

2011 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2109

2011 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veteran's Affairs Committee
Missouri River Room, State Capitol

SB 2109
January 13, 2011
12857

Conference Committee

Committee Clerk Signature

Katie Oliver

Explanation or reason for introduction of bill/resolution:

Minutes:

Testimony Attached

Chairman Dever opened the public hearing on SB 2109. Sparb Collins was there to speak in favor of the bill.

Sparb Collins: See attached testimony #1.

Senator Nelson Can you run through section 1?

Sparb Collins: In Higher Education they had the TIAA/CERF system and periodically we have employees that move from one subdivision to another. In the defined benefit plan they can transfer their fund from the PERS defined benefit plan into TIAA/CREF. But in the PERS defined contribution plan we are not allowed to do that so you would have to keep it there until you are no longer actively employed under state employment.

Senator Nelson: Do you present value that?

Sparb Collins: Yes

Senator Nelson: On your amendment, it sounds like there is no actuarial impact if we adopt it but there is if we don't.

Sparb Collins All we are doing here is maintain the status quo.

Senator Berry: In terms of the transfer from TIAA/CREFT, is that strictly a defined contribution plan?

Sparb Collins: It is defined contribution

Senator Berry: People who are in a defined benefit who are in a program now can cash out and move it over but if they are already in the defined contribution plan does not have that ability.

Sparb Collins: As with the law enforcement change the defined contribution plan came into place in 1999 and we are constantly learning things and bring the issues as they arise.

Senator Cook: In section 4, removing the consecutive 36 months. My guess that the only reason we are doing that is somewhere out there is an employee that retired and their benefits would have been higher if left in?

Sparb Collins: The reason we are doing it is that last session or the session before the word 'consecutive' was eliminated; this has to do with the transfer of the coordination of benefits between the 2 systems.

Chairman Dever: Difference between law enforcement retirement and others.

Sparb Collins: Highway Patrol Retirement plan is for officers here at the state, they don't have Soc Sec so their multiplier is higher. Everybody is built around the 90% Also they are able to retire at age 55 because of the retirement of the job, by age 60 law says they have to leave the job. The law enforcement plan in PERS is 55 for retirement. They get the same benefits as a PERS person.

Senator Nelson: Highway patrol does not have Social Security. Law enforcement doesn't have Social Security?

Sparb Collins: Those officers at 50% you would be able to transfer but wouldn't be able to retire.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veteran's Affairs Committee
Missouri River Room, State Capitol

SB 2109
February 10, 2011
14324

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Minutes:

No testimony attached

Sparb Collins with the Public Employees retirement System was present to answer the committees' questions regarding SB 2109

Vice Chairman Sorvaag: On page 6 line 27-30, can you explain that for me?

Sparb Collins: That is IRS required wording. I think what it is saying is that if the plan were terminated today the benefits that you accrued would be payable to you.

Mr. Collins distributed a summary of SB 2109 to the committee.

Senator Cook: What are the consequences of not passing this bill out?

Sparb Collins: The administration changes will not take effect and we will not have updated our plan for the IRS provisions and underneath the IRS we have to do that every 2 years to keep the plan qualification in place?

Senator Cook: What does that mean?

Sparb Collins: The plan operates with the tax benefits, meaning that the money that goes in isn't taxable until the time that it is distributed. If you are non qualified all of those things start to raise questions.

Senator Nelson: This is something that we do every 2 years?

Sparb Collins: Yes

Vice Chairman Sorvaag: This amendment is basically saying that anyone new has to go through an actuary to become part of the plan.

Sparb Collins: Actually it means the reverse. When PERS started in 1977 political subdivisions could join the plan at their election. Back in 2003 when the law enforcement plan

was put into PERS that section was inadvertently changed in a broader way to say that we would need to do an actuarial study of each political subdivision before they came on and determine an actuarial rate for them. We didn't understand that change until just this last December so what we are suggesting here is a return it back to the way it has been since the time it started because the legislature sets the rate and that is the rate that applies. Otherwise what is going to happen is we are going to be doing studies on each and every one that comes in and we will end up with dozen of rates.

Chairman Dever: So the point of the amendment is to reconcile this with a subdivision plan and they would provide the funds necessary to do that.

Sparb Collins: It would set it to status quo. They would come in and do it at the rate that is in the statute, which is the way we have always done it.

Senator Cook: When you talk about the rates you are talking about the rates that the employee and the employer pay?

Sparb Collins: Just the employer.

Senator Cook: What would make it be higher?

Sparb Collins: It would be the demographics of that group; they may be slightly older and have a salary level that is higher than our salary level on average. This becomes particularly difficult because a smaller political subdivision could be skewed in one direction or another and causes it to go up; these things normally go back to the average. As you look at a group like the state of North Dakota, they're 55% of our client base and if you have a unit comes in of 50 employees and it is slightly higher by a percentage point or so, what does it do to the rates of the entire group? Most likely alter them on the hundredth decimal. It may make a difference for that small entity but the big group not. It would be different if there was a political subdivision that had 5,000 people in it.

Senator Nelson: The political subdivisions that come in, how many people are usually involved in a request to join PERS?

Sparb Collins: Generally today it is small entities but other than that the larger entities are already in.

Chairman Dever: What happens if they get in trouble? When we get paid an employee gets another month of service credit. If there is no payment there is no liability recorded in the system and in our office it would set off something that would incur penalties.

