NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

EMPLOYEE BENEFITS PROGRAMS COMMITTEE

Wednesday, October 14, 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; Senators Ed Kringstad, Elroy N. Lindaas, Carolyn Nelson

Members absent: Representative Allan Stenehjem, Senator Karen K. Krebsbach

Others present: See Appendix A

It was moved by Representative Coats, seconded by Representative Froseth, and carried that the minutes of the July 28, 1998, meeting be approved as distributed.

At the request of Chairman Wald, committee counsel reviewed the procedure followed by the Employee Benefits Programs Committee in past interims concerning the disposition of bill drafts submitted to the committee. He said this meeting is the second to the last meeting of the interim and has historically served as the public input meeting at which time concerned individuals are allowed to testify for or against bill drafts that have been submitted to the committee. He said the committee will receive the July 1, 1998, actuarial valuations for the Teachers' Fund for Retirement, Public Employees Retirement System main system, Highway Patrolmen's retirement system, and retiree health benefits fund at its next meeting. Also, he said, the cost figures for each bill will be available at this meeting and the committee will be able to make a recommendation on each of the bill drafts submitted to the committee. He also distributed a memorandum summarizing the Employee Benefits Programs Committee bills that have been submitted to the committee.

EMPLOYEE BENEFITS PROGRAMS COMMITTEE BILLS

Teachers' Fund for Retirement

At the request of Chairman Wald, Ms. Fay Kopp, Retirement Officer, Retirement and Investment Office, reviewed Employee Benefits Programs Committee Bill No. 88. A copy of her written comments is attached as Appendix B and a copy of the technical comments prepared by Watson Wyatt Worldwide, the actuary for the Teachers' Fund for Retirement, is attached as Appendix C. She said the bill draft increases the benefit multiplier applicable to the Teachers' Fund for Retirement from 1.75 to 1.85 percent of final average salary and provides a postretirement benefit increase of $50 per month. She said according to preliminary actuarial results, Watson Wyatt believes there should be sufficient margin to fund the bill draft.

In response to a question from Representative Wald, Ms. Kopp said the current unfunded actuarial accrued liability of the Teachers' Fund for Retirement is $105.1 million.

In response to a question from Senator Nelson, Ms. Kopp said the Teachers' Fund for Retirement Board of Trustees has adopted a 20-year amortization schedule to amortize the unfunded liability of the fund. However, she said, based upon the significant investment gains experienced by the Teachers' Fund for Retirement since the last valuation, the fund is ahead of schedule in retiring the unfunded liability.

In response to a question from Representative Wald concerning whether it is good public policy to increase the multiplier in light of current market and world economic uncertainty and the existing unfunded liability, Ms. Kopp said the unfunded liability is being retired in a timely manner and that the fund's actuaries are closely monitoring the Teachers' Fund for Retirement in light of these economic conditions. She said there is nothing "wrong" or "bad" about having an unfunded liability as long as it is being retired in a timely manner.

Chairman Wald called on Mr. Howard Snortland, Retired Teachers' Association, who said the Retired Teachers' Association supports the bill draft submitted by the Teachers' Fund for Retirement Board of Trustees and is appreciative that the bill draft provides benefit enhancements for retirees as well as current members.

At the request of Chairman Wald, Mr. Steve Cochrane, CFA, Investment Director, Retirement and Investment Office, presented an investment report on the pension and insurance trusts. A copy of Mr. Cochrane's presentation is attached as Appendix D. Concerning an unfunded liability, he compared it to a corporation that issues debt in addition to equity to fund its ongoing operations. He said the debt is not a bad business practice but is an additional tool that a corporation may use and, provided it is being retired in a manageable and timely manner, is beneficial.

Concerning investment performance, Mr. Cochrane said each of the funds managed by the Retirement and Investment Office is structured from an asset allocation standpoint to withstand variations in the market, be they to the upside or downside. Also, he said, due to the size of the funds, the Retirement and Investment Office is able to employ a level of diversification not available to individual investors designed to minimize any chance of a crisis within one of the funds while maximizing the chance of positive investment return. He said the average annual rate of return over the past four years and the first quarter of fiscal year 1999 has been 12.37 percent while the actuarial assumed rate of return was eight percent. The actuaries for the Teachers' Fund for Retirement estimate the fund could withstand a realized or unrealized loss of $100 million and still meet its current and anticipated obligations.

In response to a question from Representative Wald, Mr. Cochrane said approximately 55 percent of the assets of the Teachers' Fund for Retirement are in equity investments and approximately 45 percent are in fixed income investments.

