

1999 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1071

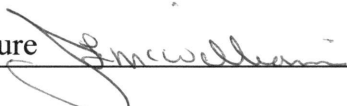
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1071

House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 2-4-1999

Tape Number	Side A	Side B	Meter #
1	X		0.6 - 19.6
1		X	37.9 - 42.4
Committee Clerk Signature 			

Minutes: Some of the individuals testifying submit written testimony. When noted please refer to it for more detailed information.

Representative Klein, Chairman of the GVA Committee opened the hearing on February 4, 1999.

Summary of the Bill: Relating to post retirement adjustments for Supreme and district court judges under the public employees retirement system. Relating to disability retirement and survivor's benefits for supreme and district court judges under the public employees retirement system.

Testimony in Favor:

Sparb Collins, PERS submitted written testimony to the committee which he read in it's entirety (please refer to his testimony).

Representative Klein, The actuarial analysis and I realize this is a small group and with the enacting of the bill, the remaining margin would be down to .62%. How does that compare with many of our other systems?

Collins, Favorably.

Representative Klein, Basically the judges contribute a percentage and the state a percentage.

Collins, Yes, the employer contribution is 14.52% covered payroll and employee is 5% contribution, for a total of 19.52% covered payroll.

Representative Cleary, When did the retirement system for judges start?

Collins, 1981 I believe.

Representative Kroeber, The judges definitely want to stay on a defined benefit program?

Collins, Yes.

Gerald Vande Walle, Chief Justice ND Supreme Court stated that the justices would like to stay on the defined benefits plan. The contributions plan provides portability and that is not a plus for judges. Two issues here are sudden death (spouses benefits not that great) and disability (early retirement with penalty versus 25% disability). We have the margin and we really do need to improve the disability retirement and survivor spouse benefit. In addition to the two percent. I think it was about 1983 that the current judges program came into being.

Representative Klemm, Have you looked at the proposed amendments?

Vande Walle, No.

Bill Neuman, Supreme Court Justice stated that on the 2 % adjustment as long as we kept increasing the multiplier it wasn't a problem. We are no longer increasing the multiplier and the

retirement benefit is shrinking relative to inflation. We could do two things to fix that, increase the multiplier or do small direct adjustments to the retirement benefit itself.

Jim Coats, I was on the interim committee and this is actuarial sound. Please support this bill.

Courtney Koebele, ND Trial Lawyers submitted written testimony (**please refer to her testimony**). We are in support of this bill.

Testimony in Opposition: None.

Representative Klein, Closed the hearing on HB 1071.

Committee Action:

Representative Klein, I have sum problems with the amendments. Part of the reason for the amendments is that it would have tied the hands of the legislature. Future legislatures may change their mind and so we took out the automatic.

Representative Devlin, Made a motion for a Do Pass on the amendments.

Representative Kliniske, Seconded the motion.

Motion Passes: Yes (vocal).

Representative Cleary, Made the motion for a Do Pass on the amended Bill.

Representative Hawken, Seconded the motion.

Motion Passes: Do Pass **14-0-1**.

Representative Fairfield, Is the carrier for the bill.

FEB 16 1999

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: _____ Amendment to: HB 1071

Requested by Legislative Council _____ Date of Request: 2-9-99

- 1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

This bill, as amended, will have no effect on state expenditures since the proposed benefit enhancement will be paid for with existing funds in the retirement system. No additional contribution is required. A small amount of additional revenue (less than \$1,000) will be generated as a result of the retiree adjustment.

- 2. State fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds
Revenues:	-0-	-0-	-0-	-0-	-0-	-0-
Expenditures:	-0-	-0-	-0-	-0-	-0-	-0-

- 3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: None
- b. For the 1999-2001 biennium: None
- c. For the 2001-03 biennium: None

- 4. County, City, and School District fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

If additional space is needed, attach a supplemental sheet.

Signed Sparb Collins

Typed Name Sparb Collins

Department N.D.P.E.R.S.