Senator Nelson: Take us back to the beginning, a Political Subdivisions wants in and they have 15 employees who have been there for a range of time. Do they pay in an actuarial value when they join the system?

Sparb Collins: The first month we get a payment from them is when we start to credit them.

Senator Nelson: All Morton County comes in with no years of service in a public plan.

A motion was made by Senator Nelson to adopt the amendments with a second by Vice Chairman Sorvaag. There was no further discussion, roll was taken and the amendments were adopted on a 7-0 count. A motion was then made for a do pass as amended by Senator Nelson with a second by Vice Chairman Sorvaag, there was no further discussion and the motion passed 7-0 with Senator Nelson carrying the bill to the floor.

FISCAL NOTE

Requested by Legislative Council
12/29/2010

Bill/Resolution No.: SB 2109

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	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

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).*

This bill provides for administrative changes to the PERS retirement plan, the Highway Patrol retirement plan and allows PERS defined contribution plan members to transfer to the Higher Education plan. The bill also updates IRS compliance requirements

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.*

N/A

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.*

N/A

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.*

N/A

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.*

N/A

Name:	Sparb Collins	Agency:	NDPERS
Phone Number:	701-328-3900	Date Prepared:	01/05/2011

JB
2-11-11

PROPOSED AMENDMENTS TO SENATE BILL NO. 2109

Page 1, line 2, replace the first comma with "and"

Page 1, line 2, replace the first "and" with "subsection 3 of section 54-52-02.1, section"

Page 8, after line 6, insert:

"SECTION 5. AMENDMENT. Subsection 3 of section 54-52-02.1 of the North Dakota Century Code is amended and reenacted as follows:

3. Notwithstanding any other provision of this chapter, a political subdivision of this state not currently participating in the public employees retirement system may not become a participant in the retirement system until an actuarial study is performed under the direction of the board to calculate the required employer contribution. The for any past service liability and the required employer contribution must be an amount determined sufficient to fund the normal cost and amortize and fund any past service liability over a period not to exceed thirty years as determined by the board. Any fees incurred in performing the actuarial study must be paid for by the political subdivision in a manner determined by the board."

Renumber accordingly

2109

Date: 2-10-11
Roll Call Vote #: 1

**2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.**

Senate Government and Veteran's Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Adopt Amendments

Motion Made By Nelson Seconded By Schwartz

Total (Yes) _____ No _____

Absent _____

Floor Assignment

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

2109

Date: 2-10-11
Roll Call Vote #: 2

**2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.**

Senate Government and Veteran's Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass as Amended

Motion Made By Nelson Seconded By Squaray

Total (Yes) No

Absent

Floor Assignment Ne 108

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

REPORT OF STANDING COMMITTEE

SB 2109: Government and Veterans Affairs Committee (Sen. Dever, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2109 was placed
on the Sixth order on the calendar.

Page 1, line 2, replace the first comma with "and"

Page 1, line 2, replace the first "and" with "subsection 3 of section 54-52-02.1, section"

Page 8, after line 6, insert:

"SECTION 5. AMENDMENT. Subsection 3 of section 54-52-02.1 of the North Dakota Century Code is amended and reenacted as follows:

3. Notwithstanding any other provision of this chapter, a political subdivision of this state not currently participating in the public employees retirement system may not become a participant in the retirement system until an actuarial study is performed under the direction of the board to calculate the required employer contribution. The for any past service liability and the required employer contribution must be an amount determined sufficient to fund the normal cost and amortize and fund any past service liability over a period not to exceed thirty years as determined by the board. Any fees incurred in performing the actuarial study must be paid for by the political subdivision in a manner determined by the board."

Renumber accordingly

2011 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2109

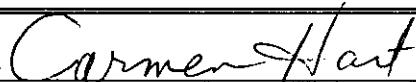
2011 HOUSE STANDING COMMITTEE MINUTES

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

SB 2109
March 10, 2011
15249

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to annuity purchases in the alternate retirement plan

Minutes:

Chairman Bette Grande opened the hearing on SB 2109.

Sparb Collins, Executive Director, North Dakota Public Employees Retirement System, appeared in support. **Attachment 1**. There were a few questions asked during his testimony. Mr. Collins was a little more specific at the end of the paragraph on Section 5 at the top of Page 2. When the law enforcement plan was created, it was created during the legislative session and everything focused on the creation of the plan, the actuarial cost, and all of these things. There was a slight change in one of the statutes and I have gone back and looked at our reports. Nobody noted it. That is why I think nobody felt it had any meaning. It had the inadvertent change of how political subdivisions can participate in our plan. We didn't think it made the change that it did, that our attorney told us it did. It was updated to mean that not only for law enforcement but for every PERS plan in this statute it had the effect of saying that if a political subdivision joins PERS, first we have to do an actuarial report of that system, take a look at their plan demographics. They have to pay for the actuarial report. Then we have to determine if the contribution rate is sufficient based upon a contribution rate statute. If it is higher than what it would be in statute, then we would have to charge them a separate rate. From 1977 all the way through that has never been the case. We are not really set up to charge political subdivisions all different kinds of rates. What happens is the statutory rate anyway updates it so everybody gets brought up into compliance anyway when necessary. We found out this last December when our attorney looked at it that it had a broader meaning and so we brought that forward to revert it back to the way it has always been.