In response to a question from Representative Froseth, Mr. Cochrane said the unfunded liability of a fund is something to monitor and if a fund is grossly unfunded it may be of concern. However, he said, that is not the case with the Teachers' Fund for Retirement. He said the unfunded liability is a part of the management of the fund in that it allows the board to enhance benefits and to provide intergenerational equity. He said the concept of intergenerational equity refers to the case where the contributions of current members would be used to retire the unfunded liability which would benefit future retirees at the expense of those paying into the fund today. By using an unfunded liability, he said, it allows future retirees to assist in funding the fund.

Chairman Wald called on Mr. Max Laird, North Dakota Education Association, Grand Forks, who said the association supports the bill draft submitted by the Teachers' Fund for Retirement Board of Trustees. Also, he reminded the committee that the employees had agreed to increase the employee contribution in 1997 from 6.75 to 7.75 percent of covered compensation in order to fund benefit enhancements.

In response to a question from Senator Nelson, Ms. Kopp said there are approximately 32 schools that do not pay Social Security benefits for their teaching employees.

At the request of Chairman Wald, Ms. Kopp reviewed Employee Benefits Programs Committee Bill No. 89. A copy of her comments is attached as Appendix E and a copy of the technical comments prepared by Watson Wyatt Worldwide is attached as Appendix F. She said the bill draft proposes a number of miscellaneous changes to the statutes governing the Teachers' Fund for Retirement. She also said the Teachers' Fund for Retirement Board is requesting several amendments to the bill draft. On page 1, line 11, she said, replace "or, in the absence of such designation, the member's surviving spouse, if any" with "except that in the absence of such designation, if the member is married, the member's spouse will be the primary beneficiary. If the member is married, and if the member wishes to name an alternative beneficiary, the member's spouse must consent in writing to the member's designation. If the member dies without having named a contingent beneficiary to receive any remaining benefits due after the death of the beneficiary, the primary beneficiary may name a contingent beneficiary". The second amendment, she said, was on page 4 to remove the overstrike over "filed with the board" on lines 3 and 7. The third amendment requested by the board, she said, is to replace the new language on page 4, lines 13 through 15, with "a member's spouse, if any, must consent in writing to the member's choice of benefit payment option for any benefit payments starting after July 1, 1999. The fund may rely on the member's representations about his or her marital status in determining the member's marital status. The spouse's written consent must be witnessed by a notary or a plan representative. If the spouse does not consent, or cannot be located, the member's annuity benefit will be paid using option two, the 50 percent joint and survivor option." The final amendment, she said, is to insert the word "accredited" on page 8, line 4, to clarify that purchase of service credit must be for service in an accredited North Dakota private or parochial school.

Ms. Kopp also presented the technical comments prepared by Watson Wyatt Worldwide on Employee Benefits Programs Committee Bill No. 89. She said only the change from five-year vesting to three-year vesting and the change in the method used for computing the early retirement reduction factor will have a measurable impact on the actuarial status of the Teachers' Fund for Retirement. The other changes, she said, are being made as a result of an Internal Revenue Code compliance review.

At the request of Chairman Wald, Ms. Kopp reviewed Employee Benefits Programs Committee Bill No. 90. A copy of her written comments is attached as Appendix G and a copy of the technical comments prepared by Watson Wyatt Worldwide is attached as Appendix H. She said the bill establishes a teachers' retiree health fund administered by the Public Employees Retirement System Board. Under the proposal, she said, retired Teachers' Fund for Retirement members would receive a monthly credit of $2.50 multiplied by their number of years of service with the fund applied toward their health insurance premiums under the uniform group insurance program administered by the Public Employees Retirement System Board. She said the health insurance premium for a retired "career" teacher with 30 years of service credit would be reduced by $75. She said the plan would be funded by a $6 million general fund appropriation. She said the Teachers' Fund for Retirement Board of Trustees recognizes that one of the greatest burdens facing current fund retirees and future retirees is health care costs. Also, she said, the board understands that many active members who are eligible to retire are not doing so because of the cost of health care. She said there are currently 438 members who are eligible to retire but who have not yet done so. This situation, she said, may keep individuals on the job long after they should be and keeps jobs from opening up for younger people, forcing them to leave the state.

At the request of Chairman Wald, Mr. Snortland addressed the committee. He said the Retired Teachers' Association supports the bill draft.

At the request of Chairman Wald, Mr. Laird addressed the committee. He said the North Dakota Education Association supports the bill draft.

