

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2/66

2007 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2166

# 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2166**

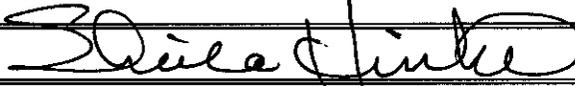
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 23, 2007**

Recorder Job Number: **1637**

Committee Clerk Signature



Minutes:

## **Senator Ray Holmberg - In Favor**

Covered the bill on wages and salaries at the State Mill and elevator. Unionized employees work overtime with a decent percentage from overtime. An individual can earn \$50,000 in the last year with only \$32,000 being the actual salary. Currently overtime does not count toward retirement. Overtime is counted as salary and wages and would have to pay ½ the cost of retirement. 4.12% employer 4% employees.

**S Potter:** Are employees paying ½ the cost option or in an agreement?

**S Holmberg** – we ask them.

## **Chad Boushee – Mechanic at ND State Mill - In Favor**

**TESTIMONY #1** Covered testimony

**S Potter:** Did you hear the question?

**C Boushee:** There are no other clauses in there that changes.

**S Potter:** this would be a mandatory assessment from the employees then?

**C Boushee:** yes, it would be a good deal.

**S Heitkamp:** When I had employees, they were paid retirement on the overtime.

**C Boushee:** Set up is now based on 40 hours of work. [9:26m examples & explains]

**David Kemnitz – NDAFLCIO – In Favor**

Agrees it would help the grain mills.

**S Potter:** I'm concerned how much these employees work and why?

**D Kemnitz:** Their income is not as high as other industries and they need the money. They like what they do and like where they live. They become dependent on the pay.

**S Behm:** It is a strenuous job at the mill, they put in a lot of hours

**John Risky – State Mill and Mayor**

Would it hurt to do it. Working overtime is part of their job, they are hard working.

**OPPOSITION**

**Vance Taylor – Pres. & General Mgr. of ND Mill & Elevator - Opposition**

**TESTIMONY #2** Read testimony

Exhibit A – Ammendments [18:02m] Suggestions

**S Hacker:** Do you know about the medium income for employees?

**V Taylor:** \$40,000 - \$50,000

**S Hacker:** Mention across the country, what are the other states?

**V Taylor:** 80 in plants, 30 plants across the country, con agra plants, Cargil, [refer to page 3 on testimony]

**S Klein:** What is the turnover like?

**V Taylor:** Better since last negotiations. Increased hiring rate from \$9.50 to \$11.00. We go through a few people. Once they get over a year, they stay.

**S Andrist:** As a small businessman, paying overtime over long periods of time is costly.

**V Taylor:** I've worked in 12 different flour mills and this is typical. 24 hours a week, 7 days a week open, driven by the competition It is a nature of the business. Some departments have lots of overtime, some have less. Milling will have the most.

**S Andrist:** All of these hours, should level off. Is this ever going to change?

**V Taylor:** 2 shifts, they shift overtime and have tried different situations. Employees prefer to work overtime for extra income. Some plants have 4 shift operations, but not at the ND M&E.

**S Hacker:** How is the mill doing lately?

**V Taylor:** Mill is doing well. Its been decent, tied to the grain crop. '99/2000 there was a renovation and expansion project, brought the yield up. Success by the efforts of the employees.

**S Hacker:** What is the number on profitability? Last 3 years in a row, \$500,000 a year.

**S Heitkamp:** Good times at the mill. You've shown a profit as president. Are you paid on your complete employment package, i.e. if you make X amount a year, is that what's taken into consideration with you retirement?

**V Taylor:** Yes it is

**S Behm:** Why don't you hire a few more employees?

**V Taylor:** The mill works 24 hours, 7 days a week. There are only a certain # of jobs. This happens mostly on weekends, we couldn't retain employees. Recently added a new shift on boat loading operations.

**S Behm:** Have the wage and hour people been on your back?

**V Taylor:** No

**S Potter:** What is the purpose of the state mill?

**V Taylor:** 1. Promote ag and industry by grinding wheat, increasing average selling prices  
2. Make a profit and provide a portion to the state.

**S Potter:** Who told you you have to make a profit? Is there legislation?

**V Taylor:** In our mission statement, it is approved by Industrial Commission

**S Behm:** Need to be commended for the nice contribution.

**NEUTRAL**

**Sparb Collins – Executive Director of the PERS**

**TESTIMONY # 3** Read the testimony and asked for some proposed amendments.

In appropriations, have to run the numbers.

**S Klein:** Can you give me an example of how much it will cost?

**S Collins:** Accounting want to have control.

**S Potter:** One amendment cuts out 6 more. Wouldn't that change the fiscal impact?

**S Collins:** Yes

**S Klein:** 2 options 1. spread the cost over all employees and 2. address the issue at the mill.

**S Collins:** {explains % 36:37m}

**S Andrist:** If this didn't include the amendment the way you suggest, all the other departments in the state would be subsidizing the SM & E workers? Does this exist anywhere else in the system?

**S Collins:** Off hand I don't know that it does exist.

**S Andrist:** So as far as you know, this would be setting up some kind of precedent?

**S Collins:** Just Mill and Elevator. May spread across others, it would make a difference.  
Example of Law enforcement.

**S Andrist:** Generally, you try to make each unit self-supporting.

**S Collins:** there is averaging in everything.

**S Hacker:** In testimony for employee contributions, I thought the bill worked where the employees would be paying for half of that? Is it ½ or whole?

