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2047

2007 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2047

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2047

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 1/12/07

Recorder Job Number: 999

Committee Clerk Signature

Monica Spauling

Minutes:

Roll was taken and all members were present.

Sen. Dever, Chairman, opened the hearing on SB 2047.

Sparb Collins, Executive Director of Public Employees Retirement Systems introduced the bill.

See attachment #1. Sparb mentioned this would have no fiscal effect because people are investing their own money.

Sen. Dever asked if we now have "opt in" and this would change it to "opt out".

Sparb confirmed that is correct.

Sen. Dever ask what percent are in the plan now.

Sparb said 40%. He feels with the proposed changes, it could be at 80 or 90%. Sparb clarified that this change would only affect new employees. Existing employees maintain their status quo.

Sen. Dever asked whether this would affect legislators. Sparb was not sure.

Sen. Oehlke mentioned that the participants will be realizing a pre-tax savings.

Sparb agreed.

Sen. Dever asked whether the \$25.00/month is flexible.

Sparb said yes, you can put up in to \$25,000.00 and even \$30,000.00 with a catch-up provision.

Sparb mentioned the most challenging part of getting people to invest is just getting them started and time is the key.

Sen. Horne expressed that he feels it is a wonderful idea and mentioned as a freshman senator he had to opt out of health insurance when he did his employment paperwork.

Sen. Dever asked about the objective of getting an employee's retirement up to 90% of his previous salary with his Social Security factored in. He feels this bill would make it significantly more than that.

Sparb explained that because health insurance is one of the benefits, the actual amounts paid to retirees along with their Social Security doesn't need to be at 90% for them to realize a 90% retirement.

There was discussion about how some counties handle their benefit packages.

Opposition: - Rita Lindgren, HR Officer at Bismarck State College, asked for an amendment to exempt the ND University System from SB 2047. See attachment #2.

Sen. Lee asked whether an employee leaving employment with the University System could get their money out of their retirement fund and invest it elsewhere. Her understanding is that it is not allowed.

Rita replied she would need more information to answer that question. She mentioned that providers generally do assess fees when funds are moved.

Sen, Horne asked if the bill were amended as Rita is requesting would University employees have to opt in and could they opt in later?

Rita answered affirmatively to both questions and mentioned that every new employee is given the information so they can make an informed decision.

Sen. Horne asked whether there were others in the University System that felt this way or was it just Rita and BSC that felt this way.

Rita stated she is representing the University System and she is on the ND University System Human Resource Council. That council has HR people from each of the 11 state institutions. This is a consensus concern from that group.

Sen. Oehlke asked what percentage of employees are presently enrolled.

Rita replied 28.4% are enrolled.

Sen. Oehlke asked what percentage of employees are presently enrolled through PERS.

Sparb replied he would have to look it up but he thinks it is around 40%.

Sen. Oehlke asked whether the difference was due to one group doing a better job of explaining it than the other group.

Rita responded she didn't know.

Sen. Oehlke asked how the information was disseminated. Was a packet just handed out?

Rita said every office handles it differently. BSC does make different presentations available to their employees.

Sen. Dever asked if TIAA-CREF is available to all employees in the University System.

Rita said it is available. TIAA-CREF is a retirement plan unique to colleges and universities. It is the retirement plan for the faculty of the Universities. Staff is on the PERS retirement plan.

Sen. Dever asked if there are other pension plans available to them.

Sparb explained how the PERS Benefits Committee is made up. That committee devises a plan and then it is reviewed by the Legislative Benefits Committee. Higher Ed is a part of the Legislative Benefits Committee and was in favor of this legislation. Their concerns on it just surfaced 2 weeks ago after something happened internally. If Higher Ed wants to be exempted, Sparb is ok with that.

Opposition: -

Neutral: -

Chairman Dever closed the hearing on SB 2047.

Sen. Lee asked whether Employee Benefits reviewed this bill.

Sparb said they did and they gave it a favorable recommendation.

The committee will wait to act on this bill until they have time to gather more information.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2047

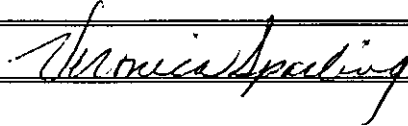
Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 1/25/07

Recorder Job Number: 1950, 1951

Committee Clerk Signature



Minutes:

All members of the committee were present.

Chairman Dever opened discussion on SB 2047.