Chairman Bette Grande: Is this when we brought the sheriffs in because they were smaller groups or something?

Sparb Collins: This is one of those that moved fairly quickly during the session. The bill started off designed during interim in one manner and then during the session the bill was hoghoused.

Chairman Bette Grande: The senate didn't like my version.

Sparb Collins: There are all types of changes. I don't why but there was a change in this political subdivision participation. It not only affected law enforcement but it affected all of the systems. It starts off with the wording at the beginning of the section. It says notwithstanding. Our interpretation at the time that it meant there were other parts of this section that were more specific they would apply. That would have meant the status quo would have been maintained. Lately our attorney says notwithstanding means that this overrides anything that is in other parts of the statute.

Rep. Roscoe Streyle: On Section 10 how long can they participate in that? Say I am 40. I die. My wife is 30. Until medicare availability, for 30 or 40 years?

Sparb Collins: This will basically apply to the retirees in those cases. They would already be in the medicare retiree plan but they would be allowed to continue.

Vice Chairman Randy Boehning: Do you have any cases where someone works for the state for ten years and fully vested in it, move out of state and take a job in some other state. They get divorced. All of a sudden the one that worked here died and they never told their new spouse about the retirement plan. Does anybody not claim their retirement benefits?

Sparb Collins: We do have instances where a benefit may remain unclaimed but it is never extinguished for us. We did seek last session or the session before where we can start to look at and we will start publishing it in our newsletters or something to be able to get the information out there. The extent that there is any benefit of any substance those generally get claimed. We never extinguish that liability.

Vice Chairman Randy Boehning: That money is always in there. If the children all of a sudden remember that Dad worked in North Dakota and come back 20 years later, the money is still there?

Sparb Collins: Yes. Another thing that we do is we never really intentionally lose contact with a member. There are statements that go out every single year. If you are an active member, you get a statement. If you are a deferred member, you get a statement. If you are a retired member under the system, you get a statement. We send that to the address that we have on file. We have a provision that a return that comes back to us from the post office if it isn't there to ask for a forwarding address that the post office may have and then we update those so we can keep in contact.

There was no in opposition or neutral to this bill. The hearing was closed.

A little later the committee came back to SB 2109.

Vice Chairman Randy Boehning made a motion for a Do Pass

Rep. Karen Rohr seconded the motion.

DO PASS, 12 YEAS, 0 NAYS, 1 ABSENT. Rep. Mark Sanford is the carrier of this bill.

Date: 3-10-11 Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2009

House GOVERNMENT AND VETERAN AFFAIRS Committee

Check here for Conference Committee

Legislative Council Amendment Number 177-1998-07-10-1778

Action Taken Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Boehning Seconded By Kohr

Total (Yes) 2 No 0

Absent _____

Floor Assignment _____ Sanford

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

REPORT OF STANDING COMMITTEE

SB 2109, as engrossed: Government and Veterans Affairs Committee (Rep. Grande, Chairman) recommends DO PASS (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2109 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

SB 2109

**Testimony of
Sparb Collins
On Senate Bill 2109**

Mr. Chairman, members of the committee my name is Sparb Collins. I am Executive Director of the North Dakota Public Employees Retirement System. I appear before you today on behalf of the PERS Board and in support of this bill and to request an amendment. Senate Bill 2109 provides for miscellaneous administrative changes to the PERS statutes.

Section 1 of the bill allows members of the PERS defined contribution plan that take employment in Higher Education and join the TIAA-CREF retirement plan to transfer their funds from PERS to TIAA-CREF. This will allow them, if they so elect, to consolidate their retirement account. Under present statute they cannot make this transfer while actively employed.

Section 2 of the bill eliminates the 60-month term certain option as a form of payment for surviving spouses in the Highway Patrol Retirement System (HPRS). Under current law, surviving spouses in HPRS get to elect either this benefit or a refund of member contributions or monthly payments of 50% of the normal retirement benefit for the surviving spouse's lifetime. Last Session this option was eliminated from the PERS Plan and making this change for the HP plan would standardize the options between the two plans. Also, this option is not utilized by HP spouses.

Section 3 of the bill updates the IRS compliance provisions of the Highway Patrol retirement plan. Each session we must update these provisions to maintain our qualified plan status.

Section 4 of the bill removes the word "consecutive" for determining the 36 months for calculating final average salary for multiple plan membership relating to the HPRS.

This change was previously approved for the calculation of regular HPRS retirement benefits and would harmonize the two sections.

Section 5 of the bill changes the pool of eligible candidates for a PERS Board member that is elected by retirees to exclude those individuals who are deferred vested members but not yet retired. These are individuals who are no longer actively employed or retired and therefore not active in the system. We have a difficult time maintaining current addresses for these individuals. Since they are not active in the system and since we cannot insure full notice to these members, we are proposing this change.

Section 6, page 10 of the bill removes the requirement for a member of the law enforcement plan to have three consecutive years of service immediately before retirement to three consecutive years of service. As presently written, a member could participate in this retirement plan for 25 years, but if their last three years of service was not "immediately preceding retirement" they may not qualify for a benefit. This change would clarify that they would be eligible for the benefit earned even if the last three years did not immediately precede retirement.

