NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

EMPLOYEE BENEFITS PROGRAMS COMMITTEE

Tuesday, July 28, 1998
Harvest Room, State Capitol
Bismarck, North Dakota

Representative Francis J. Wald, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Francis J. Wald, James O. Coats, Glen Froseth, Leland Sabby, Allan Stenehjem; Senators Karen K. Krebsbach, Ed Kringstad, Carolyn Nelson

Member absent: Senator Elroy N. Lindaas

Others present: See Appendix A

It was moved by Senator Nelson, seconded by Representative Coats, and carried that the minutes of the February 2, 1998, meeting be approved as distributed.

EMPLOYEE BENEFITS PROGRAMS COMMITTEE BILLS

At the request of Chairman Wald, committee counsel presented a memorandum describing the statutory responsibilities of the committee and summarizing the bills that have been submitted to the committee for review entitled *Employee Benefits Programs Committee Bills*.

TEACHERS' FUND FOR RETIREMENT

At the request of Chairman Wald, Ms. Fay Kopp, Retirement Officer, Teachers' Fund for Retirement, presented Employee Benefits Programs Committee Bill No. 88. A copy of her written comments is attached as Appendix B. She said the bill increases the benefit multiplier from 1.75 to 1.85 percent for all future retirees and provides a postretirement benefit increase of $50 per month for all annuitants and beneficiaries receiving a benefit on June 30, 1999.

In response to a question from Representative Wald, Ms. Kopp said the 1997 Legislative Assembly increased the multiplier for the Teachers' Fund for Retirement from 1.55 to 1.75 percent. In response to a further question from Representative Wald, she said an increase of one percent in the employer contribution and one percent in the employee contribution was used to fund the multiplier increase. Without changing the employer and employee contributions, she said, the multiplier could have been increased from 1.55 to 1.61 percent using the available margin or reserve in the Teachers' Fund for Retirement.

In response to a question from Representative Wald, Ms. Kopp said increasing the multiplier from 1.55 to 1.75 percent did increase the unfunded liability of the Teachers' Fund for Retirement, but the unfunded liability is being amortized or paid off on a 20-year amortization schedule.

In response to a question from Senator Nelson, Ms. Kopp said one of the goals of the Teachers' Fund for Retirement Board of Trustees is to increase the benefit multiplier to two percent. In 1995, she said, the board adopted a 20-year timetable within which to increase the benefit multiplier to two percent.

In response to a question from Representative Froseth, Ms. Kopp said it is the policy of the Teachers' Fund for Retirement Board of Trustees to split the available margin between active employees and retired members of the Teachers' Fund for Retirement based upon the percentage each comprises of the total membership. She said approximately two-thirds of the participants in the Teachers' Fund for Retirement are active members or active teachers and approximately one-third of the participants are retirees. Thus, she said, approximately two-thirds of the available margin is applied toward increasing the multiplier for active members and approximately one-third of the available margin is used to provide a postretirement benefit increase for retirees.

In response to a question from Senator Nelson, Ms. Kopp said the final recommendation will be made after the June 30, 1998, actuarial valuation of the Teachers' Fund for Retirement is completed. She said based upon this actuarial valuation and the resultant available margin, the Teachers' Fund for Retirement Board of Trustees may recommend that the increase in the multiplier be reduced from 1.85 percent to a figure between 1.85 and 1.75 percent. She said the Teachers' Fund for Retirement Board would not reduce the benefit multiplier below the current 1.75 percent, and in a worst case scenario, if no margin is available, the Board of Trustees would withdraw the bill.

At the request of Chairman Wald, Ms. Kopp presented Employee Benefits Programs Committee Bill No. 89. A copy of her written comments is attached as Appendix C. She said this bill contains the administrative changes that the Teachers' Fund for Retirement Board of Trustees is recommending in the statutes governing the fund. She said the bill provides that the member's spouse is the primary beneficiary unless there is written consent from the spouse to name an alternate beneficiary; requires spousal consent to a members' choice of benefit option; removes the 60-month provision for converting fringe benefits to salary; reduces vesting and eligibility for benefits from five years to three years; changes the early retirement reduction from age 65 to the earlier of age 65 or the rule of 85; removes the availability of partial service retirements; modifies the purchase of service credit provisions by no longer requiring members to be vested to purchase out-of-state service credit and removing the year-for-year requirement to purchase out-of-state service credit; allows members to purchase leave of absence, private or parochial school teaching service, and "air time"; no longer allows members to purchase college credit; removes the one-year time limit to purchase legislative credit and professional educational organization credit; and removes limits on the amount of additional service credit that can be purchased by a member with the exception of "air time."

