

# NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

## EMPLOYEE BENEFITS PROGRAMS COMMITTEE

Wednesday, May 31, 2000  
Harvest Room, State Capitol  
Bismarck, North Dakota

Representative Jim Poolman, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Jim Poolman, Glen Froseth, Bette Grande, Serenus Hoffner; Senators Ralph Kilzer, Karen K. Krebsbach, Carolyn Nelson, Herb Urlacher

**Member absent:** Representative Joe Kroeber

**Others present:** See Appendix A

**It was moved by Senator Nelson, seconded by Representative Grande, and carried on a voice vote that the minutes of the November 17, 1999, meeting be approved as distributed.**

### EMPLOYEE BENEFITS PROGRAMS COMMITTEE BILLS

At the request of Chairman Poolman, 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*. He also distributed copies of the 1999 Comprehensive Annual Financial Report for the North Dakota Retirement and Investment Office, the November 1999 *Retirement Today* newsletter from the Teachers' Fund for Retirement, the November 1999 *Report Card* from the Teachers' Fund for Retirement, the January 2000 *Your Vested Interest* from the North Dakota State Investment Board, and a letter from Ms. Fay Kopp, Deputy Executive Director, Retirement and Investment Office, concerning average benefit formulas for statewide teacher retirement systems. The Comprehensive Annual Financial Report and newsletters are on file in the Legislative Council office and the letter from Ms. Kopp is attached as Appendix B.

### ALTERNATE FIREFIGHTERS RELIEF ASSOCIATION PLANS

Chairman Poolman recognized Senator Nelson. She said Employee Benefits Programs Committee Bill No. 79 provides that a firefighters relief association may adopt an alternate pension plan for its members with a service benefit of 2.5 percent of final salary with final salary for a first-class firefighter being the final salary at the time of the member's retirement and final salary for officers or members of higher rank being

the average salary for the last five years of employment. She said the bill also provides a postretirement adjustment of two percent of the member's present benefits.

At the request of Chairman Poolman, Mr. Rory Eidsness, Fargo Firefighters Pension Association, Fargo, addressed the committee. He said the Fargo Firefighters Pension Association recently changed its fiscal year to end on May 31 so that the association will have a current actuarial review available for the committee when it considers making a recommendation on the bill in the fall. Currently, he said, the plan is four percent overfunded and has funds available to make plan enhancements. However, he said, it will not be known until the next actuarial report is available whether all the enhancements contained in Employee Benefits Programs Committee Bill No. 79 can be funded.

In response to a question from Representative Hoffner, Mr. Eidsness said not all members may be in favor of the proposed enhancements, but which enhancements to support will be determined internally by the Fargo Firefighters Pension Association.

In response to a question from Representative Grande, Mr. Eidsness said the Fargo Firefighters Pension Association has not prioritized the benefit enhancements contained in Employee Benefits Programs Committee Bill No. 79.

In response to a question from Representative Grande, Mr. Eidsness said the goal of the Fargo Firefighters Pension Association is a retirement benefit of 75 percent of a first-class firefighter's final salary. In 1999, he said, the Legislative Assembly approved legislation increasing retirement benefits from 60 to 70 percent of a first-class firefighter's final salary.

In response to a question from Senator Nelson, Mr. Eidsness said Fargo firefighters are not covered by Social Security.

In response to a question from Senator Kilzer, Mr. Eidsness said a first-class firefighter is usually a firefighter who has passed all the requisite tests to become a first-class firefighter and has 11 years of service to attain the top pay scale of a first-class firefighter. He said an officer or member of higher rank is anyone who has been promoted from a first-class firefighter and includes captains, assistant chiefs, and members of the Fire Prevention Bureau. He noted

that benefits for officers or members of higher rank are currently based on the final salary of a first-class firefighter and thus are based on a salary that is much lower than their salary at retirement. He said the rationale for this is that the plan was originally designed as a relief plan, and it has slowly been evolving into a pension plan.