Section 6, page 12 of the bill clarifies that any surviving beneficiary who dies before receiving a distribution of such account balance is treated as predeceasing the member. This addresses cases where a member dies and designates for example their brother as the beneficiary of the remaining retirement funds. However, before we can pay the funds to the brother in this example he passes away. This change gives us guidance on what to do in such a situation. Specifically as written, we would then go back to the see who the member designated as the alternate beneficiary and pay it out to them. So in this example, if the member had designated their sister as the alternate, then we would pay the funds to that person.

Section 7 of the bill removes the language allowing conversion of sick leave to retirement credit within sixty days termination under the Hybrid Plan. IRS rules actually set the timeframe for such purchases so this change will allow us to follow those rules.

Section 8 of the bill updates the IRS compliance provisions for the PERS retirement plan. As with the Highway Patrol plan, each session we must update these provisions to maintain our qualified plan status.

Section 9 clarifies that a surviving spouse of a retiree may continue to participate in the uniform group insurance program by paying the required premium. Administratively we have provided for this continuity, but adding this to the statute clearly delineates this eligibility.

Section 10 removes some old statutory language relating to the employer contribution pick up process.

Mr. Chairman, members of the committee, also attached is a proposed amendment to the bill to deal with an additional administrative issue. Recently, as a result of a review by our attorney, we noted a provision in statute that was changed when the Law Enforcement System was created that had a broader meaning than anticipated at the time. In fact, at the time it was felt that since other parts of the statute were more specific, this change would not have an effect. Our recent review indicates that is not the case and therefore we are proposing to change the statute to how it was before the law enforcement statute change.

Mr. Chairman, members of the committee this bill was reviewed by the Legislative Employee Benefits Committee and given a favorable recommendation.

Thank you and this concludes my testimony.

PROPOSED AMENDMENTS TO SENATE BILL 2109

Page 1, line 2, replace the first comma with “and”, after “39-03.1-14.1,” insert “subsection 3 of section 54-52-02.1,”, and replace “and” with “section”.

Page 8, after line 19, insert:

SECTION 5. AMENDMENT. Subsection 3 of section 54-52-02.1 of North Dakota Century Code is amended and reenacted as follows:

3. Notwithstanding any other provision of this chapter, a political subdivision of this state not currently participating in the public employees retirement system may not become a participant in the retirement system until an actuarial study is performed under the direction of the board to calculate the required employer contribution for any past service liability. The and the required employer contribution must be an amount determined sufficient to ~~fund the normal cost and amortize and~~ fund any past service liability over a period not to exceed thirty years as determined by the board. Any fees incurred in performing the actuarial study must be paid for by the political subdivision in a manner determined by the board.

Renumber accordingly

Senate Bill 2109	
Proposed Provision/Change	Reason
Section 1	The provisions of the defined benefit plan have allowed members who leave covered employment with PERS and move to covered employment in Higher Ed with TIAA/CREF the opportunity to elect to transfer their funds from PERS to TIAA/CREF. When the defined contribution plan was enacted, it did not include this provision. We are proposing that it be added to the DC plan in a like manner as exists in the Main PERS plan.
Section 2 - Edit 39-03.1-11(6)(b) relating to the HP	Remove the 5 year pre-retirement death benefit. This was removed in the main plan last year and therefore we are suggesting changing for the HP this time.
Section 3	Update IRS compliance language
Section 4 - Edit 39-03-1-14.1	Remove "consecutive" from 3a and 3b. Last time we changed the final average salary provision for the HP from consecutive months to highest months. This change is reflective of the change made last session
Section 5	Changes the pool of eligible candidates for a board member that is elected by retirees to exclude those individuals who are deferred vested members but not yet retired. These are individuals who are not longer actively employed or retired and therefore not active in the system. We have a difficult time maintaining current addresses for these individuals. Since they are no active in the system and since we cannot insure full notice to these members we are proposing this change.
Section 6 - Law Enforcement Plan	The plan presently provides that the normal retirement date is when they "attain the age of fifty-five years and has completed at least three consecutive years of employment as a peace officer or correctional officer immediately preceding retirement". We are suggesting that we remove the wording "immediately preceding retirement".
Section 6 - Edit 54-52-17(6)	Revise the language to specify that method for distributing the funds when a member passes away and one of the beneficiaries also passes away prior to PERS distributing the funds.
Section 7 - Edit 54-52-27	Remove the last sentence regarding payment timeframe of 60 days. IRS rules determine the timeframe
Section 8 - IRS Update	Updates IRS provisions for the PERS retirement plan
Section 9 – Surviving spouse participation in health plan	<p>We are proposing the following change to this section to put into statute our administrative practice of allowing the spouse to stay on the plan after the member passes:</p> <p>54-52.1-03. Employee participation in plan - Employee to furnish information - Benefits to continue upon retirement or termination.</p> <p>.....3. A retiree who has accepted a periodic distribution from the defined contribution retirement plan pursuant to section 54-52.6-13 who the board determines is eligible for participation in</p>