In response to a question from Representative Wald, Ms. Kopp said if a member's spouse does not consent to the member's choice of benefit option, then the board applies a 50 percent joint and survivor option. In response to a further question from Representative Wald, she said the fund's actuary, Watson, Wyatt Worldwide, has advised the board that this default mechanism is not an unconstitutional taking of a member's property. She said many other governmental plans as well as private pension plans provide a default mechanism in the event a member's spouse does not consent to the member's choice of benefit option.

In response to a question from Representative Wald, Ms. Kopp said the only change contained in the bill that may have an actuarial cost is the change in the early retirement reduction factor. She said credit purchases must be done on an actuarial equivalent basis, and thus there would be no cost to the system from these changes. Finally, she said, the other changes are being recommended as a result of an Internal Revenue Service compliance review performed by the fund's actuary.

At the request of Chairman Wald, Mr. Scott Engmann, Executive Director, Retirement and Investment Office, presented Employee Benefits Programs Committee Bill No. 90. A copy of his written comments is attached as Appendix D. Mr. Engmann said the bill establishes a teachers' retiree health fund administered by the Public Employees Retirement System Board. He said the plan would provide retired Teachers' Fund for Retirement members with a monthly credit toward health insurance premiums for the state health plan administered by the Public Employees Retirement System. He said the monthly credit would be $2.50 multiplied by years of service credit with the Teachers' Fund for Retirement and applied monthly. He said the plan is funded from the state general fund and is estimated to cost approximately $6 million for the biennium.

In response to Mr. Engmann's summary of the bill, Representative Wald noted that it has been estimated that as many as 15 percent of the people of North Dakota do not have health insurance, much less employer-sponsored health insurance, and he questioned whether it would be fair to tax people who may not even have health insurance to provide a retiree health benefit plan for teachers.

In response to Representative Wald's comment, Mr. Engmann said this is a policy decision that must be addressed by the Legislative Assembly. However, he noted, some of the citizens comprising the 15 percent who are without health insurance may be retired teachers, and providing health insurance for retired teachers may encourage older, higher compensated teachers to retire; thus providing the dual benefit of reducing the payroll for school districts that would then be able to hire younger people at lower salaries and provide jobs for new teachers entering the work force in North Dakota.

At the request of Chairman Wald, Mr. Larry Klundt, North Dakota Council of Educational Leaders, presented Employee Benefits Programs Committee Bill No. 54. Mr. Klundt said the bill allows a retired member to return to teaching for up to one year without losing any benefits if at least 50 percent of the salary earned by that person is placed in a school district's educational foundation or a private educational foundation. He said a teacher's take-home pay would remain the same, but the provisions of the bill would help fund school district foundations. He said both employee and employer assessments would be paid by the person's employer, and thus there should be no actuarial cost impact on the Teachers' Fund for Retirement.

In response to a question from Representative Froseth, Senator Nelson, sponsor of the bill, noted that the bill contains an effective date of either August 1, 1999, or the date the Board of Trustees of the Teachers' Fund for Retirement receives a ruling from the Internal Revenue Service that the Act does not jeopardize the qualified status of the Teachers' Fund for Retirement, whichever date is later, and then is effective for only two years. Thus, she said, the qualified status of the fund is protected, and the proposal would only be tried on an experimental or limited basis.

In response to a question from Representative Froseth, Ms. Kopp said a teacher would not receive any additional credit for years of service in the Teachers' Fund for Retirement for returning to teach under the provisions of the bill.