### **TEACHERS' FUND FOR RETIREMENT**

At the request of Chairman Poolman, Ms. Kopp reviewed Employee Benefits Programs Committee Bill No. 69. A copy of her written comments is attached as Appendix C. She said the bill increases the benefit multiplier from 1.85 to 2.00 percent for all future retirees. She said the Teachers' Fund for Retirement Board of Trustees has had a long-standing goal of providing a replacement income equal to 60 percent of the final average salary of a career employee who has 30 or more years of credited service and a two percent multiplier meets this goal. She said the bill also provides a postretirement benefit increase for all annuitants and beneficiaries receiving a benefit equal to \$2 multiplied by a member's number of years of service credit plus \$1 multiplied by the number of years since the member's retirement. She said the proposal also provides an additional .5 percent monthly benefit increase for all annuitants each year.

In response to a question from Senator Kilzer, Ms. Kopp said the multiplier was increased to 1.75 percent in 1997, increased to 1.88 percent in 1999, and this bill proposes a multiplier of two percent in 2001.

At the request of Chairman Poolman, Ms. Kopp reviewed Employee Benefits Programs Committee Bill No. 70. A copy of her written comments is attached as Appendix D. She said the bill changes the definition of contract to include written agreements with special education units; changes the definition of teacher to include persons employed by state agencies and special education units and persons contractually employed by a separate state institution, state agency, special education unit, school board, or other governing body of a school district under a third-party contract; reduces the time period within which a retired teacher may return to covered employment from 60 calendar days to 30 calendar days and allows the retired member to return to covered employment for less than four hours each day and continue to receive a monthly retirement benefit or return to covered employment for four or more hours each day for a maximum of 90 working days and continue to receive a monthly retirement benefit; provides that if a teacher subsequently retires with more than two years of additional earned credited service, the retired person's annuity is the greater of the sum of the discontinued annuity, plus an additional annuity computed according to North Dakota Century Code (NDCC) Chapter 15-39.1 based upon years of service and average salaries earned during the period of reemployment plus any postretirement benefit

adjustments granted during the period of reemployment, or a recalculated annuity computed according to NDCC Chapter 15-39.1 based on total years of service credit earned during both employment periods offset by the actuarial value of payments already received; and provides that certain Teachers' Fund for Retirement records relating to the retirement benefits of a member or a beneficiary may be disclosed to a member's participating employer, the Public Employees Retirement System, state or federal agencies, and member interest groups approved by the board of trustees.

At the request of Chairman Poolman, committee counsel reviewed Employee Benefits Programs Committee Bill No. 3. He said this bill was submitted by Representative Brandenburg and provides that if a retired teacher returns to teaching and subsequently retires with more than four years of additional credited service, the retired teacher's annuity for all years of service must be computed under NDCC Section 15-39.1-10(2).

At the request of Chairman Poolman, committee counsel reviewed Employee Benefits Programs Committee Bill No. 95. He said this bill was submitted by Senator Holmberg and would allow retired teachers to return to teaching in critical shortage areas or disciplines as determined by the Teachers' Fund for Retirement Board of Trustees by rule.

Chairman Poolman recognized Representative Froseth. He said he doubted whether retired teachers would utilize the provisions of the bill to return to teaching because their salary as well as retirement benefits would be subject to income tax. He said if a teacher were able to defer or suspend the retirement benefit and place it in a separate fund for receipt after the period of reemployment, it would be more attractive to the teacher.

In response to Representative Froseth's comments, Ms. Kopp said even if a teacher's pension is placed in a separate account, it may be viewed as constructively received by the teacher by the Internal Revenue Service and then subject to income taxation.

Chairman Poolman recognized Mr. Max Laird, President, North Dakota Education Association, Grand Forks. He noted that the Teachers' Fund for Retirement Board of Trustees is investigating and exploring several return-to-teaching possibilities. Concerning Representative Froseth's comments, he said, the proposal would allow a teacher to supplement his or her income by returning to teaching, earning a salary, and also receiving retirement benefits. He said this would allow teachers to supplement their income. However, he said, the proposal may not solve the recruitment and retention problem being experienced by school districts in the state. He said very few people who retire want to return to teaching on a full-time basis.