Phone Number 328-3901

Date Prepared: 2-15-99

V1
2/4/99

HOUSE AMENDMENTS TO HOUSE BILL NO. 1071 GVA 2-4-99

Page 1, line 1, replace "paragraph to subdivision b of subsection 4 of" with "section to chapter 54-52"

Page 1, line 2, remove "section 54-52-17"

Page 1, line 8, replace "paragraph to subdivision b of subsection 4 of section 54-52-17" with "section to chapter 54-52"

Page 1, line 9, remove "the 1997 Supplement to"

Page 1, replace lines 10 through 17 with:

"Judges postretirement adjustments. A supreme or district court judge who, on December 31, 1999, is receiving retirement benefits under subdivision b of subsection 4 of section 54-52-17 is entitled to receive an increase in benefits equal to two percent of the individual's present benefits with the increase payable beginning January 1, 2000. A supreme or district court judge who, on December 31, 2000, is receiving retirement benefits under subdivision b of subsection 4 of section 54-52-17 is entitled to receive an increase in benefits equal to two percent of the individual's present benefits with the increase payable beginning January 1, 2001."

Re-number accordingly

Date: 2-4-99

Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1071

House GOVERNMENT AND VETERANS AFFAIRS Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DP AMENDED AMENDED

Motion Made By CLEARY Seconded By HAWKEN

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN KLEIN	✓		REP. WINRICH	✓	
VICE-CHAIR KLINISKE	✓				
REP. BREKKE					
REP. CLEARY	✓				
REP. DEVLIN	✓				
REP. FAIRFIELD	✓				
REP. GORDER	✓				
REP. GRANDE	✓				
REP. HAAS	✓				
REP. HAWKEN	✓				
REP. KLEMIN	✓				
REP. KROEBER	✓				
REP. METCALF	✓				
REP. THORESON	✓				

Total (Yes) 14 No 0

Absent 1

Floor Assignment FAIRFIELD

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

REPORT OF STANDING COMMITTEE

HB 1071: Government and Veterans Affairs Committee (Rep. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1071 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "paragraph to subdivision b of subsection 4 of" with "section to chapter 54-52"

Page 1, line 2, remove "section 54-52-17"

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Renumber accordingly

1999 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1071

1999 SENATE STANDING COMMITTEE MINUTES


BILL/RESOLUTION NO. HB 1071

Senate Government and Veterans Affairs Committee

Conference Committee

Hearing Date March 11, 1999

Tape Number	Side A	Side B	Meter #
1	X		690-3200

Committee Clerk Signature 

Minutes: CHAIRMAN KREBSBACH opened the hearing on HB 1071 which relates to post retirement adjustments for supreme and district court judges under the public employees retirement system and to disability retirement and survivor's benefits for supreme court judges under the public employees retirement system. Appearing before the committee was SPARB COLLINS, Executive Director of the North Dakota Public Employees Retirement System (PERS). A copy of his written testimony is attached. Questions were offered by the committee. SENATOR DEMERS, in talking about the disability benefit, you indicated that the change was made for all employees. Have we gone back for the other employees, for the pre 1991 formula. MR. COLLINS indicated no. He explained the reason why. The disability benefit for social security, like their social security benefit, is based on a methodology that for lower income individuals, you will get a higher percentage of your final average salary, and as your income goes up your percentage decreases. So when we went to the flat methodology of 25% and what