Senator Lee explained she still does not like the way Higher Ed runs its retirement system not allowing their members flexibility, but that cannot be rectified with anything in this bill.

Senator Dever mentioned that the University System wanted to be excluded.

There was discussion about the employees' options of which plan to be part of and the "opt in" or "opt out" provisions.

Senator Horne made a motion to pass SB 2047.

Senator Nelson seconded the motion.

Senator Dever mentioned that there had been an amendment offered.

Senator Horne withdrew his motion.

Senator Nelson withdrew her second.

Senator Nelson made a motion to amend SB 2047 with the amendment offered by Sparb Collins from Public Employees Retirement Systems.

Senator Marcellais seconded the motion.

Roll Call Vote: Yes 6 No 0 Absent 0

Senator Horne asked whether the university people were still included in this.

Senator Nelson said they still were included.

Senator Horne made a motion to pass SB 2047 as amended.

Senator Nelson seconded the motion.

Roll Call Vote: Yes 5 No 1 Absent 0

Carrier: Horne

Date : 1-25-07
Roll Call Vote # : 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2047

Sess.

Senate Government and Veteran Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken _____

Motion Made By Horne *withdrawn* Seconded By Nelson *withdrawn*

Senators	Yes	No	Senators	Yes	No
Senator Dick Dever - Chairman			Senator Robert Horne		
Senator Dave Oehlke - VC			Senator Richard Marcellais		
Senator Judy Lee			Senator Carolyn Nelson		

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date : 1-25-07
Roll Call Vote # : 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. _____

Senate Government and Veteran Affairs Committee
PERS Amendment

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken _____

Motion Made By Nelson Seconded By Marcellais

Senators	Yes	No	Senators	Yes	No
Senator Dick Dever - Chairman	✓		Senator Robert Horne	✓	
Senator Dave Oehke - VC	✓		Senator Richard Marcellais	✓	
Senator Judy Lee	✓		Senator Carolyn Nelson	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

REPORT OF STANDING COMMITTEE

SB 2047: Government and Veterans Affairs Committee (Sen. Dever, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2047 was placed on
the Sixth order on the calendar.

Page 1, line 9, remove "third"

Page 1, line 10, remove "full" and replace "day" with "full month"

Renumber accordingly

2007 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2047

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2047

House Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: March 1, 2007

Recorder Job Number: 4170

Committee Clerk Signature

Morgan Renee

Minutes:

Sparb Collins: Testimony attached.

Rep. Grande: When I read this it says a participating employer shall do this in a deferred compensation program, a participating employer. They are not a participating employer.

Sparb Collins: Yes, the University Systems are a participating employer in the 457. This would as presently written, this would apply to the higher education. Any new employee in higher education would then automatically be enrolled in the 457 plan. At the time they come in, their primary retirement program for some members of higher education would be TIAA-Cref. For some members it's going to be PERS. All of them would have the 457 plan available to them.

Rep. Grande: Is it possible that the TIAA is a defined contribution program? Can we take TIAA-Cref out of this particular portion of the bill?

Sparb Collins: Certainly, TIAA-Cref could be modified to say that TIAA-Cref members wouldn't be any of the new employees. Keep in mind that this supplemental savings is good. You need to have more than what you have today when you come around for retirement. They need to have their primary employer sponsored plan. I think in TIAA-Cref, one thing that is different is that they can do supplemental savings through them. Now in the PERS defined

contribution plan, the only thing they have for supplemental savings is the 457 plan. There is a difference in that.

Rep. Grande: Those contribution plans also have that supplemental option?

Sparb Collins: If this was passed they would be enrolled.

Rep. Amerman: We had a bill in IBL the other day. First of all I'm not a big fan of opting out. I'd rather opt in. I understand and have nothing against this. Is it my understanding that employers can automatically do this? Beings this is a state thing, is this why we are passing this? To keep in touch with the federal law?

Sparb Collins: The federal law did some really positive things. Automatic enrollments have been around for awhile. There were some questions as to how employees could do this for the states sake. If the employer wants to do this, they can do it. The federal law for the 457 plan also did a really positive thing. If this bill had passed before the federal law changes, and someone had been automatically enrolled but didn't realize it, they didn't know where their money was going. The reason why is again, that they find the biggest thing is that employees are busy. This is all the 457 products that we have. There are several hundred products. They then get busy and just come along and re-enroll. If you can get somebody enrolled, after time they are starting to see money. All of a sudden it is an increase from \$25-\$50 then from \$50-\$75.