## **PUBLIC EMPLOYEES RETIREMENT SYSTEM**

### **Public Employees Retirement System Main System**

At the request of Chairman Poolman, Mr. Sparb Collins, Executive Director, Public Employees Retirement System, reviewed Employee Benefits Programs Committee Bill No. 71. A copy of his written comments is attached as Appendix E. He said Employee Benefits Programs Committee Bill No. 71 increases the benefit multiplier from 1.89 to 2.00 percent; establishes a procedure for determining a member's beneficiary; provides that if a participating member repurchases service that the member did not elect to repurchase upon retirement, the member must pay to the board an amount equal to the greater of the actuarial cost to the fund of providing the credit or the amount the member received upon taking a refund of the member's account balance; allows members to purchase service credit with either pretax or aftertax moneys; provides a postretirement adjustment of six percent of present benefits; provides a prior service adjustment of six percent of the present benefit; provides that the Public Employees Retirement System Board may share retirement records as needed by an employer to validate the employer's compliance with existing state or federal laws, the Retirement and Investment Office, state or federal agencies, and interest groups approved by the board; allows the Public Employees Retirement System to administer more than one deferred compensation program; defines employee for purposes of the deferred compensation program as a person who is at least 18 years of age and employed in an approved and regularly funded position of unlimited duration for 20 hours or more per week and at least five months each year, including members of the Legislative Assembly; and repeals NDCC Section 54-52-17.9, relating to prior service retiree adjustments.

At the request of Chairman Poolman, Mr. Collins reviewed Employee Benefits Programs Committee Bill No. 73. A copy of Mr. Collins' written comments concerning the bill is attached as Appendix E. He said the bill provides that permanent and total disability for Supreme Court and district court judges is based solely on a judge's inability to perform judicial duties arising out of physical or mental impairment; provides that for Supreme Court and district court judges who do not elect a single life, joint and survivor, level Social Security, or life with 5-year or 10-year retirement payment option, retirement benefits must be in the form of a lifetime monthly pension with 50 percent of the benefit continuing for the life of the surviving spouse, if any; provides that participants in the judges' retirement system are entitled to receive a two percent postretirement adjustment in their present monthly benefit beginning January 1, 2002, and again on January 1, 2003; and repeals NDCC Section 54-52-17.12, relating to postretirement

adjustments for Supreme Court and district court judges.

In response to a question from Senator Nelson concerning the impact of proposed judicial salary increases on the judges' retirement system, Mr. Collins said the judges' plan is overfunded, but the system's actuary would have to take into account the impact of salary increases on the fund.

Chairman Poolman recognized Senator Lindaas. He reviewed Employee Benefits Programs Committee Bill No. 88. He said this bill 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 this issue comes from the State Mill and Elevator in Grand Forks where employees earn a significant portion of their salaries in overtime pay. For example, he said, some employees receive as much as 47 percent of their gross compensation in overtime that does not count toward their retirement benefit.

In response to a question from Representative Froseth, Mr. Collins said the danger of including overtime is that it may lead to pension spiking whereby retirement benefits may be distorted. However, he noted, there is a provision in the bill to address the spiking issue, and the bill should be actuarially neutral for the Public Employees Retirement System. However, he said, there would be an additional cost to employers who pay overtime.

### **Highway Patrolmen's Retirement System**

At the request of Chairman Poolman, Mr. Collins reviewed Employee Benefits Programs Committee Bill No. 74. A copy of Mr. Collins' written comments concerning the bill is attached as Appendix E. He reminded the committee that members of the Highway Patrolmen's retirement system do not participate in the federal Social Security system. He said the bill allows contributors to the Highway Patrolmen's retirement system to purchase additional service credit from rollovers from other qualified plans, purchase additional credit for up to four years of active employment in the armed forces of the United States, purchase credit for employer-approved leaves of absence, and purchase additional years of service credit to enable the contributor to qualify for normal retirement; increases the benefit multiplier from 3.40 to 3.60 percent of final average salary for the first 25 years of service; provides a postretirement increase in the benefit multiplier from 3.40 to 3.60 percent of final average salary; provides an increase for individuals receiving disability retirement benefits of six percent of the individual's present benefits; provides for the determination of beneficiaries under the Highway Patrolmen's retirement system; and allows members of the Highway Patrolmen's retirement system to purchase service credit with either pretax or aftertax moneys.