they were saying then is with our 70% offset formula, since the higher paid people were getting less of a percent for their final average salary from social security they were getting more from us. So they were saying that was discriminatory in favor of highly compensated employees even though everybody was getting 70%. So, we went to the flat formula of 25% and that was based upon a salary of around \$20,000 or \$22,000. So an employee at that rate would still end up with about the same 70%. But somebody like in the judges salary range actually ended up with quite a bit less. So, now we made a change for all of our retirement systems and the judges retirement system ended up with them having less of a disability benefit. Now we're hoping to bring it back into place for them. A discussion took place between CHAIRMAN KREBSBACH and MR. COLLINS. SENATOR WARDNER inquired about the amendment which was put on by the house. He inquired if this simply made the 2% increase one which isn't automatic? MR. COLLINS indicated that originally it would have but after the house had examined the bill the amendment was added to make this subject to a review in 2 years. SENATOR KILZER, on the second page of your testimony, second paragraph where you say as a result of proposed federal regulations the methodology and benefits were changed to what is presently in place. Were those federal regulations ever implemented? Was the change that was put in in 1991 as it turned out absolutely necessary? MR. COLLINS, No. Interesting, at the federal level the IRS will issue proposed regulations. You are supposed to come into compliance with those proposed regulations. In fact when they issue those proposed regulations it may take them several years to make them final. But, when they do they are effective back to the day when they are proposed or issued. There were no further questions for Mr. Collins. Appearing in support of HB 1071 was JERRY VANDEWALLE, Chief Justice of the ND Supreme Court. He gave the committee a

little background on what happened this past biennium which really brought this into focus. He spoke regarding Page 1, Section 2 and Page 2, Section 3. In December of 1997 Judge Wright was killed in an accident coming back from Fargo on an assignment he been sent on. He had not been in office very long, four or five years, although that is confidential information, I'm assuming just looking at the retirement program, his wife probably got his contributions back and that was it. There really wasn't much more to have. During this same period we've had a judge in Bismarck who is seriously ill, for all practical purposes, should have retired, didn't because he wasn't eligible for retirement. The penalty for early retirement was so severe that he held on to the office and this amendment would also take care of that situation. Unfortunately I didn't have the foresight to look at these things, we think we are going to live forever, I guess. These things never happen to us. When the IRS did not make those, put those regulations into effect we should have made those changes earlier. It's too late for these two people, but it certainly opened my eyes. We have a retirement and benefits committee in the judiciary. Justice Bill Neumann chairs that committee. I support also the 2%. Senator Wardner, deja vu all over again. It's like the intermediate court of appeals. If you want to vote on it every two years, that's fine with me. There were no questions from the committee. JUDGE BILL NEUMANN appeared before the committee. He indicated he is one of the justices of the Supreme Court and co-chair of the compensation committee. He spoke about the 2% adjustment and why it is important that it is done. Inflation largely under control today does still exist. It continues at a level at about 2% a year. In the past as long as we kept increasing the multiplier for judges, every time the multiplier would go up the retirement, the benefit for retired judges would go up. We are no longer increasing the multiplier. Now, retired judges are going to end up, if we don't do this, they will

end up seeing their benefits eroded. That is why we think it is a good thing to do. As Mr. Collins pointed out it is something that is funded out of the contributions that are already there. I suppose the other thing we could do is keep on boosting the multiplier but at some point that really no longer makes as much sense anymore. SENATOR DEMERS, indicated that she wondered if it would make any sense to add an emergency clause to the amendment so that the disability benefits would go into effect sooner. No further testimony was offered in support of, in neutral position, or in opposition to the bill. Comments on the Emergency clause were offered by SENATOR STENEHJEM. He also asked SPARB COLLINS what effect the Emergency Clause might have on the bill. SENATOR DEMERS wondered what effect the Emergency Clause might have if it were added to the entire bill not just the disability section? Sparb Collins commented. The hearing was closed at this time. At this time SENATOR DEMERS moved the addition of the Emergency Clause to HB 1072, seconded by SENATOR W. STENEHJEM. ROLL CALL VOTE indicated 7 Yeas, 0 Nays, 0 Absent or Not Voting. A motion for DO PASS AS AMENDED was made by SENATOR WARDNER, seconded by SENATOR W. STENEHJEM. ROLL CALL VOTE indicated 7 Yeas, 0 Nays, 0 Absent or Not Voting. Senator Krebsbach will carry the bill.