**S Collins:** 2 components. 1. Employee contribution, 4% and employer 4.12%. Limited to  
2. w/overtime employees, they pay employee contributions.

[examples of average salary calculations 40:36m][ explained increased liability] there would be a jump in funding. Atypical jump.

**S Behm:** This is kind of a unique situation, I don't think anyone else does this, that amount.

**S Collins:** Your guess is as good as mine. We don't get any reports.

**S Klein:** In earlier comments, it was said we "take better care of our retired workers" if this mill V.S. other mills in the industry.

**S Andrist:** Don't you think anyone has a high

**S Collins:** I don't have that information.

**S Klein:** Comments: doesn't this take better care of employees?

**S Collins:** We compare state groups, we don't break it down.

**S Hacker:** What is the total liability of the plan? You said going up 1.9 million.

**S Collins:** That is in the actuarial report. Page 2..

[find that page 2 is missing]

**S Heitkamp:** Aren't you going to have to hold this until he can get this into prospective with what the amendments will do?

**CLOSED MEETING**

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2166 B**

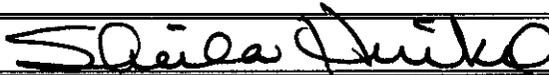
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 29, 2007**

Recorder Job Number: **2178**

Committee Clerk Signature



Minutes:

**S Klein:** Tell us what is a good idea again.

**S Hacker:** The way that the mill operates is why this is a good idea. The typical worker works 20 hours overtime. 10 hours a week or so, 20 hours for every 2 week pay period and only getting credited for a fraction of the time they work. If it's the Mills' policy that they want to pay time and ½, they can go ahead and do that. Obviously the Mill looks at their employees and knows they're paying them under market because they're willing to pay them time and ½ for extra hours per week. So what's the big deal about paying for ½ of their overtime? ½ of the retirement portion of the overtime when the employee is paying ½ as well. The Mill has been doing phenomenal since it's renovation and become a profit center for the state, I think we owe it to the employees that put in the hours per week. They need the ability to retain some of that.

**S Klein:** Some of these workers look forward to work overtime. They make \$30,000 with overtime.

**S Potter:** Sparb requested an technical amendment.

**S Hacker:** I don't think you can force anyone to work overtime. Once they're there, it's just a step up.

**S Behm:** Why pay some much overtime? Aren't their employees working too many hours?

**S Klein:** They said, after first year they have no turnovers, so obviously they must be doing something right for them. As low as unemployment is in ND, there are other places to go these days. Why be beat up with those hours if you don't to.

**S Potter:** Replace on Page 4, sum of \$8000 being appropriated for public employee system.- should be replaced with \$38,000

**S Klein:** For information only to reflect the cost of changing it.

**Motion to move Sparb Amendments by S Hacker**

**Second by S Potter**

**Vote Passed 6 – 0 1 absent**

**S Klein:** This is to help them get up to speed. Technical amendments they're looking for to cover their costs, to make sure it operates smoothly.

**S Hacker:** If \$200,000 is that significant to the Mill, they why don't they find 2 employees in the next year and start reducing everybody else's overtime, that would solve the Mills' expense.

**Motion to move SB 2166 As Ammended by S Hacker**

**Second by Heitkamp**

**Vote Passed 4 -2 1 absent**

**Carrier - Hacker**

January 29, 2007

*JF*  
1-30-07  
1 of 2

PROPOSED AMENDMENTS TO SENATE BILL NO. 2166

Page 1, line 1, replace the second "subsection" with "subsections 2 and"

Page 1, line 2, after the first comma insert "section 54-52-06,"

Page 1, line 5, remove "and" and after "appropriation" insert "; and to provide an effective date"

Page 2, after line 28, insert:

**"SECTION 3. AMENDMENT.** Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-06. Employer's contribution to retirement plan.** ~~Each~~ Except for the North Dakota mill and elevator association, which shall contribute an amount equal to seven and eighteen-hundredths percent of the monthly salary or wage of a participating member, each governmental unit shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. For those members who elect to exercise their rights under section 54-52-17.14, the employing governmental unit, or in the case of a member not presently under covered employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit shall pay the contribution monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, into the retirement fund from its funds appropriated for payroll and salary or any other funds available for these purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date they became due, penalty and interest to be paid on delinquent contributions may be waived. An employer is required to submit contributions for any past eligible employee who was employed after July 1, 1977, for which contributions were not made if the employee would have been eligible to become vested had the employee participated and if the employee elects to join the public employees retirement system. Employer contributions may not be assessed for eligible service that an employee has waived pursuant to subsection 1 of section 54-52-05. The board shall report to each session of the legislative assembly the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness."

Page 3, line 15, replace "Subsection" with "Subsections 2 and"

Page 3, line 16, replace "is" with "are"

Page 3, after line 16, insert:

2082  
"2. ~~The~~ Except for the North Dakota mill and elevator association, which shall contribute an amount equal to seven and eighteen-hundredths of the monthly salary or wage of a participating member, each employer shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. If the employee's contribution is paid by the employer under subsection 3, the employer shall contribute, in addition, an amount equal to the required employee's contribution. The employer shall pay monthly such contribution into the participating member's account from its funds appropriated for payroll and salary or any other funds available for such purposes. If the employer fails to pay the contributions monthly, it is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due."