Proposed Provision/Change	Reason
	<p>the uniform group insurance program or has accepted a retirement allowance from the public employees retirement system, the highway patrolmen's retirement system, the teachers' insurance and annuity association of America - college retirement equities fund for service credit earned while employed by North Dakota institutions of higher education, the retirement system established by job service North Dakota under section 52-11-01, the judges' retirement system established under chapter 27-17, or the teachers' fund for retirement may elect to participate in the uniform group under this chapter without meeting minimum requirements at age sixty-five, when the member's spouse reaches age sixty-five, upon the receipt of a benefit, or when the spouse terminates employment. If a retiree or surviving spouse does not elect to participate at the times specified in this subsection, the retiree or surviving spouse must meet the minimum requirements established by the board. Subject to sections 54-52.1-03.2 and 54-52.1-03.3, each retiree or surviving spouse shall pay directly to the board the premiums in effect for the coverage then being provided. A retiree or surviving spouse who has met the initial eligibility requirements of this subsection to begin participation in the uniform group insurance program remains eligible as long as the retiree maintains the retiree's participation in the program by paying the required premium pursuant to rules adopted by the board.....</p>
Section 10 - Edit 54-52.6-09	<p>Revise the language to remove election timeframes. This is to be consistent with the Defined Benefit plan.</p> <p>54-52.6-09. Contributions - Penalty.</p> <p>.....3. Each employer, at its option, may pay the employee contributions required by this section for all compensation earned after December 31, 1999. The amount paid must be paid by the employer in lieu of contributions by the employee. If the employer decides not to pay the contributions, the amount that would have been paid will continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the employer may not be included as gross income of the employee in determining tax treatment under this code and the federal Internal Revenue Code until they are distributed or made available. The employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a combination of a reduction in gross salary and offset against future salary increases. Employee contributions paid by the employer must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made before the date on which employee contributions were assumed by the employer. An employer shall exercise its option under this subsection by December 1, 1999, and shall report its choice to the board in writing. The option chosen may not be revoked for the remainder of the biennium. Thereafter, the option choice must be forwarded to the board, in writing, by June fifteenth of each odd-numbered year.....</p>

Proposed Amendment: Recently, as a result of a review by our attorney, we noted a provision in statute that was changed when the Law Enforcement System was created that had a broader meaning than anticipated at the time. In fact, at the time it was felt that since other parts of the statute were more specific, this change would not have an effect. Our recent review indicates that is not the case and therefore we are proposing to change the statute to how it was before the law enforcement statute change.

NDPERS BENEFIT MULTIPLIER & RETIREE HEALTH CREDIT HISTORY

- | | |
|--------|--|
| 7-1-77 | Defined benefit pension plan established with a multiplier of 1.04%. Service credit was limited to a maximum of 30 years for benefit calculation purposes. FAS equaled 60 consecutive months in 120. Vesting requirement of 10 years of service or age 65. |
| 7-1-81 | Disability benefits vesting changed from 10 years to 180 days. Disability benefit changed from the multiplier (accrued Normal retirement) to 60% of final average salary minus social security and workers compensation benefits. |
| 7-1-83 | Multiplier was increased to 1.20%. The 30-year maximum was removed in the benefit calculation. |
| 7-1-85 | Multiplier was increased to 1.30%. Benefits were increased by 8.33% for retirees. Rule of 90 with a minimum age 60 implemented. |
| 7-1-87 | Multiplier was increased to 1.50%. Benefits were increased by 15.4% for retirees. Vesting requirement was changed to 8 years of service or age 65. Minimum age for Rule of 90 repealed. |
| 7-1-89 | Multiplier was increased to 1.65% Benefits were increased by 15.76% for retirees, (5.76% associated with the change from highest consecutive 60 to non-consecutive 36 months (months no employed were excluded from the 120 month count) in the final average salary calculation and 10% associated with the multiplier increase). All individuals receiving disability benefits were given the 5.76% increase regardless of whether or not benefits were based on the multiplier. Disability pensioners whose benefits were based on the multiplier were given a 10% increase also. Prior Service 5.75% only. Disability benefits were increased to 70% of final average salary minus workers compensation benefits and social security benefits. A minimum disability benefit of \$100 per month was established. Vesting requirement was changed to 5 years of service or age 65. |
| | Retiree Health Insurance Credit Program was established (known as prefunded credit). Rate was \$3.00 for every year of retirement service credit, subject to reduction for early retirement. |
| 5-1-90 | Prior Service Retirees were entered in the main business system. Life-to-date balance is for the period beginning January 1, 1990 They also received a retroactive benefit increased February 1990 for the increase beginning July 1, 1989. |
| 7-1-91 | Multiplier was increased to 1.69%. Benefits were increased by 2.42% for retirees. Disability benefit changed from 70% formula to 25% of pay with a minimum benefit of \$100 per month. Eligibility for Social Security disability benefits was removed as a requirement for applicants for NDPERS disability benefits. Disability retirees did not receive this increase. |
| | Retiree Health Insurance Credit rate was changed to \$4.00 for every year of retirement service credit, subject to reduction for early retirement. |

