 2. Once you move to administrative status you move to Tier 2, five year average.

Rep. Lisa Meier: Basically what the amendment does is it still takes five years and takes the average. Is that what I am understanding with the amendment?

Chairman Bette Grande: If you go to an administrative position, you go to a five year average.

Rep. Mark Sanford: It doesn't state anytime during your career that you can do this?

Chairman Bette Grande: I don't think we addressed that. Anytime during your career if you go to administration you go to the Tier 2.

Rep. Mark Sanford: I had a young man who was an elementary who wanted to be a principal, went through all the training, got his degrees, was a principal for two years and came in and said this is not for me.

Chairman Bette Grande: I think he is already grandfathered out of the whole thing if he is still working right now.

Vice Chairman Randy Boehning moved a **Do Pass as amended**.

Rep. Karen Rohr seconded the motion.

Rep. Gary Paur: The only thing that bothers me is just a comment. This is just for very limited instances but also in very limited instances it might reduce the retirement of a teacher if they move into an administrative position depending on the difference in pays, etc.

Chairman Bette Grande: I am not sure how often it would happen either and I understand your concern. I would hope that what this would do is encourage people to stay in administration longer.

Rep. Lisa Meier: During the interim when you look at all the benefits do you ever compare to what other states are doing and look at what an average for other states would be?

Chairman Bette Grande: Typically we don't.

Rep. Ron Guggisberg: My concern is if you want somebody to kind of as a favor to the school district do this for a year, they are going to resist that because it is going to hurt their pension. It may not be just do it for a year. I was thinking of retiring but the school district talked me into stepping in as an administrator for two years on my way out and this is not an incentive for them. The other concern I have is this bill was brought to us because one teacher was upset because another teacher spiked their pension. I understand that teachers get more if they have a higher degree. The next teacher comes in and is upset because her coworker spiked her pension that way. I think we are going after a very small possible abuse of the system.

Rep. Vicky Steiner: I have actually seen some spiking going on. I had a friend who could have retired and decided to get her administration degree. She went up and worked in a very small town up in northwest North Dakota. They had a very hard time getting a superintendent. They were very glad to get her, but she worked there three years and retired. I know it happens but whether or not it is so serious that we need to make this adjustment or not is it truly something that is that serious of a situation or are they doing the school districts a good deed by doing it. I really have mixed feelings.

Chairman Bette Grande: I understand the good deed side of things. What we are talking about is the viability of a pension and that is the issue, not the personality.

DO PASS AS AMENDED, 7 YEAS, 6 NAYS. Rep. Roscoe Streyle is the carrier of this bill.

Rep. Gary Paur: I was going to ask before the question was called if we could send it out without a recommendation?

Chairman Bette Grande: It is frowned upon to send out without a recommendation. You have seen more than you should have already.

FISCAL NOTE

Requested by Legislative Council
01/19/2011

Bill/Resolution No.: HB 1398

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB1398 requires an administrator who was previously employed as a teacher to complete eight years of service as an administrator before the salaries can be used to calculate retirement benefits.

The proposed changes are not expected to have any measurable fiscal impact.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

NA

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

NA

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

NA

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

NA

Name:	Fay Kopp	Agency:	ND Retirement & Investment Office
Phone Number:	328-9895	Date Prepared:	01/24/2011

VIC
2/18/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1398

Page 1, line 23, remove the overstrike over "~~For the~~"

Page 1, line 23, remove "Except as"

Page 2, line 1, remove "otherwise provided in this subsection, for"

Page 2, line 5, remove the overstrike over "~~For~~"

Page 2, line 5, remove "However, a tier one member employed in the profession of"

Page 2, remove lines 6 through 17

Page 2, line 18, remove "otherwise provided in this subsection, for"

Page 2, line 19, after "member" insert "or a member employed in the profession of teaching who subsequently is employed as an administrator"

Page 2, remove lines 22 through 31

Page 3, remove lines 1 through 6

Page 3, line 29, remove the overstrike over "A"

Page 3, line 29, remove "Subject to paragraph 3, a"

Page 4, line 9, remove the overstrike over "A"

Page 4, line 9, remove "Subject to paragraph 3, a"

Page 4, line 9, after "member" insert "or a member employed in the profession of teaching who subsequently is employed as an administrator"