In response to a question from Representative Wald whether it would be fair to finance a teachers' retiree health benefits fund out of the general fund when 15 percent of the people in North Dakota are uninsured and one-half of the working people with health insurance do not have employer-paid health insurance, Mr. Laird said this bill draft would be a step toward ensuring that all people in North Dakota are able to obtain health insurance coverage.

Chairman Wald called on Mr. Ron Torgerson, North Dakota Council of Educational Leaders, who reviewed the provisions of Employee Benefits Programs Committee Bill No. 54 which allow 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 private educational foundation.

At the request of Chairman Wald, Ms. Kopp addressed the committee. A copy of her written comments is attached as Appendix I and a copy of the technical comments prepared by Watson Wyatt Worldwide is attached as Appendix J. She said the board generally supports the bill draft but proposed that the collection of member and employer contributions should be on the total salary earned by the member which would help to offset some of the costs of administering the program. She suggested the bill draft be amended to provide on page 2, line 5, after the underscored period that the following sentence be added: "Assessments must be paid on the total salary earned by the retired member without regard to the amount of money placed in an educational foundation."

Chairman Wald recognized Senator Nelson. She said she is sponsoring the bill draft on behalf of the North Dakota Council of Educational Leaders and would not introduce the bill draft if it were to jeopardize the qualified tax status of the Teachers' Fund for Retirement. She noted that the bill draft would not become effective until the Teachers' Fund for Retirement Board of Trustees received a letter ruling from the Internal Revenue Service that the bill draft would not jeopardize the qualified status of the fund and expires two years after that date. She said she concurs in the amendment proposed by the board and requested that the Legislative Council staff revise the bill draft accordingly.

Public Employees Retirement System (PERS)

Chairman Wald recognized Representative William E. Kretschmar. Representative Kretschmar described Employee Benefits Programs Committee Bill No. 80. He said the bill draft provides that payments for overtime must be included as wages and salaries for purposes of calculating benefits under the Public Employees Retirement System. He said he was introducing the bill draft on behalf of a constituent who is a county employee who earned a large amount overtime during the winter of 1996-97 that is not recognized for purposes of calculating retirement benefits.

At the request of Chairman Wald, Mr. Roderick B. Crane, Vice President, The Segal Company, Englewood, Colorado, presented an actuarial review and technical comments on the bill draft. A copy of the review and comments is attached as Appendix K. He said overtime is typically excluded from covered compensation for purposes of calculating benefits in order to preclude the timing by employees of overtime work near retirement to maximize retirement benefits. He said this can create a higher benefit that has not been adequately funded over the member's entire working career. He said The Segal Company recommends that consideration be given to providing the Public Employees Retirement System Board appropriate authority to establish maximum amounts of overtime that can be recognized within the final average salary determination to control manipulation of retirement benefits in this fashion. Since not all employees are able or provided the opportunity to earn overtime pay, he said, the proposal may create benefit inequities between similarly situated employees and employee classes. In summary, he said, this type of legislation that recognizes overtime compensation lends itself to "pension spiking" in which an individual can increase that person's benefit when the pension has not been fully funded over the entire career. However, he said, there are steps that can be taken to minimize this, such as placing a cap or maximum on the amount of overtime that can be recognized or as most plans do, not recognize overtime pay at all for purposes of calculating retirement benefits.

In response to a question from Representative Wald, Mr. Crane said other states that recognize overtime for purposes of calculating retirement benefits usually place a cap on the amount of overtime that can be counted for purposes of retirement benefits. One example, he said, is the Colorado Public Employees Retirement Association which recognizes no more than a 10 percent increase in final average salary.

In response to a question from Representative Wald, Mr. Crane said most plans place the cap or limitation in the statute governing the plan rather than delegating this determination to the board governing the plan.

Chairman Wald called on Mr. Sparb Collins, Executive Director, Public Employees Retirement System, who addressed the committee. Although the Public Employees Retirement System Board has not taken a position on any of the bill drafts submitted by individual legislators, he said, the board does have a concern with the potential of pension spiking identified by The Segal Company. He said the board would support placing a cap or limit on the amount of overtime that can be used to calculate retirement benefits. He said the Public Employees Retirement System Board would incur computer reprogramming costs and would request that an appropriation of $4,000 be added to the bill draft.