- 8-1-93 Multiplier was increased to 1.725%. Benefits were increased by 2% for retirees. Rule of 90 changed to rule of 88. Disability did not receive this increase.
- Retiree Health Insurance Credit rate was changed to \$4.50 for every year of retirement service credit, subject to reduction for early retirement.
- 1-1-94 Multiplier was increased to 1.74%. Benefits were increased by 1% for retirees. Disability did not receive this increase.
- 8-1-97 Multiplier increased to 1.77%. Rule of 85 implemented. Benefits increased by 5% for retirees. (2% for multiplier and 3% for Rule of 85). 50% & 100% retiree health credit options implemented.
- 8-1-99 Multiplier increased to 1.89%. Benefits increased by 8% for retirees. Vesting requirements was changed to 3 years of service or age 65, except Judges who remained at 5 years.
- 1-1-00 Incentive Matching-Vesting in Employer Contribution program (PEP)
- 8-1-01 Multiplier increased to 2.00%. Benefits increased by 6% for retirees. Early retirement reduction changed to .5% for each month a member retires before reaching age 65 or the Rule of 85.
- 8-1-03 The National Guard Retirement Plan was change to the National Guard/Law Enforcement Retirement Plan. This plan changed allowed political subdivisions to join and include their peace and correctional officers of political subdivisions. Contributions are variable and reviewed annually. Generic purchases were capped to 5 years. Employer purchase options were implemented.
- 8-1-05 Law Enforcement minimum requirements changed from 20/20 rule to 32/20 rule. 5 Year Term Certain was replaced with the 20 year term certain retirement option. The Partial Lump Sum Option (PLSO) option was implemented
- 1-1-06 Members who have a retirement effective date on or before June 1, 2005 were issued a one-time supplemental payment equal to 50% of their June 2005 benefit paid in January 2006. 13th check was also issued to the estate of a retiree that passed away between June 1 and December 31 were also issued the 13th check.
- 8-1-07 The Deferred Normal Retirement Option (DNRO) was implemented. The ability for spouse's to combine RHIC was implemented. This provision also applies to retirees who receive both a retirement benefit and a surviving spouse benefits. This provision does not apply to a member who is receiving multiple surviving spouse accounts.
- 1-1-08 Members who have a retirement effective on or before December 1, 2007 were issued a one-time supplemental payment equal to 75% of their January 2008 benefit paid in January 2008.
- 8-1-09 Increase in the Retiree Health Insurance Credit (RHIC) from \$4.50 for each year of service to \$5.00 for each year of service.
- 8-1-09 Member contributions can be made on a pre-tax basis.

HIGHWAY PATROL SPECIFICS

- 7/1/71 2.00% for first 25 years then 1% for service over that. (Salary cap of \$750 on average monthly salary) 10% ad hoc increase for retired and deferred vested members. Payment allowance to beneficiaries of deceased contributors raised to \$165.00 payable for widows and children of all members making contributions to the fund subsequent to July 1, 1955.
- 7/1/75 2.25% for first 25 years then 1.5% for service over that. Final average salary calculated for the 60 months immediately preceding retirement. (cap of \$850 per month). Contributors become eligible for full retirement benefits with 25 years of service and age 55. Beneficiary payments were increased to \$180 for those contributing to the fund subsequent to July 1, 1955.
- 7/1/77 The final average salary calculation was changed to 36 months immediately preceding retirement. (cap of \$1250 per month for purposes of benefit calculation and contributions)
- 7/1/79 Final average salary maximum increased to \$1500 per month. Full year requirement dropped and provision for crediting months of service added.
- 7/1/81 Final average salary maximum increased to \$1900 per month. Benefit multiplier changed from 2.25% for the first 25 years to 2.50% for the first 25 years.
- 7/1/83 NDPERS given administrative responsibilities for the HP system. First payment issued from NDPERS was 1/1/1984.
- 7/1/85 Removed salary limit for both benefit and contribution purposes. Dual service provisions for TFFR and PERS added.
- 7/1/87 Changed final average salary calculation to highest 36 consecutive months over the last 120 months.
- 7/1/89 Increased multiplier to 2.75% for first 25 years and 1.75% for service over that. Retiree Health Insurance Credit Program was established (known as prefunded credit). Rate was \$3.50 for every year of retirement service credit, subject to reduction for early retirement.
- 7/1/91 Increased multiplier to 2.83% for first 25 years, second tier remains same. Retiree Health Insurance Credit rate was changed to \$4.00 for every year of retirement service credit, subject to reduction for early retirement.
- 7/1/93 Increased multiplier to 2.96% for first 25 years, second tier remains same. Also implemented indexing feature for deferred vested members.
- 8/1/93 Retiree Health Insurance Credit rate was changed to \$4.50 for every year of retirement service credit, subject to reduction for early retirement.

7/1/95	Increased multiplier to 3.03% for first 25 years, second tier remains same.
8/1/97	Increased multiplier to 3.25% for first 25 years, second tier remains same.
8/1/99	Increased multiplier to 3.40% for first 25 years, second tier remains same.
8/1/01	Increased multiplier to 3.60% for first 25 years, second tier remains same. Expanded purchases provisions.
8/1/05	5 Year Term Certain was replaced with the 20 year term certain retirement option. PLSO option was implemented
1/1/06	Members who have a retirement effective date on or before June 1, 2005 were issued a one-time supplemental payment equal to 50% of their June 2005 benefit paid in January 2006. 13 th check was also issued to the estate of a retiree that passed away between June 1 and December 31 were also issued the 13 th check.
8-1-07	The Deferred Normal Retirement Option (DNRO) was implemented. The ability for spouse's to combine RHIC was implemented. This provision also applies to retirees who receive both a retirement benefit and a surviving spouse benefits. This provision does not apply to a member who is receiving multiple surviving spouse accounts.
1-1-08	Members who have a retirement effective on or before December 1, 2007 were issued a one-time supplemental payment equal to 75% of their January 2008 benefit paid in January 2008.
8-1-09	Increase in the Retiree Health Insurance Credit (RHIC) from \$4.50 for each year of service to \$5.00 for each year of service.
8-1-09	Member contributions can be made on a pre-tax basis.