Date: 3/11/99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1071

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Amend - Emergency Clause

Motion Made By Sen. DeMers Seconded By Sen. Stenehjem

Senators	Yes	No	Senators	Yes	No
SENATOR KREBSBACH	✓				
SENATOR WARDNER	✓				
SENATOR KILZER	✓				
SENATOR STENEHJEM	✓				
SENATOR THANE	✓				
SENATOR DEMERS	✓				
SENATOR MUTZENBERGER	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Date: 3/11/99
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1071

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

Subcommittee on _____
or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Sen Wardner Seconded By Sen Stenehjem

Senators	Yes	No	Senators	Yes	No
SENATOR KREBSBACH	✓				
SENATOR WARDNER	✓				
SENATOR KILZER	✓				
SENATOR STENEHJEM	✓				
SENATOR THANE	✓				
SENATOR DEMERS	✓				
SENATOR MUTZENBERGER	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Krebsbach

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

REPORT OF STANDING COMMITTEE

HB 1071, as engrossed: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1071 was placed on the Sixth order on the calendar.

Page 1, line 3, remove the first "and"

Page 1, line 6, after "system" insert "; and to declare an emergency"

Page 3, after line 11, insert:

"SECTION 4. EMERGENCY. This Act is declared to be an emergency measure."

Re-number accordingly

1999 TESTIMONY

HB 1071

**REPORT OF THE LEGISLATIVE COUNCIL'S
EMPLOYEE BENEFITS PROGRAMS COMMITTEE
HOUSE BILL NO. 1071**

Sponsor: Retirement Board

Affected Retirement Program: Judges' retirement system

Proposal: Provides that participants in the judges' retirement system are entitled to receive a two percent per year 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; provides that disability retirement benefits for Supreme and district court judges are 70 percent of final average salary reduced by the member's primary Social Security benefits and by any workers' compensation benefits; 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.

Actuarial Analysis: The reported actuarial cost impact of the proposal is 6.55 percent of covered payroll. The following table summarizes the actuarial cost impact of the proposed changes:

Plan Provision	Cost As a Percentage of Payroll	Additional Cost As a Percentage of Payroll
Current plan	7.35%	N/A
Disability benefit	7.56%	0.21%
Preretirement death benefit	8.58%	1.23%
Automatic 2% COLA	12.18%	4.83%
All improvements	13.9%	6.55%

Thus, if this bill is enacted, the remaining margin in the judges' retirement system will be .62 percent ($7.17 - 6.55 = .62$).

Committee Report: Favorable recommendation.

TESTIMONY
OF
SPARB COLLINS
ON
HB 1071

Mr. Chairman, members of the Committee, good morning. My name is Sparb Collins. I am Executive Director of the North Dakota Public Employees Retirement System (PERS).

HB 1071 relates to the judges retirement system that is administered by the Public Employees Retirement System. Presently there are 49 active members of this system, 8 retired judges and 4 beneficiary receivers. The bill before you today provides for three basic changes to this system:

- 1) Provides for an annual adhoc adjustment of 2%.
- 2) Changes the disability retirement benefit for supreme and district court judges, and
- 3) Changes the surviving spouse benefits.

Section 1 of the bill provides an annual adhoc adjustment of 2% for retirees of the judge's retirement system. This means that at the beginning of each year a receiver's benefit will increase by 2%. Last session HB 1138 was passed which provided for a 2% increase on January 1, 1998, and 1999. This proposed provision would provide for these increases to occur regularly in January of future years. Providing for these types of adjustments is a goal of the NDPERS Board. The purpose of these adjustments is to mitigate the effect inflation has on a retirement benefit over time. Specifically, inflation will decrease the value of a benefit unless specific

attention is directed toward preserving its value; thus the NDPERS Board proposes this periodic adhoc adjustment.

A 1997 survey of public sector retiree plans, conducted by the Public Pension Coordinating Council, indicates there are several methodologies used to provide for these types of inflationary adjustments including: 1) a fixed rate method specified by the plan, and 2) a variable rate cost of living adjustment. The difference in these two approaches is significant.