In response to a question from Representative Grande, Mr. Collins said the goals of the Highway

Patrolmen's retirement system are to provide career employees with a retirement income that will approximate 90 percent of final average salary and to maintain the purchasing power of current retirement benefits. He said increasing the multiplier to 3.60 percent will move the Highway Patrolmen's retirement system to 90 percent of final average salary for a career employee.

### **Defined Contribution Retirement Plan**

At the request of Chairman Poolman, Mr. Collins reviewed Employee Benefits Programs Committee Bill No. 72. A copy of Mr. Collins' written comments is attached as Appendix E. He said the bill provides that eligible employees may elect to participate in the defined contribution retirement plan on the date the employee is first notified of eligibility as well as at any time during the first six months after the date of employment, whichever is later; provides that deferred members who are reemployed have six months after the date of reemployment or the date the employee is first notified of eligibility, whichever is later, rather than 60 days, to elect to participate in the defined contribution retirement plan; provides that participants who become employed by a political subdivision that participates in the Public Employees Retirement System must remain in the defined contribution retirement plan, but participants who become employees of the judicial branch, the State Board of Higher Education, a state institution under the jurisdiction of the State Board of Higher Education, Highway Patrol, or in a position subject to Teachers' Fund for Retirement membership must become a new member of the retirement plan for which that member's new position is eligible; allows participating members to roll over funds from other qualified plans into their account; and allows distribution of the participating member's vested account balance if the board determines the participating member has become totally and permanently disabled.

Mr. Collins said the Public Employees Retirement System transferred approximately \$8.5 million to the new defined contribution retirement plan, and the plan has received approximately \$290,000 in employer and employee contributions. Thus, he said, transfers and contributions total approximately \$8,790,000 with the current value of the plan being approximately \$8 million. He said 20 of the 239 employees who elected to transfer to the defined contribution retirement plan accounted for over \$4 million, or almost one-half, of the money transferred to the new plan. Concerning the impact of transfers to the defined benefit plan, he said, the Segal Company, the actuarial consultant for the Public Employees Retirement System, has determined that the cost of the main retirement plan as a percent of pay remains at 3.34 percent of pay. However, he said, the cost to the National Guard plan increased from 3.84 percent of pay to 7.29 percent of pay. Thus, he said, transfers to the defined contribution plan did not have an impact

on the defined benefit plan but had a significant impact on the National Guard retirement system, which is a much smaller plan.

At the request of Chairman Poolman, committee counsel reviewed Employee Benefits Programs Committee Bill No. 50. He said the bill was submitted by Representatives Wald and Grande and provides that all state employees except employees of the State Board of Higher Education and state institutions under the jurisdiction of the board may elect to become members of the defined contribution retirement plan.

In response to a question from Senator Nelson, committee counsel said it was the intent of the sponsors that only nonjudge employees of the judicial branch would be eligible to elect to become members of the defined contribution retirement plan and that judges would remain members of the judges' retirement plan under the main system.

At the request of Chairman Poolman, committee counsel reviewed Employee Benefits Programs Committee Bill No. 51. He said this bill was also submitted by Representatives Wald and Grande and would extend the time period within which state employees eligible to participate in the defined contribution retirement plan may elect to participate in the plan until December 31, 2001.

In response to a question from Senator Nelson, Mr. Collins said when the Public Employees Retirement System plan was converted from a defined contribution or money purchase retirement plan to a defined benefit plan, there were several opportunities or windows created for employees to transfer to the new defined benefit plan.

In response to a question from Mr. Collins, Representative Poolman said the bill as drafted would only allow eligible members of the defined benefit plan to transfer to the defined contribution plan, but the bill does not allow employees who transferred to the defined contribution plan to transfer back to the defined benefit plan.