JUDGES SPECIFICS

- 7-1-1983 Benefit multiplier tier was established.
 1st 10 Years = 3.00%
 2nd 10 Year = 2.00%
 Remaining Year = 1%
- 7-1-1989 Vesting changed to 5 years
- 7-1-1991 Benefit multiplier tier was changed to:
 1st 10 Years = 3.50%
 2nd 10 Years = 2.50%
 Remaining Years = 1.25%
 Retiree received a percentage equivalent to the increase = .1666
- 8-1-1995 Benefit multiplier tier was changed to:
 1st 10 Years = 3.50%
 2nd 10 Years = 2.80%
 Remaining Years = 1.25%
 Retiree 2nd tier recalculated
- 8-1-1997 Retirees received 2.00% increase on January 1, 1998 and January 1, 1999
- 8-1-1999 Retirees received 2.00% increase on January 1, 2000 and January 1, 1991
 Disability benefits changed to 70% of FAS minus SSA and worker compensation
- 8-1-2001 Retirees received 2.00% increase on January 1, 2002 and January 1, 2001
- 8-1-2005 5 Year Term Certain was replaced with the 20 year term certain retirement option.
 PLSO option was implemented
- 1-1-2006 Members who have a retirement effective date on or before June 1, 2005 were
 issued a one-time supplemental payment equal to 50% of their June 2005
 benefit paid in January 2006. 13th check was also issued to the estate of a retiree
 that passed away between June 1 and December 31 were also issued the 13th
 check.
- 8-1-07 The Deferred Normal Retirement Option (DNRO) was implemented. The ability for spouse's
 to combine RHIC was implemented. This provision also applies to retirees who receive both
 a retirement benefit and a surviving spouse benefits. This provision does not apply to a
 member who is receiving multiple surviving spouse accounts.

1-1-2008 Retirees received 2.00% increase on January 1. No 13th check.

Attachment 1

2109

Testimony of

Sparb Collins

On Engrossed Senate Bill 2109

Madame Chair, members of the committee my name is Sparb Collins. I am Executive Director of the North Dakota Public Employees Retirement System. I appear before you today on behalf of the PERS Board and in support of this bill. Senate Bill 2109 provides for miscellaneous administrative changes to the PERS statutes.

Section 1 of the bill allows members of the PERS defined contribution plan that take employment in Higher Education and join the TIAA-CREF retirement plan to transfer their funds from PERS to TIAA-CREF. This will allow them, if they so elect, to consolidate their retirement account. Under present statute they cannot make this transfer while actively employed.

Section 2 of the bill eliminates the 60-month term certain option as a form of payment for surviving spouses in the Highway Patrol Retirement System (HPRS). Under current law, surviving spouses in HPRS get to elect either this benefit or a refund of member contributions or monthly payments of 50% of the normal retirement benefit for the surviving spouse's lifetime. Last Session this option was eliminated from the PERS Plan and making this change for the HP plan would standardize the options between the two plans. Also, this option is not utilized by HP spouses.

Section 3 of the bill updates the IRS compliance provisions of the Highway Patrol retirement plan. Each session we must update these provisions to maintain our qualified plan status.

Section 4 of the bill removes the word "consecutive" for determining the 36 months for calculating final average salary for multiple plan membership relating to the HPRS. This change was previously approved for the calculation of regular HPRS retirement benefits and would harmonize the two sections.

Section 5 of the bill is an amendment we requested in the Senate to deal with an additional administrative issue. Recently, as a result of a review by our attorney, we noted a provision in statute that was changed when the Law Enforcement System was created that had a broader meaning than anticipated at the time. In fact, at the time it was felt that since other parts of the statute were more specific, this change would not have an effect. Our recent review indicates that is not the case and therefore we are proposing to change the statute to how it was before the law enforcement statute change.

Section 6 of the bill changes the pool of eligible candidates for a PERS Board member that is elected by retirees to exclude those individuals who are deferred vested members but not yet retired. These are individuals who are no longer actively employed or retired and therefore not active in the system. We have a difficult time maintaining current addresses for these individuals. Since they are not active in the system and since we cannot insure full notice to these members, we are proposing this change.

Section 7, page 10 of the bill removes the requirement for a member of the law enforcement plan to have three consecutive years of service immediately before retirement to three consecutive years of service. As presently written, a member could participate in this retirement plan for 25 years, but if their last three years of service was not "immediately preceding retirement" they may not qualify for a benefit. This change would clarify that they would be eligible for the benefit earned even if the last three years did not immediately precede retirement.

Section 7, page 12 of the bill clarifies that any surviving beneficiary who dies before receiving a distribution of such account balance is treated as predeceasing the member. This addresses cases where a member dies and designates for example their brother as the beneficiary of the remaining retirement funds. However, before we can pay the funds to the brother in this example he passes away. This change gives us guidance on what to do in such a situation. Specifically as written, we would then go back to the see who the member designated as the alternate beneficiary and pay it out to them. So in

this example, if the member had designated their sister as the alternate, then we would pay the funds to that person.