PUBLIC EMPLOYEES RETIREMENT SYSTEM

Public Employees Retirement System Main System

At the request of Chairman Wald, Mr. Sparb Collins, Executive Director, Public Employees Retirement System, presented Employee Benefits Programs Committee Bill No. 101. A copy of his written comments is attached as Appendix E. Mr. Collins said the bill increases the benefit multiplier from 1.77 to 1.90 percent, provides a nine percent adjustment to retirees, and implements several portability provisions. The portability provisions, he said, include putting into place an incentive matching program with the deferred compensation plan, reducing the vesting schedule from five years to three years for all groups except judges, and allowing members to roll funds into the Public Employees Retirement System fund. He said the incentive matching program is designed to improve participation in the state's deferred compensation program. He said only 13 to 15 percent of state employees participate in the deferred compensation or Section 457 plan and the Public Employees Retirement System Board believes that employees must have a third source or leg, in addition to Social Security and an employer-provided pension, in order to provide a quality retirement for themselves. Thus, he said, if an employee elects to participate in the supplemental retirement savings program, the deferred compensation or Section 457 plan, and puts a minimum of $25 into the program, the state will match that amount up to four percent of the employee's salary on a dollar-for-dollar basis by increasing the employee's account balance in the defined benefit plan and giving the employee 7.5 percent interest on the account. Thus, he said, it makes both the employee and the employer contribution portable to those members who elect to participate in the deferred compensation program. He said the Public Employees Retirement System Board is hoping to increase participation in the deferred compensation program from 13 to 15 percent to 50 to 70 percent. The advantage for the short-term employee, he said, is that the employer contribution would become portable to the extent the employee participates in the deferred compensation program, and the advantage for the long-term employee is that it would encourage the employee to participate sooner and to a greater extent in the deferred compensation program and thus reap the advantages of compounding and also add a third component or leg to the employee's retirement benefits.

In response to a question from Senator Nelson, Mr. Collins said the incentive matching program provides several benefits to career employees who are vested and plan to retire under the Public Employees Retirement System. First, he said, the incentive matching program allows these employees to vest in the employer contribution to the extent they participate in the deferred compensation program. Thus, he said, even though they may intend to retire under the Public Employees Retirement System, if they are forced to terminate for some unforeseen reason prior to retirement, they would still be able to take a portion of the employer's contribution when they leave state employment. Secondly, he said, it increases the employee's account balance available to the employee's estate or beneficiaries in the event of the employee's death prior to retirement. And finally, he said, it encourages career employees to participate in the deferred compensation program.

In response to a question from Senator Nelson, Mr. Collins said 11 deferred compensation provider companies have signed a revised agreement with the Public Employees Retirement System effective August 1, 1998, to continue as deferred compensation providers. He said Nationwide Life is a new provider that has agreed to enter the North Dakota market. He said IDS Life and Lincoln National have determined to terminate as providers under the North Dakota deferred compensation program. A copy of this summary is attached as Appendix F.

In response to a further question from Senator Nelson, Mr. Collins said an entity must have a minimum of 50 participants in order to be approved as a deferred compensation plan provider by the Public Employees Retirement System Board.

In summary, Mr. Collins said, the bill responds to the pension portability study required by 1997 S.L., ch. 15, § 18 by providing an increase in the multiplier for long-term employees and enhanced portability provisions for short-term employees.

In response to a question from Representative Wald, Mr. Collins estimated that it takes a tenth of a percent of payroll to move the multiplier .01 percent or one basis point. Thus, he said, it is estimated to cost 1.3 percent to move the multiplier from 1.77 to 1.9 percent. He said the available margin on June 30, 1997, was 1.18 percent but the retirement fund has experienced positive growth over the past year, and the board is hopeful the margin has increased sufficiently to support all the provisions of Employee Benefits Programs Committee Bill No. 101.

In response to a question from Representative Wald, Mr. Collins said judges would not be entitled to participate in the incentive matching program. However, he said, employees of political subdivisions that participate in the Public Employees Retirement System, nonteaching members of the higher education system, and classified employees of the board office would be eligible to participate. He said faculty members of the higher education system and nonclassified employees of the board office participate in TIAA-CREF.

In response to a further question from Representative Wald, Mr. Collins said he would supply the committee with a schedule of state employees eligible to participate in the incentive matching program, political subdivision employees who participate in the Public Employees Retirement System, and higher education and board office employees who are eligible to participate in the Public Employees Retirement System.