Rep. Meier: If an employee enrolls within 90 days, or automatically enrolls, let's say they decide to opt out. Can they then re-enroll in the program at any time?

Sparb Collins: Yes. You can re-enroll in the 457 plan. You can stop the enrollment. After that 90 days, the one thing you can't do is cash out of it until you terminate employment. There is a provision where you can access it under hardship.

Rep. Froseth: If an employee decides to opt out after being in for about three years, will he eventually get that money or will he lose it?

Sparb Collins: The employee will eventually get the money. They can access it at the time they terminate employment. They can take it anytime thereafter. We encourage them not to do it until they retire.

Rep. Froseth: Is the 457 strictly employee pay or can it be matched by the employee?

Sparb Collins: Strictly employee.

Rep. Kasper: Looking at the bill, on the beginning of line 12 on the first page, the state withholds the money from the compensation of each employee subject to an automatic enrollment provision, and look at line 14. What responsibility is the board cooking up when they are taking an employees money on a payroll deduction plan and investing it for them?

Sparb Collins: That would only occur if the employee didn't make an election on their own. That bill that was talked about clarified that employers could do that. It set some guidelines on how they do that. We follow those guidelines. At that point the employee can make an election to transfer it to any type of plan they would like to.

Rep. Kasper: What education process would you be going through with these newly hired employees to make them aware of this program? It could give them something like this where they should try to decide what they should do with their dollars and you know what they are going to say. Without someone helping them they are going to say I don't know what to do. What provisions are you going to do to educate employees to help them make wise decisions on their own?

Sparb Collins: That is a challenge. First of all it started out as enrollment. When new employees would sit down with their payroll officer they get signed up for retirement, they get signed up for group insurance, they get signed up for all of this. This could be one of the things

that would be there. If you don't want to go on this, here is your form to automatically sign out of that. If you do, you will be automatically enrolled and your money is going to go over into this account if you want to make an election, you can elect it to go somewhere else. That is how it would go initially. The larger challenge is in the longer term like being able to provide employees education. What we tried to do is try to be able to sponsor some seminars in the employer settings where we have someone come in and talk about investing. One of them is the PERS companion plan and that is fidelity. I know some employers will bring in some of the other providers to provide this education. It's a real challenge to be able to get out there and talk with the employees. In that book you will notice that they can elect products that have local representatives. I know a lot of employees do that.

Rep. Kasper: Many of the investment options are secure. When you are dealing with security you are dealing with a higher level of requirement to educate employees to help them make decisions. You are also dealing with a higher potential risk than a fixed annuity or fixed account. There again, you go back to the board where they are going to select the option. Does the federal statute take away any liability from the board for putting employee's money into a securities product without the employee knowing where it's going?

Sparb Collins: Let me verify that.

Rep. Kasper: On line 24, the bill says as specified by the employee. So this bill says the employee must specify even though further up there it says it will be selected by the board as an automatic check off. I don't know if that is the conflict of the bill but I think it is.

Sparb Collins: You can ask our attorney.

Rep. Amerman: If this adopted newly employees will be automatically enrolled in it, correct? Is the \$25 the ones that are enrolled in it now?

Sparb Collins: You can contribute in the 457 plan up to \$15,500. You have a wide range.

Actually if you are over 50 you can catch up and go more.

Rep. Amerman: Do the newly hired have that option too? Or are they stuck where they are at?

Sparb Collins: Everyone has that option.

Rep. Amerman: The ones that aren't enrolled that are state employees, they will not be forced to come into this?

Sparb Collins: This does not prohibit them from doing so. We still encourage them to do this. We put a lot of emphasis on encouraging supplemental savings. We have seen our participation enroll in the last couple of years. Back in 1999 the define benefit plan was changed to a hybrid plan. That put into place a provision to encourage people to enroll. The define benefit plan prior to 1999, and broke the contributions down into two, the employer contribution and the employee contribution. Employee contribution has always been included in an employee countdown. The members who terminated prior to 1999 could get that balance and cash it out with an interest rate of 7.5%. Now if they participate in this 457 plan, whatever they participate goes into that as well.

Rep. Amerman: Wouldn't have that been a good incentive if we would have put some kind of match to get people to enroll instead of having them enroll. We have a 401 K where I work and it's nice to see if a company would match that a little bit. It would get people to enroll.