At the request of Chairman Wald, Mr. Collins reviewed Employee Benefits Programs Committee Bill No. 102. He said the bill draft affects Supreme and district court judges and provides that participants in the judges' retirement system are entitled to receive a two percent postretirement adjustment in their present monthly benefit and allows the board to suspend the increase for an upcoming year if it determines that the increase is not actuarially prudent. Also, he said, the bill draft provides disability retirement benefits for Supreme and district court judges of 70 percent of final average salary reduced by the members' primary Social Security benefits and workers' compensation benefits. Finally, he said, the bill draft provides that a surviving spouse of a Supreme or district court judge may select a lump sum payment of the member's retirement account as of the date of death or payments as calculated for the deceased member as if the member were of normal retirement age at the date of death, payable until the spouse dies. He said the Public Employees Retirement System Board has reached its goal as it applies to the multiplier and thus is asking for a two percent automatic or ad hoc increase in retirement benefits for members of the judges' retirement system.

At the request of Chairman Wald, Mr. Crane presented the actuarial review and technical comments for the bill draft, a copy of which is attached as Appendix L. He said the two percent postretirement increase provides protection against inflation impacts on benefits and is a type of increase that The Segal Company favors provided funding is available. He said automatic increases help to maintain the purchasing power of the original retirement benefit. He said the two percent increase is reasonable and in line with the goals of the Public Employees Retirement System Board to maintain the purchasing power of retirees.

In response to a question from Representative Wald, Mr. Crane said although he is not aware of another public pension plan that provides an automatic increase in retirement benefits for retirees, it is not unusual and many private pension plans allow their administrators to grant ad hoc benefit increases to retirees.

In response to a question from Representative Coats, Mr. Crane said the benefit increase is either all, the entire two percent, or nothing and the bill draft does not grant the board authority to provide an increase smaller than two percent if it is not actuarially prudent to provide an increase of two percent.

Chairman Wald recognized Chief Justice Gerald W. VandeWalle. Chief Justice VandeWalle reminded the committee that the 1997 Legislative Assembly had enacted a similar proposal granting a two percent increase and placed a sunset clause on it. Thus, he said, this type of benefit enhancement has been in effect for two years and is working well. He said the Supreme Court supports the bill draft as submitted by the Public Employees Retirement System Board. He said that because of the emphasis on increasing the multiplier, the increase in disability benefits and death benefits is perhaps overdue and the fact that the level of disability and death benefits needs to be improved was recently reinforced with the untimely death of a district court judge and the disability of another district court judge this biennium.

Concerning Employee Benefits Programs Committee Bill No. 60, which established a defined contribution retirement plan for nonclassified state employees, Chief Justice VandeWalle said the bill draft defines eligible employees as those in positions not classified by the Central Personnel Division. He said employees of the Supreme Court are not classified by the Central Personnel Division even though the court has an internal classification scheme. Thus, he said, under the bill draft, members of the Supreme Court staff who provide the same function as employees of the executive branch would be treated differently. As such, he said, the Supreme Court could not support this provision.

At the request of Chairman Wald, Mr. Collins reviewed Employee Benefits Programs Committee Bill No. 101. He also distributed a summary of investment options for the Public Employees Retirement System deferred compensation program, a copy of which is on file in the Legislative Council office, and a schedule showing retirement payments and average yearly payments by county in North Dakota, a copy of which is attached as Appendix M.

At the request of Chairman Wald, Mr. Crane presented the actuarial review and technical comments for Employee Benefits Programs

Committee Bill No. 101, a copy of which is attached as Appendix N. He said the bill draft is designed to address concerns with retirement benefit adequacy, competitiveness, and portability. He said the 1.9 percent multiplier makes strides toward meeting the board's benefits policy to provide a 2 percent multiplier and would increase the replacement ratio for an employee with 20 years of service from 33 to 36 percent and for an employee with 25 years of service from 42 to 45 percent of final average salary. He said the bill draft enhances the amount of retirement benefits at retirement and at termination of employment and the matching contribution in the deferred compensation plan increases retirement income adequacy, allowing members flexibility in early retirement and retaining purchasing power after retirement. However, he said, the employer matching program does create the potential for some retirement asset "leakage" because members may have access to funds prior to retirement. He said the bill draft increases benefits equity for shorter service employees while maintaining group integrity and sharing responsibility of saving for retirement.

Chairman Wald called on Mr. Tom Tupa, who distributed written comments on behalf of Mr. Weldee Baetsch, Association of Former Public Employees, which are attached as Appendix O. He said the Association of Former Public Employees would prefer no change in the defined benefit structure of the Public Employees Retirement System; however, since the request for retirement fund portability is moving forward, he said, the association believes that Employee Benefits Programs Committee Bill No. 101 is a reasonable response. Next, speaking on behalf of the North Dakota Independent State Employees Association, he said, that organization supports the bill draft.

Chairman Wald called on Ms. Chris Runge, Executive Director, North Dakota Public Employees Association, who said the Public Employees Association supports the bill draft as a measure that addresses the needs of short-term employees while protecting the integrity of the plan.