At the request of Chairman Wald, Mr. Collins presented Employee Benefits Programs Committee Bill No. 102. A copy of his written comments is attached as Appendix G. Mr. Collins said the bill provides that participants in the judges' retirement system are entitled to receive a two percent postretirement adjustment in their present monthly benefit, changes the disability retirement benefits for Supreme and district court judges from 25 percent of final average salary to 70 percent of final average salary less Social Security and workers' compensation benefits, and changes the surviving spouse benefit to 100 percent of the member's accrued benefit.

Mr. Collins said a goal of the judges' retirement system, like the Public Employees Retirement System and Highway Patrolmen's retirement system, is to provide a retirement benefit when added to Social Security of 90 percent of final average salary. He said this goal has been achieved in the judges' retirement system, and thus there is a move to provide an ad hoc postretirement adjustment. He said approximately 60 percent of governmental or public pension plans do this. He said the two methods of providing a postretirement adjustment are on an annual ad hoc or fixed rate basis or based on a cost of living adjustment. He said the advantage of an ad hoc or fixed rate increase is that an actuary can easily predict the affordability of such an adjustment, whereas if a cost of living adjustment tied to an outside variable is used, then the state has no control over the increase, and it is also difficult to estimate future costs.

In response to a question from Representative Wald, Mr. Collins said the current judges' benefit multiplier is 3.5 percent for the first 10 years of service, 2.8 percent for the next 10 years of service, and 1.25 percent for service beyond 20 years. He said the system is designed to attract attorneys who are in midcareer to the judiciary for 10 years, or at most 20 years, and then the rate of increase in the benefit declines.

At the request of Chairman Wald, committee counsel reviewed Employee Benefits Programs Committee Bill No. 60. He said the bill establishes a defined contribution retirement plan for nonclassified state employees; provides that participating members would direct the investment of their accumulated employer and employee contributions and earnings to one or more investment choices within available categories of investment provided by the Public Employees Retirement System Board; provides that a participating member is immediately 100 percent vested in that member's contributions and vests in 50 percent of the employer's contributions upon completion of two years of service, 75 percent of the employer's contributions upon completion of three years of service, and 100 percent of the employer's contributions upon completion of four years of service.

In response to a question from Senator Nelson, committee counsel agreed that the definition of employees who are eligible to participate in the defined contribution plan may have to be clarified to provide that those faculty members of the higher education system who are participating in the TIAA-CREF system are exempt from the defined contribution system.

In response to a question from Representative Wald, committee counsel said the appropriation clause is included in the bill to alert the committee that even though the administrative expenses of a vendor contracted for by the board to manage an employee's defined contribution account would be paid for by the employee, the Public Employees Retirement System Board may incur certain costs in administering the program. In response to a further question from Representative Wald, committee counsel said the appropriation in the draft is made from the general fund because of questions of equity if these costs were taken out of the retirement fund because the beneficiaries of the defined contribution plan would no longer be participating in the defined benefit plan.

At the request of Chairman Wald, committee counsel reviewed Employee Benefits Programs Committee Bill No. 122. He said the bill reduces the vesting period from five years to three years for nonjudge members of the Public Employees Retirement System and provides that a member's account balance includes vested employer contributions of 25 percent upon completion of three years of service, 50 percent upon completion of seven years of service, 75 percent upon completion of 11 years of service, and 100 percent upon completion of 15 years of service.

Chairman Wald distributed a copy of the spring 1998 *Outlook*, a publication of the South Dakota Retirement System, which discusses refunding employer contributions to members withdrawing from the South Dakota Retirement System. A copy of the publication is attached as Appendix H.

At the request of Chairman Wald, committee counsel reviewed Employee Benefits Programs Committee Bill No. 80. He said the bill was submitted by Representative Kretschmar and provides that payments for overtime must be included as wages and salaries for purposes of calculating benefits under the Public Employees Retirement System. He also distributed a letter from Representative Kretschmar to Chairman Wald concerning the bill. A copy of the letter is attached as Appendix I.

Highway Patrolmen's Retirement System

At the request of Chairman Wald, Mr. Collins presented Employee Benefits Programs Committee Bill No. 103. A copy of his written comments is attached as Appendix J. Mr. Collins said the bill increases the benefit multiplier from 3.25 to 3.40 percent and amends the automatic refund provision to make it the same for the Highway Patrol as the Public Employees Retirement System. He said the bill also provides a proportional increase to the system's retirees of approximately 4.6 percent. He said this will move the salary replacement percentage from 81.25 toward 90 percent of final average salary, the goal of the Highway Patrolmen's retirement system as well as the Public Employees Retirement System main system and the judges' retirement system. He reminded the committee that members of the Highway Patrolmen's retirement system do not receive Social Security and thus are dependent upon their state pension for their sole retirement benefit.