Page 4, remove lines 20 through 31

Page 5, remove lines 1 through 18

Renumber accordingly

Date: 2-17-11
Roll Call Vote #: 7

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1398

House GOVERNMENT AND VETERAN AFFAIRS Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 1002

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Boehning Seconded By Rohr

Representatives	Yes	No	Representatives	Yes	No
Chairman Bette Grande			Bill Amerman		
Vice Chairman Randy Boehning			Ron Guggisberg		
Glen Froseth			Lonny Winrich		
Karen Karls					
Lisa Meier					
Gary Paur					
Karen Rohr					
Mark Sanford					
Vicky Steiner					
Roscoe Streyle					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

*Will vote
to accept
amendment
motion carried*

Date: 2-17-11
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1398

House GOVERNMENT AND VETERAN AFFAIRS Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Boehning Seconded By Rohr

Representatives	Yes	No	Representatives	Yes	No
Chairman Bette Grande	✓		Bill Amerman		✓
Vice Chairman Randy Boehning	✓		Ron Guggisberg		✓
Glen Froseth		✓	Lonny Winrich		✓
Karen Karls	✓				
Lisa Meier	✓				
Gary Paur		✓			
Karen Rohr	✓				
Mark Sanford		✓			
Vicky Steiner	✓				
Roscoe Streyle	✓				

Total (Yes) 7 No 6

Absent 0

Floor Assignment Streyle

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1398: Government and Veterans Affairs Committee (Rep. Grande, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1398 was placed on the Sixth order on the calendar.

Page 1, line 23, remove the overstrike over "~~For the~~"

Page 1, line 23, remove "Except as"

Page 2, line 1, remove "otherwise provided in this subsection, for"

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Page 4, remove lines 20 through 31

Page 5, remove lines 1 through 18

Renumber accordingly

2011 TESTIMONY

HB 1398

HB 1398 – School Administrators Requirements for Teacher Fund For Retirement – TFFR

Chair Grande and Members – Rep. M. Schatz

The Bill:

- Section 1 defines “Administrator” and “Teacher”
- Section 2 defines Tier 1 and Tier 2 member, 1/36 and 1/60, final three years salaries, SA would have to have 8 years as a SA to get final three years average
- Section 3 is the code amended
 1. Rights and eligibilities of benefits
 2. Tier two benefits
 3. Tier one benefits

Why put forth this bill:

- Teachers aren't getting a cost of living raise
- If you take more out than you put in, eventually the fund will be broke
- Should be two funds, one for teachers and one for administrators
- All the biggest payments from the fund are for the administrators
- I look at a school like a baseball team. Your classroom math teacher is the pitcher, science the catcher, English on first and so on. Point being, your classroom teacher is the most important part of the school system.
- Administrators should teach one core class daily

Worst Case Scenario:

- ❖ Tracy was a teacher of English at a small class B school named Hayes. While at Hayes she taught for 25 years and in 2005 earned \$36,000 per year.
- ❖ Tracy got some grants and earned 12 hours of administrative credit. She became a principal at Garfield, a bigger class B school. The salary was \$75,000 and worked there two years.
- ❖ Tracy's ambitions were weighted by the salary and having taken many graduate classes through the years, she attained a master's degree and superintendent's credential. She then got an assistant superintendent's job at a Class A school for the final average three years salary of \$113,000.
- ❖ Upon retirement, Tracy received 60% of the last three years salary or \$67,800 annually for life.
- ❖ Had Tracy stayed at Hayes and retired on \$40,000, she would have received \$24,000 annually.