The fixed rate methodology, like the one proposed in this bill, is a defined benefit just like the other existing provisions in the retirement plans such as the multiplier, disability benefits, surviving spouse benefits, the normal retirement date, and the vesting schedule. Since these types of benefits are defined and fixed they can be accurately projected by the actuary, as has been demonstrated over past years. The estimated cost of the defined annual adhoc adjustment proposed in this bill has been calculated by the NDPERS consultant's actuary who has indicated that the adjustment can be paid for by available funds within this retirement system, and with no increase in the level contribution by the employer or the employee.

Similar in concept to the defined fixed rate adjustment proposed in this bill, but dramatically different on an actuarial basis, is the method used by some other retirement systems and Social Security for providing retirement adjustments. This method is generally referred to as an annual Cost Of Living Adjustment (COLA). A COLA is significantly different from the adhoc adjustment proposed here because it is not a defined benefit, but rather a variable benefit tied to an index such as the Consumer Price Index. The cost of a COLA varies from year to year

based on the outside index and, therefore, cannot be accurately predicted. Consequently, implementing a COLA as some systems have done can result in the need to change or increase contributions. I am sure many of you have read about these types of situations. I highlight this other methodology only to clarify that the method being proposed in this bill is not a variable COLA.

Providing a method for adhoc adjustments is particularly important for the judge's retirement system at this point since we have met our first goal of the retirement plan; which was to set the multiplier at a level that will provide a retirement benefit of approximately 90% of final average salary at retirement when combined with Social Security benefits. Over the past years, as we worked toward this goal, retired judges received adhoc increases that were the equivalent of a multiplier increase. In other words, past practice was that if the multiplier went up 3% for active employees, retired employees received a 3% increase. Since the multiplier has now reached the goal set by the Board there is no longer a mechanism to keep retiree benefits current. Therefore, unless a new methodology is adopted, such as the one proposed in this bill, there will no longer be any predictable method for adhoc adjustments for retired judges. The result could be an erosion of the benefit over time. This is not a desirable plan design and does not appear to be consistent with the original legislative intent, or the goals of the NDPERS Board, when the judges retirement system was created.

As a bit of history, the judges plan was originally designed by the Legislature to attract experienced, mid-career attorneys to judiciary service and retain them for approximately 10-20 years. To accomplish this the plan provides for higher benefit accruals in early years, followed

by decreasing benefit accruals over the remaining time. Presently there is a 3.5% multiplier for the first 10 years of service, a 2.8% multiplier for the second 10 years and 1.25% for the years thereafter. Basically this design means that the longer you stay the less retirement you earn; especially after 20 years. However, if the plan does not provide for adhoc adjustments the incentive may be to remain, rather than to retire, to avoid the erosion of the retirement benefit due to a longer period of time in retirement. Although the multiplier is considerably lower on the third tier, a judge may feel it necessary to work longer to ensure the benefit will meet his or her retirement needs. The proposed annual adhoc adjustment in Section 1 of this bill addresses this situation.

Section 2 of the bill changes the disability retirement benefits for supreme and district court judges from 25% of final average salary to 70% of final average salary minus Social Security and Workers Compensation benefits. Before 1991, the disability retirement benefit for judges was based on the methodology that is proposed in this bill. As a result of proposed federal regulations, the methodology and benefits were changed to what is presently in place which is a flat 25% of final average salary. The present 25% does not recognize the amount an employee may earn from Social Security or Workers Comp.

The 25% of FAS disability benefit was initiated to comply with proposed federal regulations and was done for all NDPERS members, regardless of circumstances. More recently the United States Congress enacted a law that has superseded the proposed regulations and will now allow us to return the judge's system to the original offset formula that was in place prior to 1991. The benefit proposed in this bill is one that is more responsive to the needs of the

judge's system and, therefore, we are proposing to reinstate that method as a result of the new federal law which now allows us to do so.

Section 3 of the bill changes the surviving spouse benefit to 100% of the member's accrued benefit. This is an enhanced benefit for surviving spouses, should a judge die while employed. For example, if a judge passed away prior to retirement, the surviving spouse would receive the full benefit that the judge had accrued at the time the judge passed away. Under present law the spouse can choose a lump sum, 100% of accrued benefit for five years, or 50% of the accrued benefit for the spouse's lifetime. This enhancement would allow the surviving spouse to receive 100% of the accrued benefit over their lifetime.