In response to a question from Representative Wald, Mr. Collins said the most recent increase in the Highway Patrolmen's retirement system multiplier was from 3.03 percent to 3.25 percent in 1997. In response to a further question from Representative Wald, Mr. Collins said it is anticipated the available margin will be able to fund the proposed increase.

In response to a question from Senator Nelson, Mr. Collins said the Highway Patrolmen's retirement system has 124 active members, 48 retired members, and 21 beneficiaries. He said the employer contributes 16.7 percent and the employee contributes 10.3 percent, of which the state picks up four percent as it does for other public employees, leaving 6.3 percent paid by the employee.

UNIFORM GROUP INSURANCE PROGRAM

At the request of Chairman Wald, Mr. Collins presented Employee Benefits Programs Committee Bill No. 104. He said the bill provides that the rate for a non-Medicare retiree single plan is 150 percent of the active member's single plan rate, provides that the rate for a non-Medicare retiree family plan of two people is twice the non-Medicare retiree single plan rate, and the rate for a non-Medicare retiree family plan of three or more persons is two and one-half times the non-Medicare retiree single plan rate for purposes of determining health insurance premiums for retired public employees not eligible for Medicare.

At the request of Chairman Wald, committee counsel reviewed Employee Benefits Programs Committee Bill No. 114. He said the bill was submitted by Senator Mathern and allows any person who is without health insurance coverage to participate in the uniform group insurance program subject to minimum requirements established by the Public Employees Retirement System.

OLD-AGE AND SURVIVOR INSURANCE SYSTEM

At the request of Chairman Wald, Mr. Ray Gudajtes, Job Service North Dakota, reviewed Employee Benefits Programs Committee Bill No. 58. A copy of his written comments is attached as Appendix K. He said the proposal increases primary insurance benefits under the Old-Age and Survivor Insurance System fund.

In response to a question from Representative Wald, Mr. Gudajtes said the last time the Old-Age and Survivor Insurance System tax was triggered was 1989 when the tax went into effect for six months and raised $1.25 million.

It was moved by Senator Nelson, seconded by Representative Coats, and carried on a roll call vote that the Legislative Council staff be requested to redraft Employee Benefits Programs Committee Bill No. 58 to provide a benefit increase of $66.66 per month and to repeal the Old-Age and Survivor Insurance System tax trigger contained in North Dakota Century Code (NDCC) Section 52-09-09.

At the request of Chairman Wald, committee counsel reviewed Employee Benefits Programs Committee Bill No. 53. He said the bill allows the governing body of a county to pay retirement program employer contributions from the levy authorized by subsection 5 of NDCC Section 57-15-28.1.

In response to a question from Senator Nelson, committee counsel said subsection 5 of Section 57-15-28.1 allows political subdivisions, except school districts, to levy a tax for old-age and survivor insurance, Social Security, and employee retirement programs not to exceed 30 mills.

ALTERNATE FIREFIGHTERS RELIEF ASSOCIATION PLANS

At the request of Chairman Wald, committee counsel reviewed Employee Benefits Programs Committee Bill No. 87. He said the bill is being submitted by Senator Grindberg and provides that a firefighters relief association may adopt an alternate pension plan for its members with a normal retirement age of 55 years, an early retirement age of 50 years, a service benefit of 2.33 percent of a first-class firefighter's salary at the time of the member's retirement multiplied by the number of years of service employment up to a maximum of 30 years, deferred vesting after 10 years, vesting of 10 years, and postretirement adjustments provided on an actuarially sound basis.

At the request of Chairman Wald, Mr. Thomas Schons, Secretary/Treasurer, Fargo Firefighter's Relief Association Retirement Plan, addressed the committee. He presented a cost study of the proposal, a copy of which is attached as Appendix L. He said the proposed bill would still retain a funding margin of 2.1 percent based upon an investment return of 7.75 percent.