	A	B	C	D	E	F	G	H	I
1									
2	susanireland.com/careeroptions/ scroll to education school administrators								
3	School Administrators Salaries				Teachers Salaries				
4			workers			first yr		Admin/teacher diff	
5	Alaska		50		California	\$35,760	\$59,825	1. ND 85 to 37	
6	Delaware	106,000	500		Connecticut	\$39,259	\$59,304	2. FL 90 to 43	
7	Connecticut	105,000	200		Illinois	\$37,500	\$58,686	3. NE 83 to 40	
8	New Jersey	99,000	400		New Jersey	\$38,408	\$58,156	4. SD 71 to 35	
9	California	95,000	500		New York	\$37,321	\$57,354		
10	New York	95,000	490		Massachusetts	\$35,421	\$56,369	ND 225% more	
11	Washington	92,000	150		Michigan	\$35,557	\$54,739	CA 160% more	
12	Illinois	91,000	160		Rhode Island	\$33,815	\$54,730		
13	Hawaii	90,000	690		Maryland	\$37,125	\$54,333		
14	Rhode Island	90,000	1080		Delaware	\$35,854	\$54,264		
15	Ohio	89,000	430		Pennsylvania	\$34,976	\$54,027		
16	Florida	88,000	200		Alaska	\$38,657	\$53,553		
17	Massachusetts	88,000	220		Ohio	\$33,671	\$50,314		
18	Maryland	87,000	260		Oregon	\$33,699	\$50,044		
19	Minnesota	87,000	130		Hawaii	\$35,816	\$49,292		
20	Michigan	86,000	180		Minnesota	\$31,532	\$48,489		
21	Nevada	86,000	1000		Georgia	\$34,442	\$48,300		
22	Pennsylvania	86,000	240		Indiana	\$30,844	\$47,255		
23	North Dakota	85,000	80		Vermont	\$26,461	\$46,622		
24	Wisconsin	84,000	100		Wisconsin	\$25,222	\$46,390		
25	Nebraska	83,000	200		Washington	\$30,974	\$46,326		
26	Oregon	83,000	120		New Hampshire	\$28,279	\$45,263		
27	Wyoming	83,000	70		Arizona	\$30,404	\$44,672		
28	Colorado	82,000	220		Colorado	\$35,086	\$44,439		
29	Georgia	81,000	120		Nevada	\$27,957	\$44,426		
30	Kentucky	80,000	300		Alabama	\$31,368	\$40,347		
31	Indiana	78,000	110		North Carolina	\$27,944	\$43,922		
32	Iowa	78,000	110		Virginia	\$33,200	\$43,823		
33	New Hampshire	77,000	105		Florida	\$33,427	\$43,302		
34	Utah	77,000	300		Wyoming	\$31,481	\$43,255		
35	Idaho	77,000	90		South Carolina	\$28,568	\$43,011		
36	New Mexico	75,000	220		Arkansas	\$28,784	\$42,768		
37	Vermont	75,000	220		Kentucky	\$30,619	\$42,592		
38	Arizona	74,000	120		Tennessee	\$32,369	\$42,537		
39	Alabama	73,000	110		Texas	\$33,775	\$41,744		
40	Kansas	73,000	170		New Mexico	\$33,730	\$41,637		
41	Missouri	73,000	120		Kansas	\$27,840	\$41,467		
42	Montana	73,000	70		Idaho	\$27,500	\$41,150		
43	South Carolina	73,000	220		Iowa	\$27,284	\$41,083		
44	Mississippi	72,000	140		Maine	\$26,643	\$40,737		
45	Virginia	72,000	170		Mississippi	\$28,200	\$40,576		
46	Arkansas	71,000	200		Missouri	\$29,281	\$40,462		
47	Maine	71,000	140		Nebraska	\$29,303	\$40,382		
48	South Dakota	71,000	110		Louisiana	\$31,298	\$40,029		
49	Tennessee	71,000	170		Utah	\$26,521	\$40,007		
50	Texas	70,000	270		Montana	\$25,318	\$39,832		
51	North Carolina	68,000	300		Oklahoma	\$29,174	\$38,772		
52	Louisiana	66,000	390		West Virginia	\$26,704	\$38,284		
53	Oklahoma	65,000	670		North Dakota	\$24,872	\$37,764		
54	West Virginia	63,000	110		South Dakota	\$26,111	\$34,709		
55	average	80,755					\$46,230		

HB 1398
HOUSE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE

Fay Kopp, Deputy Director - Retirement Officer
Retirement and Investment Office (RIO) - Teachers' Fund for Retirement (TFFR)
February 11, 2011

During the interim, the Legislative Employee Benefits Programs Committee (LEBPC) studied a bill similar to HB1398 (Bill No. 217) and gave it no recommendation. As part of the interim study, TFFR's actuarial consultant reviewed the bill and provided technical and actuarial analysis. I appear today on behalf of the TFFR Board in a neutral position. My comments are related to the analysis conducted by the actuary in their letter dated October 22, 2010.