In response to a question from Representative Nelson, Ms. Kopp said when provisions were enacted to allow members of the Teachers' Fund for Retirement to transfer to TIAA-CREF, several windows were created with the last window being in 1977 or 1979.

### **RETIREE HEALTH INSURANCE CREDIT FUND**

At the request of Chairman Poolman, Mr. Collins reviewed Employee Benefits Programs Committee Bill No. 77. A copy of his written comments concerning the bill is attached as Appendix E. He said the bill increases the retiree health credit from \$4.50 to \$5.

In response to a question from Senator Nelson, Mr. Collins said there are approximately 3,000 participants in the retiree health insurance credit fund or approximately 70 percent of eligible retirees.

In response to a question from Senator Nelson, Mr. Collins said whether the bill will be introduced by the Public Employees Retirement System Board in the 2001 Legislative Assembly depends upon the actuarial review. He said since the fund is a relatively new fund there is very little, if any, margin available for benefit enhancements and the viability of the proposed enhancement will depend upon investment returns over the period since the last actuarial valuation. Also, he said, it is likely that any increase in the retiree health insurance credit will be more than offset by an increase in the health insurance premium.

In response to a question from Representative Froseth, Mr. Collins said the retiree health insurance credit fund is available to members of the main retirement system, judges' retirement system, Highway Patrolmen's retirement system, and the National Guard retirement system.

In response to a question from Representative Froseth, Mr. Collins said participation by members of the Highway Patrolmen's retirement system is probably higher than that for the main system because of the lower normal retirement date for the Highway Patrolmen's retirement system. In response to a further question from Representative Froseth, Mr. Collins said members of the Highway Patrolmen's retirement system are eligible to participate in Medicare.

### **UNIFORM GROUP INSURANCE PROGRAM**

At the request of Chairman Poolman, Mr. Collins reviewed Employee Benefits Programs Committee Bill No. 75. A copy of his written comments is attached as Appendix E. He said the bill transfers the wording relating to board authority currently contained in NDCC Section 54-52.1-06 to Section 54-52-04, which relates to board authority under the Public Employees Retirement System. He said the bill also clarifies the definition of eligible employee to include retired and terminated employees; clarifies that individuals taking a periodic distribution from the defined contribution retirement plan can continue to participate in uniform group insurance programs; makes a clarifying adjustment for defined contribution members; deletes wording relating to board authority; and provides that the premium payment amount and history for any available insurance coverage are confidential, but the Public Employees Retirement System Board may disclose certain information records to persons or entities to which the board is required to disclose information pursuant to federal statutes or rules.

At the request of Chairman Poolman, Mr. Collins reviewed Employee Benefits Programs Committee Bill No. 76. A copy of Mr. Collins' written comments is attached as Appendix E. He said the bill requires the Public Employees Retirement System Board to establish a dental plan for eligible employees and retirees by July 1, 2002.

In response to a question from Representative Poolman, Mr. Collins said the premium rates for the current dental plan have been increasing because of adverse selection problems. He said eligible participants calculate whether their dental work will be more expensive than the premium when determining whether to participate in the plan, and if the anticipated work is greater than the premium, they join and if it is not, they elect to not participate since the plan is voluntary.

At the request of Chairman Poolman, committee counsel reviewed Employee Benefits Programs Committee Bill No. 2. He said this bill was submitted by Senator Andrist and provides that eligible employees who are eligible to participate in the uniform group insurance program at the family plan rate who have medical and hospital benefits under a health insurance plan provided to another member of the eligible employee's family who is not insured under the uniform group insurance program and the eligible employee does not enroll in the uniform group insurance program are entitled to receive a monthly payment equal to 60 percent of the family plan rate. He said the bill also provides that if eligible employees who are eligible to participate in the uniform group insurance program at the family plan rate elect to participate at the single plan rate and forego family coverage, the eligible employee is entitled to receive a monthly payment equal to one-half of the difference between the family plan rate and the single plan rate provided no member of the eligible employee's family is insured under the uniform group insurance program.