Page 4, line 11, replace "\$8,000" with "\$38,000"

Page 4, after line 18, insert:

**"SECTION 7. EFFECTIVE DATE.** This Act becomes effective on January 1, 2008."

Renumber accordingly



Date: 1-29-07

Roll Call Vote: 2

**2007 SENATE STANDING COMMITTEE ROLL CALL VOTES**

BILL/RESOLUTION NO. 2166

Senate INDUSTRY BUSINESS & LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DPAA ReReferred

Motion Made By Hacker Seconded By Heitkamp

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein		✓	Senator Arthur Behm	✓	
Vice Chair Nicholas Hacker	✓		Senator Joel Heitkamp	✓	
Senator John Andrist	NP		Senator Tracy Potter	✓	
Senator Terry Wanzek		✓			

Total Yes 4 No 2

Absent 1

Floor Assignment Hacker

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

**REPORT OF STANDING COMMITTEE**

**SB 2166: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (4 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). SB 2166 was placed on the Sixth order on the calendar.**

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Page 4, after line 18, insert:

"SECTION 7. EFFECTIVE DATE. This Act becomes effective on January 1, 2008."

Renumber accordingly

2007 SENATE APPROPRIATIONS

SB 2166

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2166

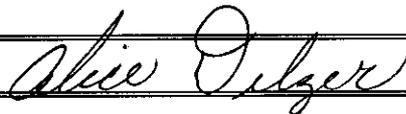
Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: 02-07-07

Recorder Job Number: 3036

Committee Clerk Signature



Minutes:

**Chairman Holmberg** opened the hearing on SB 2166 on February 7, 2007 relating to definition of wages and salaries, employer contribution for employees of the ND Mill and Elevator Association under PERS. He turned the meeting over **Vice Chairman Bowman** as he gave testimony in support of the bill.

**Senator Holmberg** explained the Engrossed Bill. He gave the general flavor of the bill. This bill has to do with people who work at ND State Mill and Elevator. He talked about the base salary and overtime they work. There is a structured overtime system. What this bill would allow the workers to pay into the retirement system for those overtime hours therefore allowing those hours to count on their retirement. Of course it makes a goodly difference for those folks whose career is there and their living salary is here and all of a sudden their retirement is computed based upon a somewhat lower number. The bill as it has come in the past would just ask the State Mill to pay back. These are unionized workers. They came forward with the bill that is different, and that is that they would pay the 4.1% of their overtime salary into the retirement system to help partially pay. That is essentially the bill. The appropriation has to do with the State Mill itself, it's share, and you can see that from the amendment. I am going to ask Senator Hacker who carried the bill on the floor for the amendments.

**Senator Tallackson** I think the original bill a few years ago is that they wanted to get credit for the bonus on their salaries. Is the bonus included.

**Senator Holmberg** stated that the bonus would not be included. This is just earned overtime. In the interest of full disclosure the Employee Benefits Committee, the Retirement Committee, met on Friday and was not favorable inclined towards the bill. They gave it a unfavorable recommendation. That doesn't mean as the policy making branch, however, cannot overrule them, a committee of which I am a member. After testimony, Senator Holmberg resumed chairing this committee.

**Senator Nicholas P. Hacker, District 42, Grand Forks** gave oral testimony in support of SB 2166 and presented written testimony (1) The Employee Benefits Programs Committee Report. The Committee Report recommended an Unfavorable recommendation.

**Chad Boushee, Employee at State Mill and Elevator** presented written testimony (2) and oral testimony in support of SB 2166.

**Senator Kilzer** had questions regarding overtime and working holidays.

**Senator Krebsbach** asked if the employees were willing to pay a portion of this, what would be the difference and adjustment in the 401 K program, which is voluntary contribution for the retirement program.

**Senator Bowman** had questions regarding the average salary paid at the State Mill.

Your base salary plus benefits is what?

**Chairman Holmberg** stated we have that information here.

**Senator Tallackson** stated he toured the mill last fall and found out with the additions made at the mill, we are the largest mill in the US. It is quite an achievement.

**John Risky, President of Bakery, Confectionary, Tobacco Workers and Grain Miller's Local Union 167G** gave testimony in support of SB 2166.

**Senator Mathern** asked how do we handle these kind of issues in other businesses. He also asked if this is negotiated in the labor contract.

**Ed Barchenger, Controller/Financial Manager of the North Dakota Mill and Elevator Association appearing today on behalf of Vance Taylor, President and General Manager of the State Mill** presented written testimony (3) and gave oral testimony in opposition to SB 2166.

**Senator Robinson** had questions regarding overtime issues and other state employees, if there are requests from employees to do overtime, the position of management regarding the salaries of workers, the ability to retain and recruit new employees, and the fact that we need to be competitive. The work force is everything there. We produce some of the finest products in the nation.

**Senator Lindaas** asked about comparison with other agencies, addressed the overtime issue and if it would be better to hire more FTE's.

**Chairman Holmberg** stated he had a copy of the recommendation or the commentary from the Employee Benefits Committee handed out to the committee, and I do have to thank, I know there are people that are here that stayed, and I had to leave and had to miss that portion of the meeting so I can tell you that if I had been there the vote would have been six to one instead of six to nothing. But that was their recommendation. Are there any other questions on SB 2166?

The hearing on SB 2166 was closed.

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2166

Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: 02-08-07

Recorder Job Number: 3228

Committee Clerk Signature



Minutes:

**Chairman Holmberg** opened the hearing on SB 2166 on February 8, 2007 regarding the the Overtime Work at the State Mill and Elevator.