At the request of Chairman Wald, committee counsel reviewed Employee Benefits Programs Committee Bill No. 60. He said the bill draft establishes a defined contribution retirement plan for nonclassified state employees. He also presented a memorandum entitled *Public Employee Retirement Programs - History*.

At the request of Chairman Wald, Mr. Crane presented the actuarial review and technical comments for Employee Benefits Programs Committee Bill No. 60. A copy of the review and comments is attached as Appendix P. He said that based upon a total contribution of 7.5 percent of salary and an assumed rate of return of 8 percent a year, the replacement ratio for the new plan would be 20 percent of final average salary for an employee with 20 years of service and 27 percent for an employee with 25 years of service. He said this compares to the replacement ratio of the current plan of 33 percent for an employee with 20 years of service and 42 percent for an employee with 25 years of service. Concerning benefits equity and group integrity, he said, The Segal Company has concerns that the proposal will create benefit differences for similarly situated state workers who perform similar services but for different state agencies. Also, he said, nonvested employees who transfer to the new plan may be immediately increasing their vesting percentage and their pension benefits compared to similar employees who do not transfer. He said consideration should be given to providing a statement of legislative purpose that would provide guidance to the Public Employees Retirement System Board as to the design and administration of the new plan.

Chairman Wald called on Mr. Collins, who said the bill draft would require an appropriation of $191,000 from the general fund and $159,000 in other funds which would be charged against individual accounts for administrative expenses. Also, he said, the effective date of the bill draft should be clarified in order that it applies to salary earned in January 2000 but not paid until February 1, 2000, and not to salary received on January 1 which is in effect for money earned in December. Concerning qualified domestic relations orders, he said, the provisions of the bill draft should be clarified. For example, he said, the Public Employees Retirement System Board has accepted qualified domestic relations orders for members who would be eligible to transfer to the new plan which may affect the qualified domestic relations order. One suggestion, he said, would be to provide that members who have qualified domestic relations orders filed against their accounts would not be able to transfer to the new defined contribution plan. Finally, he said, the procedure for transferring from classified to nonclassified or nonclassified to classified should be clarified.

Chairman Wald recognized Mr. Rod Backman, Executive Director, Office of Management and Budget. He said the state of North Dakota, as an employer, needs to address the concerns of short-term employees as well as long-term employees. He said it is a misconception that there is little turnover in state government and in one study he has seen, of the employees who left state employment between 1993 and 1997 with between five and nine years of service, 615 cashed out of the system and 351 remained in the system. Also, he said, there were 343 employees with more than 10 years of experience who cashed out of the plan during this same period. Thus, he said, in a four-year period there were almost 1,000 people who left state government who did not receive any portion of the employer contribution to their retirement plan. One suggestion, he said, would be to establish a pilot program with a small group of employees and after two to four years there would be a track record that employees could review to determine whether a defined contribution plan was more beneficial than a defined benefit plan.

At the request of Chairman Wald, committee counsel reviewed the provisions of Employee Benefits Programs Committee Bill No. 122. He said the bill draft reduces the vesting period from five years to three years for nonjudge members of the Public Employees Retirement System and provides that except for Supreme and district court judges, a member's account balance includes 75 percent of vested employer contributions if the member has less than three years of service and 100 percent of vested employer contributions if the member has three years or more of service.

At the request of Chairman Wald, Mr. Crane presented the actuarial review and technical comments prepared by The Segal Company for the bill draft. A copy of the review and comments is attached as Appendix Q. He said the provisions of the bill draft benefit short-term employees who accrue less than five years of service. He said the bill draft does not make any changes or enhancements for employees who ultimately retire under the Public Employees Retirement System and receive an annuity or for current Public Employees Retirement System retirees. He said the bill draft increases benefits equity for shorter service employees while maintaining group integrity. In particular, he said, members with less than three years of service would also receive a return of a portion of the employer contribution. Concerning preservation of benefits, he said, the three-year vesting and the enhanced employer contribution withdrawal benefit provisions enhance the ability of shorter service members to earn and retain the value of employer-provided benefits under the system. Concerning portability, he said, the bill draft increases portability of assets by decreasing vesting requirements from five years to three years. He said the provision will require additional administrative resources and the Public Employees Retirement System has estimated the cost of implementation at $5,000. Also, he said, the August 1, 1999, effective date may be at risk and he suggested that the effective date be moved back to January 1, 2000.

