NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

# EMPLOYEE BENEFITS PROGRAMS COMMITTEE

Monday, December 1, 2008
Harvest Room, State Capitol
Bismarck, North Dakota

Representative Bette B. Grande, Chairman, called the meeting to order at 4:00 p.m.

**Members present:** Representatives Bette B. Grande, Eliot Glassheim, Jim Kasper, Matthew M. Klein, and Joe Kroeber and Senators Ralph L. Kilzer, Karen K. Krebsbach, and Curtis Olafson

**Others present:** State Senator Stanley W. Lyson, Williston

See Appendix A for additional persons present.

**It was moved by Senator Krebsbach, seconded by Representative Klein, and carried on a voice vote that the minutes of the October 21, 2008, meeting be approved as distributed.**

At the request of Chairman Grande, committee counsel reviewed a bill draft [90118.0500] to create a supplemental defined contribution retirement plan for state correctional and peace officers.

Chairman Grande recognized Senator Lyson. Senator Lyson said he had submitted the bill draft to the Employee Benefits Programs Committee at the request of several corrections and Bureau of Criminal Investigation employees. He said the bill draft is an effort to assist the Department of Corrections and Rehabilitation and the Bureau of Criminal Investigation, as well as other agencies employing correctional or peace officers, to recruit and retain employees. He said the bill draft had been revised in light of technical comments prepared by The Segal Company for the Public Employees Retirement System Board. However, he said, the bill draft still contains a provision that may violate federal law.

Chairman Grande recognized Mr. Tom Trenbeath, Deputy Attorney General, Attorney General's office. Mr. Trenbeath said the newly created North Dakota Century Code Section 54-52.7-07(3) provides that employer contributions cease the first day of the month next following the month in which a participating member reaches the age of 65 or when the participating member has a combined total of years of service credit and years of age equal to 85. He said federal law provides that it is unlawful for an employer, an employment agency, a labor organization, or any combination thereof, to establish or maintain an employee pension benefit plan requires or permits in the case of a defined contribution plan that the cessation of allocations to an employee's account or the reduction of the rate at which contributions are allocated to an employee's account because of age. He suggested that the age of 65 or Rule of 85 provisions be deleted from the bill draft. As a policy matter and cost matter, he said, the Legislative Assembly must make a determination of how many employees would actually continue to work after the age of 65 or the Rule of 85 for which the state would continue to make employer contributions. He said if the Legislative Assembly determines that few employees would continue to work after the age of 65 or the Rule of 85 then the cost of deleting this provision would be minimal.

Chairman Grande recognized Mr. Jerry Kemmet, Director, Bureau of Criminal Investigation, Attorney General's office. Mr. Kemmet said the bill draft is designed to enhance recruitment and retention, and to provide an ability to retire earlier for correctional and peace officers. He said North Dakota is finding it difficult to retain qualified officers. For example, he said, the Bureau of Criminal Investigation requires a four-year degree and five years of experience for a new agent while the city of Fargo does not require a four-year degree or any experience for starting police officers, yet, the bureau is paying starting agents in 2008 what the city of Fargo was paying starting police officers in 2006. He said the proposal will allow correctional and peace officers to retire earlier, reduce injuries because law enforcement and corrections is a demanding job better suited for younger people, and the proposal will not cost the state a tremendous amount of money.

In response to a question from Representative Kasper, Mr. Kemmet agreed the proposal will not help older employees and does not address entry level wages but will help recruit and retain employees moving forward.

Chairman Grande recognized Mr. Sparb Collins, Executive Director, Public Employees Retirement System. Mr. Collins reviewed the technical comments (Appendix B) for the bill draft. He noted that The Segal Company, the actuarial consultant for the Public Employees Retirement System, has identified age discrimination in employment issues concerning the bill draft. Also, he said, the bill draft does not specify the type of plan to be established, but presumably the Retirement Board will have the discretion to establish the plan as a tax-qualified plan under Internal Revenue Code Section 401(a). He said if the new plan is established under Section 401(a), it must be designated as a profit-sharing or money purchase defined contribution plan. He said that under the provisions of the bill draft, eligible employees may change their election to participate and contribute to the plan or cease participation in the plan at any time. He said if eligible employees may change their elections under the plan at any time, employee contributions cannot be made to a Section 401(k) plan because this would constitute impermissible cash or a deferred arrangement for a government plan under Section 401(k). However, he said, employee contributions under the plan design could be made to an eligible governmental deferred compensation plan under Section 457(b), while the employer contributions could be made to a Section 401(a) plan. In such case, he said, all eligible employees who elect to participate in the plan would be required to make the employee contributions to a Section 457(b) plan. To the extent these contributions are made to the Section 457(b) deferred compensation plan, he said, employees would vest in the portability enhancement provisions of the hybrid plan. He said the Retirement Board would address this issue if the proposal is enacted.

**It was moved by Senator Krebsbach and seconded by Representative Kroeber that the committee give Employee Benefits Programs Committee Bill No. 118 a favorable recommendation.**

Chairman Grande recognized Representative Kasper. Representative Kasper said it is apparent that there are several issues with the bill draft that must be resolved before it can be enacted by the Legislative Assembly. Thus, he said, it would not be appropriate for the committee to give the bill draft a favorable recommendation, but the committee could give the bill draft no recommendation and allow it to be revised by the sponsor prior to introduction.

**Representative Kroeber withdrew his second and Senator Krebsbach withdrew her motion to give the bill draft a favorable recommendation.**

**It was moved by Representative Kasper, seconded by Senator Krebsbach, and carried on a roll call vote that the committee give Employee Benefits Programs Committee Bill No. 118 no recommendation.** Representatives Grande, Glassheim, Kasper, Klein, and Kroeber and Senators Kilzer, Krebsbach, and Olafson voted "aye." No negative votes were cast.

Chairman Grande announced that if the committee is required to meet again, the committee will meet at 10:00 a.m. on Tuesday, January 6, 2009.

No further business appearing, Chairman Grande adjourned the meeting at 4:50 p.m.

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Jeffrey N. Nelson
Committee Counsel

ATTACH:2