Discussion followed about the concerns of overtime and how the employees are expected to do overtime, questions concerning management of the mill, the Union involvement, the fact that these employees do not come under the State package for benefits, Profit Sharing, the Retirement program, the remodeling of the mill. After much discussion Chairman Holmberg asked if there was a motion for a do pass.

**Senator Robinson moved a DO PASS, Senator Seymour seconded.** There was further discussion. **A roll call vote was taken resulting in 8 yeas, 5 nays, and 1 absent. The motion carried. Senator Hacker will carry the bill.**

The hearing on SB 2166 closed.

Date: 2/8/07  
Roll Call Vote #:

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2166

Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken do pass ~~amend~~

Motion Made By Robinson Seconded By Seymour

Senators	Yes	No	Senators	Yes	No
Senator Ray Holmberg, Chrm	✓		Senator Aaron Krauter	✓	
Senator Bill Bowman, V Chrm		✓	Senator Elroy N. Lindaas	✓	
Senator Tony Grindberg, V Chrm	✓		Senator Tim Mathern	✓	
Senator Randel Christmann		✓	Senator Larry J. Robinson	✓	
Senator Tom Fischer		✓	Senator Tom Seymour	✓	
Senator Ralph L. Kilzer	✓		Senator Harvey Tallackson		
Senator Karen K. Krebsbach		✓			
Senator Rich Wardner	✓				

Total (Yes) 8 No 5

Absent 1

Floor Assignment Sen Hacker: I. B. L.

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

REPORT OF STANDING COMMITTEE (410)  
February 9, 2007 7:45 a.m.

Module No: SR-28-2635  
Carrier: Hacker  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

SB 2166, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman) recommends **DO PASS** (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2166 was placed on the Eleventh order on the calendar.

2007 TESTIMONY

SB 2166

Chairman Klein and Senators

*same given to Senate Appropriations*

My name is Chad Boushee and I am a mechanic at the North Dakota State Mill. I am here to testify in favor of Senate Bill 2166, on behalf of myself and the employees of the North Dakota Mill. Thank you for this opportunity.

The current retirement only accounts for 40 hours worked per week, Senate Bill 2166 would allow overtime to be counted towards retirement. Overtime at the State Mill is a fact of life, it is not voluntary, and it is a condition of employment. In previous years, management at the Mill has stated they will try to cut overtime, but in reality it is not cost effective to do so. Since the last Legislative Session we have negotiated a 4-year contract with the mill at that time management had a chance to resolve the overtime issue and chose not too. A few changes were made to shift overtime from one employee to another, but the fact is the average annual income is still 30- 40% overtime. In some cases over 50% of an employees annual income is overtime. As I stated earlier, I am a mechanic at the State Mill. I work in one of the departments, which requires the least amount of overtime, But over the past three years 25% of my annual income has come from overtime.

Attached is an example of the hours worked from an employee in the milling department for the past three years and the income he received. Please keep in mind he has done this for 27 years.

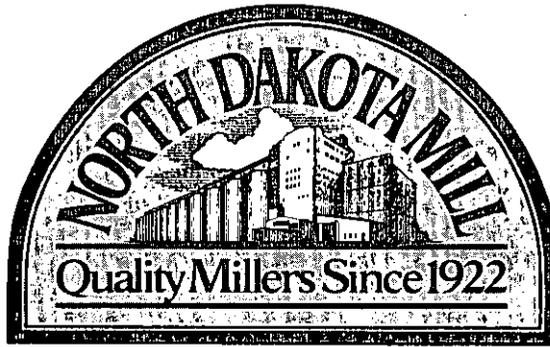
For years the mill has represented the State of North Dakota very well. In recent years the State Mill has been profitable and set production records on a regular basis thanks to hard working employees who take pride in their jobs. All we ask in return is a fair deal. Senate Bill 2166 is written so employees pay the first half of this extra retirement and that the State Mill match that amount. If it is profitable for the Mill to operate with this much overtime, then it should reflect the same on an employee's retirement. The employees of the Mill understand that this bill separates the State Mill from other state agencies in regards to calculating retirement, but please keep in mind having a state owned flour mill is a unique situation which requires legislation like this. So I ask you to give Senate Bill 2166 a chance and a recommendation to pass.

Thank you. I will gladly answer any questions you may have.

#1  
2166

Actual Employee from Milling Department

Two week pay periods (80hrs)	2004 <u>Hours worked</u>	2005 <u>Hours worked</u>	2006 <u>hours worker</u>
1	132	104	134
2	132	116	132
3	101	109	89.25
4	104.25	118	114
5	124	120.75	120
6	112	124	109
7	118	104	116
8	103	116	112
9	112	124	104.25
10	112	120	136
11	152	120.5	116
12	122	109.25	100
13	128.25	108	96.5
14	96	108	112
15	132	124	108
16	136	101	108
17	153	116	116
18	124	128	100
19	96	112	120
20	126	120	116.25
21	124.5	148	124
22	118	129	129.75
23	105	104	136
24	108	128	112.75
25	120	136	112
26	<u>132.25</u>	<u>136</u>	<u>100</u>
Total hours worked	3123.25	3083.5	2973.75
40 hr work week	2080	2080	2080
40hr/wk Salary	\$29,390.40	\$30,274.40	\$31,335.20
Actual Salary earned	\$60,607.52	\$61,607.80	\$62,331.31



Legislative Committee Hearing  
January 23, 2007  
Senate Bill No. 2166  
North Dakota Mill & Elevator Association

Chairman Klein and Senators:

I am Vance Taylor, President and General Manager of the North Dakota Mill and Elevator Association. I am appearing today in opposition to Senate Bill No. 2166.