At the request of Chairman Wald, Mr. Collins reviewed Employee Benefits Programs Committee Bill No. 103. He said the bill draft increases the benefit multiplier for the Highway Patrolmen's retirement system from 3.25 to 3.40 percent of final average salary for the first 25 years of service and provides a postretirement increase in the benefit multiplier from 3.25 to 3.40 percent of final average salary.

At the request of Chairman Wald, Mr. Crane presented the actuarial review and technical comments prepared by The Segal Company on the bill draft. A copy of the review and comments is attached as Appendix R. He said the bill draft substantially enhances retirement benefits for employees and retirees under the Highway Patrolmen's retirement system. He said with a 3.4 percent benefit multiplier, a 25-year career employee will receive a benefit equal to 85 percent of final average salary and will be near the plan goal to replace 90 percent of income at retirement. He reminded the committee that members of the Highway Patrol do not participate in Social Security.

Chairman Wald called on Colonel James Hughes, North Dakota Highway Patrol, who said the North Dakota Highway Patrolmen's retirement fund has 53 retirees receiving benefits and 19 individuals receiving survivor's benefits. He said the Highway Patrol supports this bill draft.

In response to a question from Representative Wald, Colonel Hughes said the patrol is in the process of adding 10 to 12 officers and that turnover is minimal as officers only leave by injury or retirement. Out of 132 sworn officers, he said, approximately 45 will have less than five years of experience once the most recent class graduates.

In response to a question from Senator Nelson, Colonel Hughes said the patrol has a mandatory retirement age of 60, but mandatory retirement ages have been subject to challenge in other states and thus whether it is enforceable is problematical. However, he said, almost everyone who reaches retirement eligibility retires as soon as they are able to because of the nature of the work.

UNIFORM GROUP INSURANCE PROGRAM

At the request of Chairman Wald, Mr. Collins reviewed Employee Benefits Programs Committee Bill No. 104. He said the bill draft 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 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.

Chairman Wald called on Mr. Patrick L. Pechacek, Deloitte & Touche LLP, Minneapolis, Minnesota, who presented a review of the bill draft, a copy of which is attached as Appendix S. He said the actual costs of the retiree group not eligible for Medicare are approximately 150 percent of the active group's costs. Therefore, a strong case can be made for indexing the rates as proposed. He said the tying of rates to the active group will provide for rate stability since the active pool is much larger and more credible than the non-Medicare retiree pool and, as a result, the rate for this retiree subgroup will follow the trends of the larger active group and will not be subject to potential large swings in rates due to the small size of the enrolled population.

At the request of Chairman Wald, committee counsel reviewed Employee Benefits Programs Committee Bill No. 114. He said the bill draft was submitted by Senator Mathern and will allow 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 Board.

At the request of Chairman Wald, Mr. Pechacek addressed the committee. A copy of the review prepared by Deloitte & Touche LLP is attached as Appendix T. He said the determinative factor concerning this bill draft is whether the Health Insurance Portability and Accountability Act (HIPAA) applies. He said Deloitte & Touche does not believe HIPAA will apply to the Public Employees Retirement System program and, if so, allowing these new groups to join the uniform group insurance program would not have a significant negative impact on the program. However, if HIPAA is deemed to apply, he said, then the Public Employees Retirement System Board would be prohibited from applying medical underwriting requirements and in this case, the potential impact on the plan would be significant due to adverse selection by individuals and employers.

Chairman Wald called on Mr. Dan Ulmer, Blue Cross Blue Shield of North Dakota, who said the only way this proposal would work is if it is subsidized by the state. For example, he said, if the Public Employees Retirement System Board is not allowed to use underwriting procedures then participation by uninsured individuals in the uniform group would be very expensive for the state. On the other hand, he said, if the Public Employees Retirement System Board is allowed to use underwriting principles, then the insurance becomes very expensive for uninsured individuals and they will not be able to participate in the group for that reason. Thus, he said, the insurance would have to be subsidized by the state.

OLD-AGE AND SURVIVOR INSURANCE SYSTEM (OASIS)

At the request of Chairman Wald, Mr. Jim Hirsch, Customer Service Area Manager, Job Service North Dakota, reviewed Employee Benefits Programs Committee Bill No. 58. He said the bill draft increases the primary insurance benefits under the Old-Age and Survivor Insurance System (OASIS) fund and repeals the old-age and survivor insurance tax trigger. He distributed a revised schedule of OASIS funding usage which is attached as Appendix U. He said one of the 11 survivors died in August and thus there are now 10 individuals receiving survivor’s benefits under the OASIS plan. As a result, he said, implementing a $66.66 increase in primary insurance benefits will increase the ending balance from $6,801 to $36,734.94.