Section 8 of the bill removes the language allowing conversion of sick leave to retirement credit within sixty days termination under the Hybrid Plan. IRS rules actually set the timeframe for such purchases so this change will allow us to follow those rules.

Section 9 of the bill updates the IRS compliance provisions for the PERS retirement plan. As with the Highway Patrol plan, each session we must update these provisions to maintain our qualified plan status.

Section 10 clarifies that a surviving spouse of a retiree may continue to participate in the uniform group insurance program by paying the required premium. Administratively we have provided for this continuity, but adding this to the statute clearly delineates this eligibility.

Section 11 removes some old statutory language relating to the employer contribution pick up process.

Mr. Chairman, members of the committee this bill was reviewed by the Legislative Employee Benefits Committee and given a favorable recommendation.

Thank you and this concludes my testimony.

Senate Bill 2109

Proposed Provision/Change	Reason
Section 1	The provisions of the defined benefit plan have allowed members who leave covered employment with PERS and move to covered employment in Higher Ed with TIAA/CREF the opportunity to elect to transfer their funds from PERS to TIAA/CREF. When the defined contribution plan was enacted, it did not include this provision. We are proposing that it be added to the DC plan in a like manner as exists in the Main PERS plan.
Section 2 - Edit 39-03.1-11(6)(b) relating to the HP	Remove the 5 year pre-retirement death benefit. This was removed in the main plan last year and therefore we are suggesting changing for the HP this time.
Section 3	Update IRS compliance language
Section 4 - Edit 39-03-1-14.1	Remove "consecutive" from 3a and 3b. Last time we changed the final average salary provision for the HP from consecutive months to highest months. This change is reflective of the change made last session
Section 6	Changes the pool of eligible candidates for a board member that is elected by retirees to exclude those individuals who are deferred vested members but not yet retired. These are individuals who are not longer actively employed or retired and therefore not active in the system. We have a difficult time maintaining current addresses for these individuals. Since they are no active in the system and since we cannot insure full notice to these members we are proposing this change.
Section 7 - Law Enforcement Plan	The plan presently provides that the normal retirement date is when they "attain the age of fifty-five years and has completed at least three consecutive years of employment as a peace officer or correctional officer immediately preceding retirement". We are suggesting that we remove the wording "immediately preceding retirement".
Section 7 - Edit 54-52-17(6)	Revise the language to specify that method for distributing the funds when a member passes away and one of the beneficiaries also passes away prior to PERS distributing the funds.
Section 8 - Edit 54-52-27	Remove the last sentence regarding payment timeframe of 60 days. IRS rules determine the timeframe
Section 9 – IRS Update	Updates IRS provisions for the PERS retirement plan
Section 10 – Surviving spouse participation in health plan	We are proposing the following change to this section to put into statute our administrative practice of allowing the spouse to stay on the plan after the member passes:

Senate Bill 2109

Proposed Provision/Change	Reason
	<p>54-52.1-03. Employee participation in plan - Employee to furnish information - Benefits to continue upon retirement or termination.</p> <p>.....3. A retiree who has accepted a periodic distribution from the defined contribution retirement plan pursuant to section 54-52.6-13 who the board determines is eligible for participation in the uniform group insurance program or has accepted a retirement allowance from the public employees retirement system, the highway patrolmen's retirement system, the teachers' insurance and annuity association of America - college retirement equities fund for service credit earned while employed by North Dakota institutions of higher education, the retirement system established by job service North Dakota under section 52-11-01, the judges' retirement system established under chapter 27-17, or the teachers' fund for retirement may elect to participate in the uniform group under this chapter without meeting minimum requirements at age sixty-five, when the member's spouse reaches age sixty-five, upon the receipt of a benefit, or when the spouse terminates employment. If a retiree or surviving spouse does not elect to participate at the times specified in this subsection, the retiree or surviving spouse must meet the minimum requirements established by the board. Subject to sections 54-52.1-03.2 and 54-52.1-03.3, each retiree or surviving spouse shall pay directly to the board the premiums in effect for the coverage then being provided. A retiree or surviving spouse who has met the initial eligibility requirements of this subsection to begin participation in the uniform group insurance program remains eligible as long as the retiree maintains the retiree's participation in the program by paying the required premium pursuant to rules adopted by the board.....</p>
Section 11 - Edit 54-52.6-09	<p>Revise the language to remove election timeframes. This is to be consistent with the Defined Benefit plan.</p> <p>54-52.6-09. Contributions - Penalty.</p> <p>.....3. Each employer, at its option, may pay the employee contributions required by this section for all compensation earned after December 31, 1999. The amount paid must be paid by the employer in lieu of contributions by the employee. If the employer decides not to pay the contributions, the amount that would have been paid will continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the employer may not be included as gross income of the employee in determining tax treatment under this code and the federal Internal Revenue Code until they are distributed or made available. The employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a combination of a reduction in gross salary and offset against future salary increases. Employee contributions paid by the employer must be treated for the purposes of this chapter in the</p>

Senate Bill 2109

Proposed Provision/Change	Reason
	same manner and to the same extent as employee contributions made before the date on which employee contributions were assumed by the employer. An employer shall exercise its option under this subsection by December 1, 1999, and shall report its choice to the board in writing. The option chosen may not be revoked for the remainder of the biennium. Thereafter, the option choice must be forwarded to the board, in writing, by June fifteenth of each odd-numbered year.....