Rep. Wolf: I know as a teacher that the school takes that money out of my paycheck and they send it to someone that I have designated as a recipient. That person is in charge of figuring out where I put it. Will these people who go into a 457 have that option to pick a representative to deal with their money and make those decisions so they don't have to?

Sparb Collins: There is a lot of options. They can use the local companies with local agents to affiliate with. They can stay in the fidelity product. It varies on what people are most comfortable with.

Rep. Amerman: What she is saying that she can pick the investors that she wants, but can the new employees pick who they want also?

Sparb Collins: Within this plan there are a lot of options because there is about 10 different companies. That booklet describes all the different products that are available.

Rep. Froseth: I didn't see the set of amendments in this bill. Secondly, would it make it cumbersome if we amended this to exclude NDUS and leave them as an opt in?

Sparb Collins: The only thing is that there are different ways of looking at it. If you exempted the whole university system, that doesn't make it cumbersome. Within the university system about half of them are in the PERS while the other half is in TIAA-Cref.

Rep. Froseth: What is the set of amendments?

Sparb Collins: That was just the start date. It used to be the third month, but is now moved to the first month based on our request because of the change in federal law.

Rep. Potter: Would you remind me how people choose Cref or PERS?

Sparb Collins: The University sets the rules for who is eligible for TIAA-Cref. Generally speaking, your faculty are all in TIAA-Cref.

Rita Lindgren: Testimony attached.

Rep. Wolf: The University system has a 403 B plan, if this bill is passed and the new employees that are hired are required, can that go to a 403 or does it have to go to a 457?

Rita Lindgren: It can go to a 403, they still have that choice. Basically the problems I have is the opt out with the opt in. It does limit our employee options.

Rep. Wolf: How does it limit them if they can still go in the 403 route?

Rita Lindgren: Once an employee chooses which one they want to go to, they are in it but they change their mind. They could change down the road. First they have to choose one from us.

Rep. Haas: Not if they go into the 403 right?

Rita Lindgren: Correct.

Rep. Schneider: If NDSU chooses an opt in vs. an opt out, what types of education does NDSU provide their new employees on the benefits of saving and retirement?

Rita Lindgren: Currently it is the responsibility of our benefit people that when a new employee starts to go through the entire benefit package and explain all of the options. In addition you will have some of the 403 B companies contact us to come to our campuses to do educational meetings that are open to all employees. TIAA-Cref is very good about doing that. They come to our campus at least four times a year and do educational sessions that are open to all employees. Some of the other providers do come as well.

Rep. Schneider: At BSC, what is the percentage of employees that have opted in to some form of retirement plan?

Rita Lindgren: I don't have the BSC statistics with me. The University System has 6,830 benefit employees. The participants in the 403 B is 1,724. In the 457 plan we have 218. The total is 1,942.

Rep. Kasper: Are there other benefits that you see in the 403 B over the 457 or is it just the makeup of the plan and design?

Rita Lindgren: They are both good plans that have good intentions. I guess I don't know if one is better than the other. That is just my opinion.

Rep. Haas: If we would exclude TIAA-Cref from this bill, would that be better for you?

Rita Lindgren: Yes, we originally proposed an amendment when the bill was heard on the senate side.

Rep. Grande: I am handing out testimony from John Olson.

John Olson: Testimony attached.

Jodee Bohrer: *I was not originally planning on getting up before you on this bill as we did not on the other side. I feel a little bit of pressure do to so, so I just want to add some clarifying remarks. We are here in a neutral position. We have employees who have a position on both sides of this issue. By saying that I want to make sure you understand that NDPEA fully supports the concept of encouraging employees to save. We believe that it is necessary. We think that we should do everything we can to do that. With my HR hat on I can tell you that the biggest piece that is critical if this bill passes or doesn't, is educating our employees. So that would be NDPEA's statement that we believe that it is important to save. We understand that higher education has some of those concerns. We would support this but we believe it is critical that employees are educated on the front end. Many times employees are busy as we heard, and aren't paying attention. I can tell you that they pay close attention to their paycheck. So if it takes 3 times of a \$25 deduction, they will talk about it. I think that Sparb and his group will work with agency, HR, and higher education people to make sure that the proper information gets out to the employees.*