Provisions of Bill

Under present law, a member's retirement benefit is determined by a formula which uses the multiplier of 2.0% X years of service credit X final average salary (FAS). A member's FAS is calculated by averaging the member's highest three (Tier 1) or five (Tier 2) annual salaries. All compensation increases resulting from promotions or performing additional responsibilities are included in the earnings for calculating retirement benefits.

HB1398 makes an exception in the case of a member who was employed as a teacher for some period of time and then becomes an administrator. If the administrator has not completed eight years of service as an administrator, he or she would not be permitted to use his or her salaries as an administrator in the calculation of the FAS. Instead, the FAS of such a member would be based on the employee's previous teaching salaries.

Example 1: Betty Brown is a hypothetical Tier 1 member hired as a high school teacher in 1986 and promoted to principal for the 2015-16 school year:

Plan Year	Position	Salary	Year	Profession	Salary
2012-13	Teacher	\$52,000	2017-18	Principal	\$72,000
2013-14	Teacher	54,000	2018-19	Principal	75,000
2014-15	Teacher	56,000	2019-20	Principal	78,000
2015-16	Principal	66,000	2020-21	Principal	81,000
2016-17	Principal	69,000	2021-22	Principal	84,000

If she decides to retire at the end of 2022, her compensation earned as an administrator would not be included in calculating her FAS because she only has seven years of service as an administrator. Therefore, her FAS would be \$54,000/year, or \$4,500/month, which is the average of her pays in FY 2013 – FY 2015, when she was a teacher. Under current law, her FAS would be the average of her salaries in FY 2020 – FY 2022, or \$81,000 or \$6,750/month. Therefore, under the bill, her retirement benefit would be one-third smaller than under current law.

HB 1398 would apply only to someone who is classified as an administrator but was previously employed in the profession of teaching. Section 1 of the bill defines both terms. To be an administrator, the member must hold an administrator's credential and must be employed primarily in providing administrative services. The definition identifies a number of positions by title as administrators, including superintendents, principals, assistant and associate principals, and certain other directors. Profession of teaching is defined by job description, applying to services as a teacher, counselor, school librarian, speech therapist, etc.

Under the bill's definition of an administrator, the member would have to be employed by a school district, special education unit, or career and technology unit. It would apparently not apply to a member employed by a state agency or state institution, such as the School for the Deaf, School for the Blind, Youth Correctional Center, or Center for Distance Education. The bill may need to be amended if the intent is to apply the FAS restrictions to all TFFR members promoted into administration.

It appears the bill would not apply to someone hired as an administrator if they were not previously a teacher in a North Dakota public school. For example, this restriction would not apply to someone hired as a principal after having taught in Minnesota or after having taught in a Catholic school.

Sections 2 and 3 amend the calculation of a member's final average monthly salary as previously described. Section 4 describes the effective date of this bill as applying to salaries earned after June 30, 2011. As it relates to the effective date, it was our understanding that the eight-year requirement would be applied to all members retiring after June 30, 2011 with service as an administrator, but salaries earned prior to June 30, 2011 would be included in the FAS calculation regardless of how many years the member worked as an administrator.

Example 2: John Jenkins is a hypothetical assistant principal. He is a Tier 1 member who was promoted to this position at the beginning of the 2007-08 school year, after working as a counselor. He intends to retire at the end of June 2012. His last ten years' pays are shown below.

Plan Year	Position	Salary	Year	Profession	Salary
2002-03	Counselor	\$42,000	2007-08	Asst. Principal	\$54,000
2003-04	Counselor	44,000	2008-09	Asst. Principal	57,000
2004-05	Counselor	46,000	2009-10	Asst. Principal	60,000
2005-06	Counselor	48,000	2010-11	Asst. Principal	63,000
2006-07	Counselor	50,000	2011-12	Asst. Principal	66,000

Under current law, his FAS would be \$63,000/year or \$5,250/month, the average of his last three salaries. Since he has only five years as an administrator, his FAS would be limited under the bill. We believe his FAS would be \$60,000/year, or \$5,000/month, which is the average of his pays in FY 2009 – FY 2014. Only his last year would be excluded from the calculation under our interpretation of Section 4.