At the request of Chairman Poolman, Ms. Chris Runge, Executive Director, North Dakota Public Employees Association, addressed the committee. She said the Board of Directors of the North Dakota Public Employees Association has not taken a position on this bill, but that some single members already feel that the current plan discriminates against them in favor of employees who have family members who receive benefits under the plan. Also, she said, she envisioned some members foregoing family coverage in order to receive compensation as opposed to a benefit and relegating their dependents to medical assistance programs.

Chairman Poolman recognized Mr. Tom Tupa, Independent State Employees Association. Mr. Tupa said the Independent State Employees Association has the same concerns as those raised by the North Dakota Public Employees Association with the bill.

In response to a question from Representative Poolman, committee counsel said the committee is statutorily required to consider and report on those legislative measures and proposals over which it takes jurisdiction and which affect, actuarially or otherwise, the retirement programs of state employees or employees of any political subdivision and health and retiree health plans of state employees or employees of any political subdivision.

Thus, he said, once the committee makes the determination that a proposal affects a program, the committee is required to take jurisdiction and to make a thorough review, including an actuarial review.

Chairman Poolman said the committee should explore whether it should require full actuarial reviews of proposals that have limited merit and thus unnecessarily incur the cost of an actuarial review.

At the request of Chairman Poolman, committee counsel reviewed Employee Benefits Programs Committee Bill No. 49. He said this bill was submitted by Senator Tim Mathern and would 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.

In response to a question from Senator Nelson, Mr. Collins said since this bill had been considered by the Employee Benefits Programs Committee in past interims, the consultant for the uniform group insurance program could utilize those reports but would still have to review them in light of any changes in federal law.

### **OLD-AGE AND SURVIVOR INSURANCE SYSTEM (OASIS)**

Chairman Poolman recognized Ms. Jennifer Glad-den, Executive Director, Job Service North Dakota. A copy of her written comments concerning Employee Benefits Programs Committee Bill No. 78 is attached as Appendix F and a table of life expectancy for the current beneficiaries of the Old-Age and Survivor Insurance System is attached as Appendix G. She said Employee Benefits Programs Committee Bill No. 78 increases primary insurance benefits under the Old-Age and Survivor Insurance System fund. The dilemma faced by the Legislative Assembly, she said, is to wind down the fund without leaving a large amount of money in the fund at the time of the death of the last beneficiary but not to wind down the fund too quickly and thus necessitate a general fund appropriation.

### **COMMITTEE ACTIONS**

**It was moved by Representative Hoffner, seconded by Representative Froseth, 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 except for Employee Benefits Programs Committee Bill No. 2 relating to participation in the uniform group insurance program and that the Teachers' Fund for Retirement Board, Public Employees Retirement System Board, Job Service North Dakota, and the Fargo Firefighters Pension Association, 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 Poolman, Froseth, Grande, and Hoffner and Senators Kilzer, Krebsbach, Nelson, and Urlacher voted "aye." No negative votes were cast.

**It was moved by Senator Nelson, seconded by Representative Krebsbach, and carried on a roll call vote that the Employee Benefits Programs Committee assume jurisdiction over Employee Benefits Programs Committee Bill No. 2 relating to participation in the uniform group insurance program but that the Public Employees Retirement System Board be directed to limit its review of the bill to general technical comments.** Representatives Poolman, Froseth, and Grande and Senators Kilzer, Krebsbach, Nelson, and Urlacher voted "aye." Representative Hoffner voted "nay."

In response to a question from Representative Hoffner, Chairman Poolman said if the technical comments on Employee Benefits Programs Committee Bill No. 2 indicate that a more thorough actuarial review should be undertaken in order for the committee to make a recommendation on the bill then the committee will direct the Public Employees Retirement System Board to obtain such a report at that time.

No further business appearing, Chairman Poolman adjourned the meeting at 12:00 noon.

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Jeffrey N. Nelson  
Committee Counsel

ATTACH:7