In response to a question from Senator Nelson, Mr. Schons said the Fargo Firefighter's Relief Association has 67 retirees and 82 active members.

In response to a question from Representative Wald, Mr. Schons said the city of Fargo supports the proposed legislation.

UNIFORM MANAGEMENT OF PUBLIC EMPLOYEE RETIREMENT SYSTEMS ACT

At the request of Chairman Wald, committee counsel reviewed Employee Benefits Programs Committee Bill No. 49. He said the bill adopts the Uniform Management of Public Employee Retirement Systems Act, and he distributed a summary prepared by the National Conference of Commissioners on Uniform State Laws, which is attached as Appendix M. Committee counsel said public retirement systems are regulated by state laws that vary considerably and in many cases have not kept pace with modern investment policies. Thus, he said, the uniform law commissioners have identified a need for a uniform act that will modernize, clarify, and make the rules governing the management of public retirement systems uniform. He said a primary purpose of the Act is to facilitate the incorporation of sound modern investment practices and modern portfolio theory into state law regulating the management of public employee retirement systems. He said the Act recognizes that trustees and other plan fiduciaries can only be effective in incorporating modern investment practices into the retirement system to the extent that these fiduciaries have the necessary independence and institutional resources available. The Act, he said, therefore contains provisions that give these fiduciaries sufficient independence and resources to manage retirement system assets in accordance with modern investment practices.

Committee counsel said the Act protects participants and beneficiaries of public employee retirement systems in two ways. First, he said, the Act articulates the fiduciary obligations of trustees and others with discretionary authority over various aspects of a retirement system and ensures that trustees and other fiduciaries have sufficient authority to fulfill those obligations. Second, he said, the Act facilitates monitoring of retirement systems by requiring regular and significant disclosure of the financial and actuarial status of the systems both to participants and beneficiaries directly, and to the public. He said the scope of the Act applies to most retirement programs maintained on behalf of public employees by their employers. He said the only programs that are not covered are unfunded deferred compensation programs for highly compensated employees or tophat programs, severance pay arrangements not to exceed specified amounts, Social Security payments, excess benefit plans under Section 415 of the Internal Revenue Code, individual retirement accounts, Internal Revenue Code Section 403(b) annuities, and workers' compensation and disability insurance benefits. He said the Act requires that all retirement assets be held in trust and ensures that the trustees and other plan fiduciaries have exclusive control over retirement system assets and sufficient control over the enterprise to manage the assets efficiently and effectively. He said the Act also articulates the duties of trustees and other fiduciaries in the operation and administration of a retirement system or its assets and adopts the Employee Retirement Income Security Act personal liability standards for trustees and other fiduciaries which establishes liability for negligence which results in a breach of fiduciary obligation. He said although the Act adopts the personal liability standard for trustees, it allows the affected systems to purchase insurance against this liability for the trustees or other fiduciaries. He said the Act imposes significant disclosure requirements designed to facilitate monitoring of retirement systems and permits for enforcement through court action by a public employer, participant, beneficiary, or fiduciary.

It was moved by Senator Krebsbach, seconded by Representative Coats, and carried on a roll call vote that the Employee Benefits Programs Committee assume jurisdiction over all the Employee Benefits Programs Committee bills submitted to the committee and that the Teachers' Fund for Retirement Board, Public Employees Retirement System Board, and Job Service North Dakota, as appropriate, be requested to obtain an actuarial analysis of each bill submitted to the committee or, if a bill does not have an actuarial effect on a fund, to provide any other information that would assist the committee in making a recommendation concerning the bill. Representatives Wald, Coats, Froseth, and Sabby and Senators Krebsbach, Kringstad, and Nelson voted "aye." No negative votes were cast.

Chairman Wald said he had received several inquiries from state employees in his district who said they had been informed that the Employee Benefits Programs Committee is contemplating legislation under which state employees would lose a major portion of, if not all, their retirement benefits. Even though an election is approaching, he said, politics should not enter into the deliberation or discussions of the committee, and he stated it was his aim that no state or political subdivision employee, current retiree, or beneficiary would lose any retirement benefits under any of the bills being considered by the committee.

No further business appearing, Chairman Wald adjourned the meeting at 3:00 p.m.

Jeffrey N. Nelson
Counsel
ATTACH:13