Actuarial Analysis

Based on the actuarial analysis (procedures and screening criteria included in the October 22, 2010 letter from the actuary), it was projected that potentially one retiree every other year might be affected by the bill. In such a case, this would generally reduce the member's FAS and benefit less than 40%, depending on the number of years the administrator worked before retirement and the raise the member received when promoted. This translated to a decrease in the value of the member's benefit of \$160,000 or less per affected member. Therefore, TFFR's liability would be reduced by about 0.08% and the annual required contribution (ARC) would be reduced by about 0.02%. The impact on the funded ratio and funding period would be immaterial.

According to the actuarial analysis, while the bill could potentially save as much as indicated above, actual savings would likely be much smaller. It is expected that rather than forfeit the use of their highest salaries, most administrators would choose to continue in service until they have eight years of service as an administrator.

Fiscal Impact

Based on the actuarial analysis, it is not expected that this bill would result in a measurable actuarial impact on TFFR, nor have a fiscal impact on the state, counties, or school districts. Contribution levels would not change (increase or decrease) due to passage of this bill.

Other Issues

The TFFR Board has taken no position on this bill. However, there are a number of issues outlined by the actuary in their October 2010 analysis that should be considered or clarified in the bill.

- 1) Impact on recruitment of administrators. One consequence of this bill is that a member, by accepting a position in administration, could end up with a smaller retirement benefit than if he/she had remained a classroom teacher. Even though the member paid contributions on a higher salary, their benefit would be calculated on lower salaries than they would have received if they had stayed in employment as a teacher. These lower salaries would be from over 8 years ago, or more if the member had a break in service. This could result in making it difficult to fill positions in administration.

- 2) Payment of contributions on higher salaries not used for benefit calculation. Members who have less than 8 years of service in administration will likely feel they are being treated unfairly because they will be required to make contributions to the system based on their current salary, while their FAS for benefit calculation purposes might be based on older and smaller salaries. In Example 1, this would amount to about \$11,400 in employee contributions and \$12,900 in employer contributions (total of \$24,300) on administrator salaries not used in FAS calculation.
- 3) To clearly identify which position titles the 8-year FAS restrictions would apply to, we suggest amending the bill to tie the definitions of "administrator" and "profession of teaching" to the definitions and title codes in NDCC 15.1-02-13.6 (a) and (b), which are used by school districts in their annual employee compensation report to DPI.
- 4) If the intent is to apply the 8-year FAS restrictions to all TFFR members who hold an administrator's credential and are promoted into administration (including state agencies or state institutions such as the School for the Deaf, School for the Blind, Youth Correctional Center, and Center for Distance Education), we suggest amending the bill to add "and other TFFR participating employers."
- 5) Effective date of bill. Our understanding is that the 8-year FAS restrictions would be applied to all members retiring after June 30, 2011 with service as an administrator, but salaries earned prior to June 30, 2011 would be included in the FAS calculation regardless how many years the member worked as an administrator. Clarification is needed.
- 6) 8-years of service requirement. The bill does not define how 8 years of service should be determined. Use TFFR definition for service credit (minimum 700 hours per year)? Use any amount of time/service as an administrator in the school year? Clarification is needed.
- 7) Part-time teachers/part time administrators. In the actuarial analysis, members were treated as being in an administrative position if they were classified as part time administrator / part time teacher. Any amount of time/service as an administrator was counted toward the 8-year requirement. For example, some small school districts employ full time teachers who also have principal or administrative responsibilities. Some districts employ half teacher/half principal positions, and other districts might employ someone to teach one or two classes, but whose job duties are primarily administrative. Clarification is needed as it relates to administrators who may not be full time administrators.