In response to a question from Senator Nelson, Mr. Hirsch agreed that the committee could recommend increasing the primary benefit $133.33 per month and still leave an estimated ending OASIS fund balance of $12,312.65. However, he cautioned that many of these individuals could live longer than anticipated because for all intents and purposes they are already beyond the actuarial tables and if the fund were to be exhausted then the Legislative Assembly would be faced with making a general fund appropriation or reinstituting the OASIS tax to pay benefits under the fund.

At the request of Chairman Wald, committee counsel reviewed Employee Benefits Programs Committee Bill No. 53. He said the bill draft allows employers to pay Public Employees Retirement System employee contributions from the old-age and survivor insurance levy authorized by North Dakota Century Code Section 57-15-28.1(5). He also distributed written comments prepared by Mr. Mark A. Johnson, Executive Director, North Dakota Association of Counties, which are attached as Appendix V and a memorandum entitled *Old-Age and Survivor Insurance System Tax Levy - History*.

FIREFIGHTERS RELIEF ASSOCIATION PLANS

Chairman Wald called on Mr. Tom Schons, Secretary-Treasurer, Fargo Firefighters Relief Association, Fargo, who addressed the committee. Concerning Employee Benefits Programs Committee Bill No. 87, which allows a firefighters relief association to adopt an alternate pension plan for its members, he said, the only change in the bill draft since the last committee meeting is that the early retirement at age 50 provision has been removed.

At the request of Chairman Wald, Mr. Crane addressed the committee. Mr. Crane referred to a letter to the Fargo Firefighters Relief Association showing that under the proposed plan formula a firefighter with 30 years of service would receive 70 percent of a first-class firefighter's earnings and that the expected funding margin of the proposed plan would be .99 percent. A copy of this letter is attached as Appendix W. He said The Segal Company is also the actuarial consultant for the Fargo Firefighters Relief Association plan. He said the legislation is the culmination of a four-year effort on the part of the Fargo Firefighters Relief Association to update and modernize its retirement plan. He said the plan is in a position that benefit enhancements can now be proposed. First, he said, the bill draft removes the archaic 20-year or cliff vesting requirement under which if a firefighter leaves one day before accruing 20 years of service the firefighter is not entitled to a pension because that person has not vested. He said the benefit multiplier is also improved in recognition of the fact that firefighters do not receive Social Security benefits. He said a multiplier of 2.33 percent will provide 70 percent of an individual's final average salary at 30 years of service. Also, he said, the association may provide postretirement adjustments if it is actuarially prudent to do so.

In response to a question from Senator Nelson, Mr. Crane said the Bismarck Firefighters Relief Association could elect, with the approval of the city, to adopt this plan. However, he said, Bismarck has a 50-year age retirement provision and thus probably would not elect to come under this plan. He said Bismarck is currently operating its firefighters relief association plan under an alternate provision of North Dakota Century Code (NDCC) Chapter 18-11.

In response to a question from Representative Wald, Mr. Crane said there are four paid fire departments in the state—Bismarck, Fargo, Minot, and Grand Forks. He said Bismarck and Fargo are relief associations governed by state law while Minot and Grand Forks are independent municipal pension plans that are not subject or governed by Chapter 18-11.

At the request of Chairman Wald, committee counsel reviewed Employee Benefits Programs Committee Bill No. 29. He said the bill draft was submitted by Representative Drovdal and will allow cities with volunteer fire departments to form firefighters relief associations.

In response to a question from Representative Froseth, committee counsel said firefighters relief associations are funded from fire insurance premium taxes. Also, he said, cities are allowed to levy a tax for firefighters relief associations.

In response to a question from Representative Wald, Ms. Lois Hartman, North Dakota Firemen's Association, addressed the committee. She said each individual department that establishes a firefighters relief association under the proposal would create its own retirement plan and be responsible for determining the actuarial soundness of the plan. She said cities may levy a tax of one-half of one mill in addition to the one-half of the fire insurance premium tax refund that is available to fund firefighter relief associations.

In response to a question from Representative Wald, Mr. Bob Wetzler, Minot Rural Fire Department, and Executive Board, North Dakota Firemen's Association, said a city may raise one-half of one mill in addition to one-half of the fire insurance premium tax refund available to finance firefighters relief associations. He said if volunteer fire departments are able to provide a pension to their members it will greatly aid in recruitment and retention which is becoming a nationwide problem for these types of departments.

In response to a question from Representative Wald, Ms. Hartman said she has received calls and letters from many small and rural fire departments supporting this type of legislation.