The State Mill is fortunate to have a hard working group of employees that function well together as a team. They are a key part of the business and strive to produce a high quality product. However, it is important to remember that the Mill operates in a highly competitive marketplace.

The State Mill's pension plan, in its present form, is already superior to what is typically provided by our competitors in the flour milling industry. Most of our competitors calculate pension benefits by using a multiplier (in collective bargaining agreements across the country \$35, or less, is common) times years of service. An employee, retiring after 30 years of service, working for a competitor with a base salary of \$30,000 per year, would receive a pension benefit of \$1,050 per month (30 years Times \$35 per year). A State Mill employee, retiring after 30 years of service, with a base salary of \$30,000 per year, would receive a pension benefit of \$1,500 per month under our present pension plan. The annual cost to the State Mill to fund this pension is \$2,736 per year vs. our competitor's cost of approximately \$2,000 per year. This is a comparison using our present plan. The proposed improvement would add more than \$2,000 per year per employee to the State Mill's cost to fund future pension liability that, as mentioned earlier, is already substantially higher than our competitors.

Senate Bill No. 2166 would require the inclusion of overtime payments for calculation of future contributions to the Public Employees Retirement System. Passage of this Bill would dramatically increase existing pension

liability by \$2.0 million. This would necessitate additional State Mill contributions of an estimated \$256,000 per year going forward. This is due to increased pension payments to existing employees who retire at the proposed higher calculated wage base. The State Mill's increased cost for existing and future liability for this improved pension plan would be more than \$512,000 per biennium.

It is my understanding that no other State agency is required to include overtime in wages used to calculate pension contributions. It would appear that the cost to the State of North Dakota would be quite high if other agencies followed suit with this proposed change in the future.

The employees who work most of the overtime at the North Dakota Mill are members of the Bakery, Confectionery, Tobacco Workers and Grain Millers Local Union No. 167G. We are currently in the 2<sup>nd</sup> year of a 4 year collective bargaining agreement, which expires on June 30, 2009. Our agreement included wage increases totaling 12% over the 4 years. Increases of this magnitude would not likely have been negotiated had the costs of the proposed improvement to the pension plan been taken into account.

Our primary concern is the increased costs to the State Mill associated with Senate Bill No. 2166. It is critical for the State Mill to keep plant costs in check to be able to compete in a very difficult market place. We respectfully request that you not approve this change to the North Dakota Century Code.

If you believe this type of benefit should be considered, I would request amendments that would give the North Dakota Mill the authority to offer an improved pension plan but not require the Mill to do so. This will allow us the option to discuss improvements to the pension plan in the next union contract negotiations. Attached are the proposed amendments for your consideration (Exhibit A).

Also attached is a report on overtime hours worked at the State Mill from 1999 to present, (Exhibit B) and a report showing calculated pension cost increases with overtime wages included (Exhibit C). The last page illustrates the impact of the change in pension payments and the potential shortfall of funds, for two employees at the mill (Exhibit D).

Thank you for your attention. I will be happy to answer any questions you may have at this time.

Exhibit A

Proposed Amendments to Senate Bill No. 2166

Page 1, line 12, after "association" insert "if authorized in writing by the mill and elevator association"

Page 1, line 16, after "association" insert "if authorized in writing by the mill and elevator association"

Page 1, line 21, replaces "Overtime" with "If the mill and elevator association authorizes overtime to be included in salary as provided above, overtime pay"

Page 3, line 4, after "association" insert "if authorized in writing by the mill and elevator association"

Page 3, line 8, after "association" insert "if authorized in writing by the mill and elevator association"

Exhibit B

North Dakota Mill Overtime Report				
Fiscal Year	Overtime Hrs.	Plant Employees	Avg OT per Year	Avg OT per Week
1999	33,822	80	422.8	8.1
2000	46,647	81	575.9	11.1
2001	51,562	81	636.6	12.2
2002	46,963	80	587.0	11.3
2003	40,684	80	508.6	9.8
2004	46,622	79	590.2	11.3
2005	48,912	82	596.5	11.5
2006	41,347	83	498.2	9.6
YTD 2007	25,100	83		11.6
1. Plant employees consists of all hourly union employees and electricians.				
2. YTD 2007 is through December 31, 2006; 183 days or 26.1 weeks.				