- 8) Death and disability benefits. As currently drafted, this bill would also provide reduced death and disability benefits to those administrators (or their beneficiaries) who have less than 8 years of administrative service since these benefits would also be calculated using the restricted FAS for teaching service, not administrative service.
- 9) Service purchases. As currently drafted, the bill may create difficulties in the case of an administrator who wishes to purchase service credit before completing the 8 years of service requirement in administration. The member could pay too little if the purchase price was determined based on the FAS from teaching salaries, or could pay too much if the price was based on higher administrative salaries, but the employee terminated before earning 8 years of administrative service.
- 10) Qualified domestic relations orders (QDROs). The bill could create problems if an administrator is divorced during this 8-year period and the ex-spouse seeks a QDRO. Should the QDRO award the ex-spouse a share of the member's benefit based on the FAS as though the administrator terminated immediately and received a benefit based on old teacher salaries, possibly short-changing the ex-spouse? Or, should the ex-spouse's share be based on the FAS using actual current salaries, possibly over-rewarding the ex-spouse?
- 11) Breaks in service. As currently drafted, if the TFFR member does not have 8 years of ND administrative salaries and there was a break in ND teaching service, the bill requires TFFR to use salaries from past teaching service outside of the state in the calculation of final average salary. (This provision was not in the original version of the bill which was studied during the interim.) It would be difficult and unusual for TFFR or the employee to try to verify the out-of-state salary (teaching or administrative) on which to calculate ND pension benefits, since those salaries have no relation to the ND teaching service, salary, or contributions paid. It is also possible that the employee may have had a break in service but did not teach during that time. It may be appropriate for members who have a break in ND teaching or administrative service to be treated like other administrators (with no break in service) and use past ND teaching salaries (even though they may be very old). Clarification is needed.
- 12) Administrative procedures. Since historical data on job position is not currently tracked by TFFR, this bill would require additional administrative changes for TFFR and potentially the employers/school districts. This would involve computer programming changes and/or other manual position verification processes and procedures.

Testimony on HB 1398
By
Dr. M. Douglas Johnson, Executive Director—NDCEL

Madame Chair Grande and members of the House Government and Veteran Affairs Committee, for the record my name is Doug Johnson and I am the executive director of the ND Council of Educational Leaders (NDCEL) which represents North Dakota's school leaders. I am here to testify in opposition to **HB1398**.

Members of our association have had much discussion about this bill ever since it was brought forward for consideration by the Employee Benefits Interim committee this past fall and finally introduced as **HB1398**. I believe it important for you to know that the members of the NDCEL are deeply concerned with the negative impact this bill would have on our profession should it be adopted. First, this bill is addressing an issue that has little or no impact on the actuarial status the TFFR funding ratio. Second, it creates considerable confusion in eligibility or ineligibility for full vested retirement for school administrators who have not completed eight years of administrative service. Third, it would severely hamper the recruitment of teachers into the field of administration. Finally, it unfairly singles out school teachers who become administrators for possible salary "spiking".

In an actuarial analysis completed for TFFR this past October it was determined that this bill would impact one retiree every other year, ~~might~~. Further, the overall impact on the funded ratio and funding period would be in their words "immaterial". The analysis also suggested that rather than forfeit the use of their highest salaries, most administrators would choose to continue in service until they have eight years of service as an administrator but would more likely than not have a detrimental effect on attracting teachers to the field of administration. In the letter to the Employee Benefits Committee dated October 22, 2010 by Gabriel Roeder Smith & Company stated that "one consequence of this bill is that a member, by accepting a position in administration, would end up with a smaller retirement benefit than if he/she remained a classroom teacher" and went on to say

that "this fact could have the inadvertent result of making it difficult to fill positions in administration". These actuarial facts support our members' concern that the adoption of **HB1398** would have a significant negative and long lasting impact in the recruitment of teachers into the field of administration. Further, the passage of this bill would more likely than not have a greater impact the ability of small school districts in recruiting teachers to become administrators in their school than it would in larger school districts.

As of the 2010 fall enrollment there are one hundred and nineteen districts in our state that have fewer than 250 students (see accompanying documentation). Accreditation requirements for the amount of time a school must have a principal present are set by the number of students enrolled. Schools that have 100 or fewer students in grades 1-6 and 100 or fewer in grades 7-12 are required to have an administrator for only for 1/3 of the day (120 minutes) with at least one-half of that time must include activities related to providing building-level instructional leadership. The remaining 2/3 of that administrators time can be spent as a classroom teacher. In most, if not all of the smaller school districts the school principals spend more time as teachers than they do as principals. One must logically ask if these principals be considered as "administrators" with the passage of this bill or would they be "teachers" when came time for determining their years of for their final average salary? This legislation is silent on this issue. To further complicate matters, accreditation requirements state that a school building having more than 100 but less than 250 students are required to have an administrator for 2/3 of the day (240 minutes) with the remaining time spent as a classroom teacher. This could have significant impact on a small but growing school districts.

Take for example the school district of TGU. They have two buildings, one in Granville and one in Towner. Towner has 91 students in grades K-6 and 87 students in grades 7-12. Under current accreditation standards the principals in both these buildings (they may be housed in one building but for accreditation purposes they are treated as two buildings) could teach 2/3 of the time and and

be building principal for 1/3 of the time and would be consider as teachers by definition in **HB1398**.