In response to a question from Representative Froseth, Ms. Hartman said four of the 388 fire departments in North Dakota are paid fire departments.

In response to a question from Representative Wald, Mr. Crane said Wyoming has similar firefighters relief association legislation, but Wyoming has a statewide system under which all volunteer firefighters may join a single plan. This, he said, would address the issue of portability.

UNIFORM MANAGEMENT OF PUBLIC EMPLOYEE RETIREMENT SYSTEMS ACT

At the request of Chairman Wald, committee counsel reviewed Employee Benefits Programs Committee Bill No. 49 which adopts the Uniform Management of Public Employee Retirement Systems Act. He also distributed a copy of the technical comments prepared by Watson Wyatt Worldwide, attached as Appendix X and an actuarial review and technical comments prepared by The Segal Company, attached as Appendix Y.

Chairman Wald recognized Mr. Crane. He said that among the reasons the National Conference of Commissioners on Uniform State Laws is proposing this legislation is as a result of the high profile failure of several state and local public pension plans and the fear that the federal government may step in and regulate these plans. Although the bill draft will not have a substantial administrative impact on the Public Employees Retirement System, he said, it will impact unpaid volunteer trustees because they will be made personally liable for any breach of their duties. However, he said, the system may purchase insurance for the trustees.

It was moved by Senator Kringstad that Employee Benefits Programs Committee Bill No. 49, relating to the adoption of the Uniform Management of Public Employee Retirement Systems Act be given a favorable recommendation. The chairman announced that the motion died for lack of a second.

It was moved by Senator Nelson that Employee Benefits Programs Committee Bill No. 49 be given an unfavorable recommendation. The chairman announced that the motion died for lack of a second.

It was moved by Senator Nelson, seconded by Representative Coats, and carried on a roll call vote that Employee Benefits Programs Committee Bill No. 49, relating to the adoption of the Uniform Management of Public Employee Retirement Systems Act, be given no recommendation. Representatives Wald, Coats, Froseth, and Sabby and Senators Kringstad, Lindaas, and Nelson voted "aye." No negative votes were cast.

PUBLIC EMPLOYEE HEALTH INSURANCE BENEFITS STUDY

At the request of Chairman Wald, Mr. Collins addressed the committee. Concerning general fund savings that may be realized if members of the uniform group insurance program were permitted to participate in health maintenance organizations where such organizations are available, he said, the Public Employees Retirement System Board's current as well as past actuaries have been asked to review this issue. In both instances, he said, they have concluded that to allow a health maintenance organization to participate directly in the group insurance plan would raise the issue of adverse selection and potentially increase the cost to the uniform group insurance program. He distributed copies of a William M. Mercer report and a Deloitte & Touche LLP report, attached as Appendices Z and AA, respectively, which discuss this issue.

At the request of Chairman Wald, Mr. Pechacek addressed the committee. He said Deloitte & Touche LLP had also prepared another health maintenance organization (HMO) study report for the Public Employees Retirement System at the end of 1997. A copy of this report is on file in the Legislative Council office. He said Deloitte & Touche had reviewed the issue of participation of HMOs in the Public Employees Retirement System plan and identified the various options and their implications to the Public Employees Retirement System health plan. He said they looked at allowing any willing HMO to participate through HMOs acting as subcontractors of the primary carrier, which is Blue Cross Blue Shield at the present time. He said the study showed that the most optimum level of participation would be to have HMOs act as subcontractors.

Mr. Collins next presented information on the expected premiums for the group insurance plan for state active employees for the next biennium. He said the current state rate is $301 per month and the expected rate for the 1999-2001 biennium is $359 per month, an increase of approximately 19.3 percent or $58 per contract. He said the rate increase is due to medical trends, less reserves, and funds being carried forward. He distributed a report on the Dakota Plan or the state health plan recommended rate for 1999-2001. A copy of the report is on file in the Legislative Council office.

Concerning alternative plan features, Mr. Collins distributed a chart comparing the present uniform group insurance plan with five alternatives. A copy of this chart is attached as Appendix BB.

In response to a question from Representative Wald, Mr. Collins said the recommended funding level for the uniform group insurance program will be known when the Governor releases his executive budget in December.

Mr. Collins distributed a chart summarizing the relevant issues on each of the bill drafts affecting the Public Employees Retirement System. A copy of this chart is attached as Appendix CC. Chairman Wald announced that the next meeting of the committee would be Thursday, November 5, 1998.

No further business appearing, Chairman Wald adjourned the meeting at 5:30 p.m.

Jeffrey N. Nelson
Committee Counsel

ATTACH:29