North Dakota Mill					
Calculation of Pension Expense on Overtime Paid					
		Hours	Dollars Pd	Mill Paid Pension Exp. At 5.12%	Mill Paid Pension Exp. as % Total \$ Pd
<b>FY 2006</b>					
<b>Total hours</b>					
	All Employees	297,596	\$ 6,240,922		
	Union employees	213,613	\$ 4,023,666		
<b>Overtime hours</b>					
	All Employees	45,837	\$ 1,128,284	\$ 57,768.12	0.93%
	Union employees	41,347	\$ 1,046,157	\$ 53,563.24	1.33%
<b>FY 2005</b>					
<b>Total hours</b>					
	All Employees	298,427	\$ 5,940,731		
	Union employees	215,835	\$ 3,846,199		
<b>Overtime hours</b>					
	All Employees	52,922	\$ 1,256,462	\$ 64,330.85	1.08%
	Union employees	48,912	\$ 1,183,442	\$ 60,592.23	1.58%
<b>FY 2004</b>					
<b>Total hours</b>					
	All Employees	293,021	\$ 5,530,255		
	Union employees	208,871	\$ 3,685,309		
<b>Overtime hours</b>					
	All Employees	46,622	\$ 1,080,432	\$ 55,318.12	1.00%
	Union employees	42,745	\$ 1,011,644	\$ 51,796.17	1.41%
<b>FY 2003</b>					
<b>Total hours</b>					
	All Employees	287,951	\$ 5,220,861		
	Union employees	206,255	\$ 3,454,021		
<b>Overtime hours</b>					
	All Employees	40,684	\$ 917,601	\$ 46,981.17	0.90%
	Union employees	37,986	\$ 871,004	\$ 44,595.40	1.29%
<b>FY 2002</b>					
<b>Total hours</b>					
	All Employees	273,388	\$ 4,676,896		
	Union employees	196,823	\$ 3,044,127		
<b>Overtime hours</b>					
	All Employees	46,963	\$ 1,025,608	\$ 52,511.14	1.12%
	Union employees	44,525	\$ 985,803	\$ 50,473.12	1.66%

<b>North Dakota Mill</b>			
<b>Pension Cost Calculation</b>			
<b>Miller</b>			
	<b>Wages</b>	<b>Pension Exp</b>	
regular	\$ 42,826.00	\$ 3,905.73	9.12% pd by Mill
OT	21,245.00	1,937.54	5.12% pd by Mill and 4% pd by employee
<b>Total</b>	<b>\$ 64,071.00</b>	<b>\$ 5,843.27</b>	
Pension Pay without OT \$ 25,695.60 Based on 2% of 3 yr. avg wages, 30 years of service			
Pension Pay with OT 38,442.60 Based on 2% of 3 yr. avg wages, 30 years of service			
Incr in annual pension <u>\$ 12,747.00</u>			
Person retires in 4 years.			
Mill and Employee make \$ 7,750.16 of additional payments into PERS for pension.			
Assuming that person is in retirement for 20 years, there will be a shortfall of \$ 247,189.84 that will need to be made up by the state retirement fund.			
<b>Bagger</b>			
	<b>Wages</b>	<b>Pension Exp</b>	
regular	\$ 38,669.00	\$ 3,526.61	9.12% pd by Mill
OT	32,708.00	2,982.97	5.12% pd by Mill and 4% pd by employee
<b>Total</b>	<b>\$ 71,377.00</b>	<b>\$ 6,509.58</b>	
Pension Pay without OT \$ 23,201.40 Based on 2% of 3 yr. avg wages, 30 years of service			
Pension Pay with OT 42,826.20 Based on 2% of 3 yr. avg wages, 30 years of service			
Incr in annual pension <u>\$ 19,624.80</u>			
Person retires in 4 years.			
Mill and Employee make \$ 11,931.88 of additional payments into PERS for pension.			
Assuming that person is in retirement for 20 years, there will be a shortfall of \$ 380,564.12 that will need to be made up by the state retirement fund.			

TESTIMONY OF  
SPARB COLLINS  
ON  
SENATE BILL 2166

Mr. Chairman, members of the committee, good morning. My name is Sparb Collins and I am Executive Director of the North Dakota Public Employees Retirement System or PERS. I appear before you today in a neutral position on this bill but to offer technical comments on the benefit being proposed and to offer some amendments.

Anytime a benefit change is proposed to the PERS retirement plan we refer it to our actuary to determine the financial effect on the retirement plan. That is, if a proposed benefit or change will result in additional benefit payments, the actuary determines the cost of the change and if additional contributions are needed to pay for it. Attached for your review is the report from our actuary the Segal Company.

The report indicates that if this bill is passed, the retirement plan liabilities will increase by \$1,968,975. To pay for this increase the plan will need an additional \$191,000 per year in contributions above the current level of contributions to pay for this liability. This means the employer contribution rate needs to be increased. The attached shows two methods for this increase. The first is to increase all employer contribution rates by .04% (please note the present employer contribution rate is 4.12%). The second

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method is to increase only the state mill's contribution rate by an additional 3.06%. Since this enhancement is only for state mill employees, I have attached an amendment to raise their contribution rate to pay the additional \$191,000 per year.

The bill also proposes an appropriation of \$8,000 to PERS to annualize the salaries. However, in addition, the bill changes the method for contribution payments on overtime to require it to be paid by the employee instead of the employer. This will also require a change in our business system for which we will need an appropriation. Lastly with the attached amendment for the change in the employer contribution for the state mill, we will again need to change our business system to allow this differing contribution level by one employer. In total, we estimate the cost of these changes to our business system to be \$38,000. I have also included in the attached amendment a change to reflect these costs.

Last, our business system is in the process of being migrated off the ITD mainframe. As a result it may delay our ability to make the changes to implement this provision by July 1. We are therefore requesting a delayed implementation date of January 1, 2008. I have also included this change in the attached amendment.