The funding for the three initiatives proposed in this bill is provided out of existing funds in the retirement plan and no increase in contributions is required to enact these provisions. This determination has been made by our actuary who has reviewed this bill in detail.

This bill was also reviewed by the Interim Legislative Employee Benefits Committee and given a favorable recommendation.

Mr. Chairman, members of the committee, I request your favorable consideration of this bill. This concludes my testimony.

February 4, 1999

HOUSE GOVERNMENT & VETERANS AFFAIRS
HB 1071

CHAIRMAN KLEIN AND COMMITTEE MEMBERS:

My name is Courtney Koebele. I'm appearing today on behalf of The North Dakota Trial Lawyers Association. We SUPPORT **HB 1071** and respectfully urge that you give it a DO PASS.

The benefits provided ^{are} ~~is~~ deserving, particularly those designated for the surviving spouse of a judge. This bill has been studied and approved by the Public Employees Retirement System.

If you have any questions, I'll be happy to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.

**TESTIMONY
OF
SPARB COLLINS
ON
ENGROSSED HB 1071**

Madame Chair, members of the Committee, good morning. My name is Sparb Collins. I am Executive Director of the North Dakota Public Employees Retirement System (PERS).

HB 1071 relates to the Judge's retirement system that is administered by the Public Employees Retirement System. On June 30, 1998, there were 49 active members of this system, 8 retired judges and 4 beneficiary receivers. The bill before you today provides for three basic changes to this system:

- 1) Provides for a retiree adjustment of 2% per year.
- 2) Changes the disability retirement benefit for supreme and district court judges, and
- 3) Changes the surviving spouse benefits.

Section 1 of the bill provides an annual adhoc adjustment of 2% for retirees and beneficiaries of the Judge's retirement system payable in January of 2000, and an additional 2% payable in January of 2001. Last session HB 1138 was passed which provided for 2% increases on January 1, 1998 and 1999. This proposed provision would provide for these increases to occur this next biennium as well. Providing for these types of adjustments is a goal of the NDPERS Board.

The purpose of these adjustments is to mitigate the effect inflation has on a retirement benefit over time. Specifically, inflation will decrease the value of a benefit unless specific attention is directed toward preserving its value; thus the proposal before you today.

Section 2 of the bill changes the disability retirement benefits for supreme and district court judges from 25% of final average salary to 70% of final average salary minus Social Security and Workers Compensation benefits. Before 1991, the disability retirement benefit for judges was based on the methodology that is proposed in this bill. As a result of proposed federal regulations, the methodology and benefits were changed to what is presently in place, which is a flat 25% of final average salary. The present 25% does not recognize the amount an employee may earn from Social Security or Workers Comp.

The 25% of FAS disability benefit was initiated to comply with proposed federal regulations and was done for all NDPERS members, regardless of circumstances. More recently the United States Congress enacted a law that has superseded the proposed regulations and will now allow us to return the judge's system to the original offset formula that was in place prior to 1991. The benefit proposed in this bill is one that is more responsive to the needs of the judge's system and, therefore, we are proposing to reinstate that method as a result of the new federal law which now allows us to do so.

Section 3 of the bill changes the surviving spouse benefit to 100% of the member's accrued benefit. This is an enhanced benefit for surviving spouses, should a judge die while employed. For example, if a judge passed away prior to retirement, the surviving spouse would receive the full

benefit that the judge had accrued at the time the judge passed away. Under present law the spouse can choose a lump sum, 100% of accrued benefit for five years, or 50% of the accrued benefit for the spouse's lifetime. This enhancement would allow the surviving spouse to receive 100% of the accrued benefit over their lifetime.

The funding for the three initiatives proposed in this bill is provided out of existing funds in the retirement plan and no increase in contributions is required to enact these provisions. This determination has been made by our actuary who has reviewed this bill in detail.

Madame Chair, members of the committee, I request your favorable consideration of this bill. This concludes my testimony.