But what if the elementary school gains 10 more students next year and the high school 15 students and the elementary school has 101 students and the high school 103 students? Both schools would now be required to have the principals spend 2/3 of their time as principals and only 1/3 of their time as teachers. These individuals would now move from "teacher" status to "administrator" status for determining the final average salary for their retirement benefit. To complicate this further, let's assume both principals would have been eligible for retirement within three years. If I understand **HB1398** correctly these principals would have to remain in their positions for another 8 years to get the last 3 years of highest salary simply because their school buildings gained more students which changed their retirement status. This unfortunate circumstance could happen with many small school districts in our state, especially with the recent growth of student population in the Northwest corner "oil patch" school districts. What teacher would want to take the chance of becoming an administrator knowing they could possibly lose the vested rights for retirement they are currently entitled to receive? Further, how would TFFR and school district business managers be able to keep accurate track of these changes in retirement eligibility for these administrators especially with no historical data to verify status changes of these principals/teachers? The chance of an error in determining a retiring administrators final average salary for determining their retirement benefit would be greatly increased by the passage of this bill.

Finally, it should be noted that when teachers move from a teaching position to an administrative position there is usually a substantial increase in the numbers of contracted days for which they are paid. These can range from 10 (9 1/2 month contract) to ²⁵~~35~~ (12 month contract) additional days of contracted service above that of a teacher working for nine months (185 days) of the year. The added days in a contract automatically "spike" a salary. Teachers moving to administrative positions often have little initial net gain in their daily average salary when moving to an administrative position from a teaching position. However, teachers can "spike" their salaries

in later years by taking on extra duties, teaching summer school, or moving from a district with a lower salary schedule to one with a higher salary schedule. **HB1398** does not address this inconsistency. Finally, administrators who would be impacted by the adoption of this bill would be treated unfairly as they would be making contributions to the TFFR fund based on their higher salaries but not able to benefit from that contribution when calculating their final average salary for their retirement benefit.

Madame Chair Grande and members of the House Government and Veteran Affairs Committee, the NDCEL is opposed to **HB1398** and urges the committee to give the bill a do not pass. This concludes my testimony and I will be glad to answer any questions that the committee might have at this time.

6,000 and greater:

Bismarck (10,719), Fargo (10,492), Grand Forks (6,925), West Fargo (6,848), Minot (6,623)

Total Students – 34,759

2,000 to 5,999:

Mandan (3,169), Dickinson (2,586), Williston (2,275), Jamestown (2,164)

Total Students – 10,194

1000 to 1,999:

Devils Lake (1,678), Rolette (1,624), Wahpeton (1,176), Valley City (1,079)

Total Students – 15,751

500 or 999:

Grafton (869), Central Cass (801), New Town (749), Kindred (667), Beulah (647), Lisbon (610), Bottineau (603), Hazen (577), Rugby (567), United 7 (546), Northern Cass (542), McKenzie Co (540), Carrington (529), MayPort CG (526)

Total Students – 8,196

250 -499:

Oakes (473), North Border (452), Larimore (451), Dunseith (443), Park River (408), Thompson (407), Hillsboro (404), Bowman Co (413), Kidder Co (394), Cavalier (391), Lewis and Clark (390), Langdon (374), Velva (374), Killdeer (373), Surrey (350), St. John (343), Ellendale (340), Garrison (327), TGU (327), Mohall-Lansford-Sherwood (325), New Rockford-Sheyenne (322), LaMoure (318), New Salem-Almont (316), Enderlin (311), Linton (310), Barnes Co (310), Kenmare (291), Hankinson (290), Richland 44 (287), Beach (283), Dakota Prairie (273), Griggs Co Central (271), Washburn (264), Hettinger (263), Tioga (263)

Total – 11,840

249 or less:

119 Districts: High to low range - Napoleon (249) to Horse Creek and Central Elementary at (4)

Average Size (109)

Total Students –12,971

67-19-01-17. Qualifications of an assistant superintendent. An assistant superintendent must have a superintendent's credential, AD01 or ADP2.

History: Effective January 1, 2000; amended July 1, 2007.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 115.1-02-11

67-19-01-18. Administration - Secondary school principal qualifications and time assignments.