Mr. Chairman, members of the committee this concludes my testimony.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2166

Page 1, line 1, replace "subsection" with "subsections 2 and"

Page 1, line 2, after the first comma insert "54-52-06,"

Page 1, line 5, after the semicolon insert " an increase in state mill employer

contributions;"; remove "and", and after "appropriation" insert "; and to provide an effective date"

Page 2, after line 28, insert:

SECTION 3. AMENDMENT. Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-06 Employer's contribution to retirement plan.** Except for the North Dakota mill and elevator association, which shall contribute an amount equal to seven and eighteen-hundredths percent of the monthly salary or wage of a participating member, Each governmental unit shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. For those members who elect to exercise their rights under section 54-52-17.14, the employing governmental unit, or in the case of a member not presently under covered employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit shall pay the contribution monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, into the retirement fund from its funds appropriated for payroll and salary or any other funds available for these purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date they became due, penalty and interest to be paid on delinquent contributions may be waived. An employer is required to submit contributions for any past eligible employee who was employed after July 1, 1977, for which contributions were not made if the employee would have been eligible to become vested had the employee participated and if the employee elects to join the public employees retirement system. Employer contributions may not be assessed for eligible service that an employee has waived pursuant to subsection 1 of section 54-52-05. The board

shall report to each session of the legislative assembly the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

Page 3, line 15, replace "Subsection" with "Subsections 2 and"

Page 3, line 16, replace "is" with "are"

Page 3, after line 16, insert:

2. Except for the North Dakota mill and elevator association, which shall contribute an amount equal to seven and eighteen-hundredths percent of the monthly salary or wage of a participating member, ~~The~~ each employer shall contribute an amount equal to four and twelve hundredths percent of the monthly salary or wage of a participating member. If the employee's contribution is paid by the employer under subsection 3, the employer shall contribute, in addition, an amount equal to the required employee's contribution. The employer shall pay monthly such contribution into the participating member's account from its funds appropriated for payroll and salary or any other funds available for such purposes. If the employer fails to pay the contributions monthly, it is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due.

Page 4, line 11, replace "\$8,000" with "\$38,000"

Page 4, after line 18, insert:

SECTION 7. EFFECTIVE DATE. This Act becomes effective on January 1, 2008.

Renumber accordingly

VIA FACSIMILE & US MAIL

January 19, 2007

Mr. Sparb Collins  
Executive Director  
State of North Dakota Public Employees'  
Retirement System  
400 East Broadway, Suite 505  
Bismarck, ND 58502

**Re: Technical Comments-Senate Bill No. 2166**

Dear Sparb:

The following presents our analysis of the proposed changes found in Senate Bill No. 2166:

**Systems Affected:** North Dakota Public Employees Retirement System, Retiree Health Benefit Fund

**Summary:** The proposed legislation would include payments for overtime earned by employees of the Mill and Elevator Association within the definition of "wages" and "salaries" under the defined benefit plan and the defined contribution plan for purposes of contributions and benefits. Overtime payments must be reported and annualized under the rules adopted by the PERS Board. The bill also allows the additional employee contributions associated with overtime pay to be picked up on a pre-tax basis by the employer under Internal Revenue Code Section 414(l).

**Actuarial Cost Analysis:** This bill would include payments for overtime earned by employees of the Mill and Elevator Association within the definition of "wages" and "salaries" under the defined benefit plan for purposes of benefit accrual. The bill's impact on the Main System's July 1, 2006 actuarial valuation results is as follows:

	<u>Valuation Results</u>	<u>Senate Bill No. 2166</u>
Actuarial Accrued Liability	\$1,450,113,412	\$1,452,082,387
Normal Cost	46,374,326	46,474,154
Required Contribution	37,041,461	37,232,502
Required Contribution Increase as a Percentage of Payroll	- -	191,041 0.04%
Payroll	536,574,504	537,729,563

The projected payroll for the Mill and Elevator Association employees as of July 1, 2006 is \$5.11 million without overtime and \$6.24 million with overtime. The required contribution increase of \$191,041 is 3.06% of projected payroll (with overtime) for the Mill and Elevator Association employees and 0.036% of the total Main System projected payroll.

**Technical Comments:** Our comments on the bill are as follows:

### General

Overtime is often excluded from covered compensation under a defined benefit plan for purposes of benefits in order to preclude employees from timing overtime work near retirement in order to maximize retirement benefits under a high average salary benefit formula. Such "benefits spiking" by employees can create higher levels of benefits that have not been adequately funded over the employee's service under the plan. The bill allows the PERS Board to establish rules for annualizing the amount of overtime reported in order to minimize these "benefits spiking" concerns. It is our view that the additional contributions associated with overtime cannot be picked up on a pre-tax basis by the employer under Internal Revenue Code Section 414(l) but rather must be made on an after-tax basis.

### Benefits Policy Issues

#### ➤ Adequacy of Retirement Benefits

The bill would significantly enhance retirement benefits for Mill and Elevator Association employees who perform overtime work.

#### ➤ Benefits Equity and Group Integrity

Only a small group of employees, Mill and Elevator Association employees, are provided the opportunity to have overtime pay included in covered compensation for retirement benefits. Therefore, the bill may create benefit inequities between similarly situated employees and employee classes other than Mill and Elevator Association employees who also receive overtime pay.

➤ Competitiveness

The bill may increase the benefits competitiveness of the System for Mill and Elevator Association employees only.

➤ Purchasing Power Retention

No impact.

➤ Preservation of Benefits

No impact.

➤ Portability

No impact.

➤ Ancillary Benefits

- ◆ The bill indirectly impacts other ancillary death or survivor benefits under the System that are based on final average salary for Mill and Elevator Association employees only.
- ◆ Social Security: No impact

**Funding Policy Issues**

➤ Actuarial Impacts

The bill creates the opportunity for Mill and Elevator Association employees to elect to work larger amounts of overtime during the final average salary determination period as a means of increasing retirement benefits. However, the actuarial impact will be lessened because of the annualization rules to be adopted by the Board and the fact that only a small group of employees are affected.