Bob Evans: *Human Resources Director for the ND Department of Transportation. I am also here in a neutral position. Our agency does not have a specific position on this legislation. I wanted to provide information in two regards. One is that the nature of the employees we have. About 1/3 of our employees are professional level employees and administrators. I think that group of employees generally finds themselves in a position to be well informed about*

what benefits are available, what is to their advantage, etc. We also have a great number of employees like equipment operators, administrative personnel and so forth, that face the day to day challenges of dealing with crisis issues that come up. Many of the individuals in that category of employees do face the strong inertia to make that first move into a savings position. It is a very hard initial decision to make. Once made and moving on, it becomes part of the thought process. These employees do take a serious look at that. It is my concern that we do parade the biggest possible influence for all of our employees to start taking a serious look at their future. Sparb talked about the transition with the life insurance program that can be covered. That was also a very controversial step as we move to that. Now we found that our employees appreciate it. I haven't had one complaint yet or anybody saying that they wanted to pay those taxes. It has proven to be a very positive step. The other thing I wanted to cover was something that happens in our office everyday. We hire younger employees each year between the classified positions and the temporary positions. Today we just happen to hiring a person I went to high school with. As that employee sits down to begin his employment he is going to be faced with an individual who is going to spend about two hours talking about all of the assets and benefit options. She is going to talk about what he needs to do to get signed up with tax withholdings, etc. At that point if this legislation were in place one of the conversations that they would have would be about the deferred compensation program. They will be enrolled in it. There are many advantages about being in a deferred comp. This legislation will force that initial conversation and that employee at that point is going to have to make a decision if they are going to do it or not. They will then have to choose if they want the take home income.

Rep. Kasper: Let's carry that conversation a step further. The HR person is talking to the new employee about the 457 plan and the new employee thinks it sounds ok but they don't know

what to do with their money. If you ask the HR person what they suggest you do, what does that person tell that employee?

Bob Evans: The employee is thinking about the investment. Then you can seriously talk about the list of options that are available. Our contact person might talk about what some of the other employees are doing, what kinds of options are available, and they will probably talk about the state contract program. At that point they will be encouraged to be in contact with an investment professional that could provide that kind of advice and guidance in terms of what they would suggest.

Rep. Kasper: The bill says that the deposits are going to be forwarded to the board, and the board is going to make the investment option selections. I'm assuming that is if the employee doesn't make the investment options. When you are dealing with the areas of securities, you have definite dos and don'ts that you can discuss whether you are a licensed securities rep or you're not. So what I see the problem is that there are HR people who had good intention but go too far in giving investment advice when they aren't licensed to do so. As an example, two days ago the market tanked 416 points. Let's just say that this employees dollars were put into an investment where he did not get advice on the front end. The good intentions were to talk to this investment professional. It is three months down the road now and that employee did not see an investment professional. It is two months down the road and the market went down another 2,000 points which we experienced in 2001. Now the employee gets his statement that says I have \$180 out of my paycheck but it's only worth \$42. Whose liability is it to that employee for that loss of 140 when that employee did not have the counseling on that front end of the risk in the security and just said go ahead and do it.

Bob Evans: I guess I think back on my initial employment experience in the state system. I was enrolled in a contribution plan that did just that. In 1971 it tanked and all of a sudden the

money that was being taken out of my check and being put into that program was less than what I had started off with. Nevertheless looking back at that experience I'm glad that provisions were being made for my retirement. I can now look forward to a future that is going to be pretty comfortable. I understand that there is a level of responsibility. We are careful not to be providing investment advice at our level and in our organization. We can't present what employees share and talk about. That is their business and they do that. Could the organization ultimately be held responsible for something? Maybe. We won't cross the line in terms of offering investment advice. Our goal is to get people steered into the contact with individuals that can provide guidance in a legal matter.

Rep. Haas: Sparb I have a question for you. It follows on what Rep. Kasper is talking about.

Let's say that a person is automatically enrolled and choose. Is it possible for them to elect one at any time for their investment portfolio and can they change it at any time?

Sparb Collins: For example the PERS plan has it through fidelity which is mutual funds. If someone is enrolled in that, they could then transfer that to any of the other 457's. Some of the other 457 plan options that are available are annuities. If they would elect to go to that company and that annuity, there may be provisions to identify for them what those are. If they elect to go into that they then have to sit down with that company and choose. There are lists of people that they can choose from.

Rep. Potter: If this bill passes, what kind of person would be working with the new employees? What kind of qualifications would that person have?

Sparb Collins: You are going to have a couple of levels. In terms of investment advisors it would be the company and the individuals. Nobody at PERS or the agencies are licensed investment advisors. Once you would go into that you would work with one of those investment advisors. If you automatically enroll and don't go through and advisor, it will be defaulted into