1. A secondary school principal administering a school with enrollments as described in section 67-19-01-06 must have the following qualifications within the person's enrollment classification:
 - a. Enrollment one hundred or fewer. A secondary school principal must have a secondary principal's credential, SP01, SP02, SP03, or SPP2. An individual holding an SP03 credential may continue to renew the credential only while the individual serves in the same school. The SP03 is no longer issued as an initial credential.
 - b. Enrollment one hundred one through two hundred fifty. A secondary school principal must have a secondary principal's credential, SP01, SP02, or SPP2.
 - c. Enrollment two hundred fifty-one or more. A secondary school principal must have a secondary principal's credential, SP01 or SPP2.
2. The time assignment for the secondary school principal within the person's enrollment classification must be as follows:
 - a. Enrollment one hundred or fewer. A secondary school principal must devote a minimum of 120 minutes per day or 600 minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership.
 - b. Enrollment one hundred one through two hundred fifty. A secondary school principal must devote a minimum of 240 minutes per day or 1200 minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership.
 - c. Enrollment two hundred fifty-one or more. A secondary school principal must devote a minimum of 360 minutes per day or 1800 minutes per week to the principalship. At least one-half of that time must include activities related to providing building-level instructional leadership and a maximum of one-sixth of the instructional day may be devoted to instructional activities.

67-19-01-19. Administration - Middle level or junior high school principal and assistant principal - Qualifications and time assignments.

1. Qualifications by enrollment categories are as follows:
 - a. Enrollment one hundred or fewer. A middle level or junior high school principal must have an elementary or a secondary principal's credential, EP01, EP02, EPP2, SP01, SP02, or SPP2. An individual holding an EP03 or SP03 may continue to renew the credential only while the individual serves in the same school. The EP03 or SP03 is no longer issued as an initial credential.
 - b. Enrollment one hundred one through two hundred fifty. A middle level or junior high school principal must have an elementary or a secondary principal's credential, EP01, EP02, EPP2, EP03, SP01, SP02, SP03, or SPP2.
 - c. Enrollment two hundred fifty-one or more. A middle level or junior high school principal must have an elementary or a secondary principal's credential, EP01, EPP2, SP01, or SPP2.
2. Time assignments by enrollment categories are as follows:
 - a. Enrollment one hundred or fewer. A middle level or junior high school principal must devote a minimum of 120 minutes per day or 600 minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership.
 - b. Enrollment one hundred one through two hundred fifty. A middle level or junior high school principal must devote a minimum of 240 minutes per day or 1200 minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership.
 - c. Enrollment two hundred fifty-one or more. A middle level or junior high school principal must devote a minimum of 360 minutes per day or 1800 minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership. A maximum of one-sixth of the instructional day may be devoted to instructional activities.
3. An assistant middle level or junior high school principal must have an elementary or a secondary principal's credential, EP01, EP02, EPP2, SP01, SP02, or SPP2.
4. Time assignments by enrollment categories are as follows:

minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership.

- c. Enrollment one hundred one through two hundred fifty. An elementary school principal must devote a minimum of 240 minutes per day or 1200 minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership.
- d. Enrollment two hundred fifty-one or more. An elementary school principal must devote a minimum of 360 minutes per day or 1800 minutes per week to the principalship. At least one-half of that time must include activities related to providing building-level instructional leadership and a maximum of one-sixth of the instructional day may be devoted to instructional activities.

History: Effective January 1, 2000; amended effective July 1, 2007.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11

67-19-01-21. Administration - Shared elementary school principal - Elementary school principal qualifications and time assignments. The time assignments for the elementary school principal serving two schools or employed in a school that has a shared superintendent must be as follows according to enrollment category:

- 1. **Enrollment twenty-four or fewer.** Time should be provided for the performance of administrative duties.
- 2. **Enrollment twenty-five through one hundred.** An elementary school principal must devote a minimum of 120 minutes per day or 600 minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership.
- 3. **Enrollment one hundred one through two hundred fifty.** An elementary school principal must devote a minimum of 240 minutes per day or 1200 minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership.
- 4. **Enrollment two hundred fifty-one or more.** An elementary school principal must devote a minimum of 360 minutes per day or 1800 minutes per week to the principalship. At least one-half of that time must include activities related to providing building-level instructional