➤ Investment Impacts

- ◆ Asset Allocation: The bill does not create new investment asset allocation issues.
- ◆ Cash Flow Impacts: The bill does create new cash flow needs, but the impact on the System is minimal.

## Administration Issues

### ➤ Implementation Issues

- ◆ The bill will require the establishment of meaningful administrative guidelines to ensure the appropriate recognition and funding of benefits resulting from overtime pay and to ensure that affected employers and employees are aware of the new contribution requirements and amounts.
- ◆ In addition, the PERS Board must establish rules regarding for reporting overtime compensation.

### ➤ Administrative Costs

The bill will have an impact on administrative resources. An appropriation of funds has been made to the Board to defray the expenses of administering the proposed changes.

### ➤ Needed Authority

- ◆ The bill does appear to clearly provide sufficient levels of administrative and governance authority to the PERS Board to control the "benefits spiking" risks resulting from overtime pay.
- ◆ The bill should provide an appropriation to the Mill and Elevator Association to pay for the additional contributions.

### ➤ Cross Impact on Other Plans

- ◆ Additional contributions on overtime pay for Mill and Elevator Association employees only will be made to the retiree health benefit fund. These additional contributions will be a gain to the retiree health benefit fund since no additional benefits will accrue.
- ◆ Should this be enacted, a conforming change would be required in the defined contribution plan so that the definition of compensation is the same in each plan. Such a change would increase the amount of contributions by employers in that plan.

### ➤ Employee Communications

Some additional employee communication effort may be needed to explain how overtime pay is recognized under the System.

## Miscellaneous and Drafting Issues

- ◆ Affected employers will need to budget additional amounts to provide the increased contributions on overtime pay. An appropriation has been made for this purpose.

Mr. Sparb Collins  
January 19, 2007  
Page 5

- ◆ PERS will need to determine whether affected employers need to continue to report pay without overtime for purposes of its other group benefit programs.
- ◆ Retroactive overtime pay settlements in the future under the Fair Labor Standards Act by covered employers will need to include applicable PERS contribution amounts.

Please call if you have any questions or comments.

Sincerely,

Michael Moehle

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**EMPLOYEE BENEFITS PROGRAMS COMMITTEE  
REPORT TO THE 60TH LEGISLATIVE ASSEMBLY  
REGARDING SENATE BILL NO. 2166**

**Date:** February 2, 2007

**Sponsor:** Senator Ray Holmberg

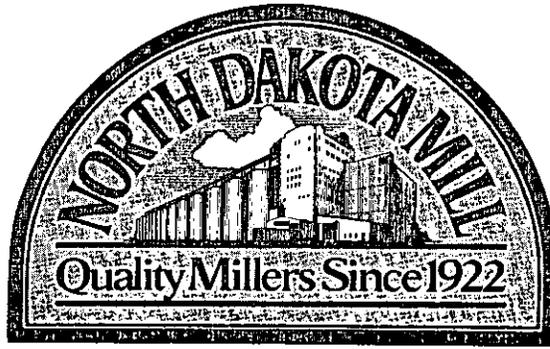
**Proposal:** Provides that overtime earned by employees of the Mill and Elevator are included as salaries and wages for purposes of the retirement program.

**Actuarial Analysis:** The actuarial analysis indicates the employer contribution rate for all employers in the main retirement system would need to increase by .04 percent, from 4.12 to 4.16 percent to pay for this increased benefit for Mill and Elevator employees or alternatively, the employer rate for the Mill and Elevator would need to increase by 3.06 percent, from 4.12 to 7.18 percent.

The Public Employees Retirement System would incur estimated costs of \$38,000 to modify its computer system to adjust the employer contribution rate and to annualize overtime earnings for Mill and Elevator employees.

**Committee Report:** Unfavorable recommendation.

*Received after bill  
was turned in to  
bill floor.*



Same  
Attachments  
as on  
1-23-07

Legislative Committee Hearing  
February 7, 2007  
Engrossed Senate Bill No. 2166  
North Dakota Mill & Elevator Association

Chairman Holmberg and Senators:

I am Ed Barchenger, Controller/Financial Manager of the North Dakota Mill and Elevator Association. I am appearing today on behalf of Vance Taylor, President and General Manager of the State Mill, in opposition to Senate Bill No. 2166.

The State Mill is fortunate to have a hard working group of employees that function well together as a team. They are a key part of the business and strive to produce a high quality product. However, it is important to remember that the Mill operates in a highly competitive marketplace.

The State Mill's pension plan, in its present form, is already superior to what is typically provided by our competitors in the flour milling industry. Most of our competitors calculate pension benefits by using a multiplier (in collective bargaining agreements across the country \$35, or less, is common) times years of service. An employee, retiring after 30 years of service, working for a competitor with a base salary of \$30,000 per year, would receive a pension benefit of \$1,050 per month (30 years Times \$35 per year). A State Mill employee, retiring after 30 years of service, with a base salary of \$30,000 per year, would receive a pension benefit of \$1,500 per month under our present pension plan. The annual cost to the State Mill to fund this pension is \$2,736 per year vs. our competitor's cost of approximately \$2,000 per year. This is a comparison using our present plan. The proposed improvement would add more than \$2,000 per year per employee to the State Mill's cost to fund future pension liability that, as mentioned earlier, is already substantially higher than our competitors.

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Thank you for your attention. I will be happy to answer any questions you may have at this time.