NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ADMINISTRATIVE RULES COMMITTEE

Friday, March 15, 2019
Prairie Room, State Capitol
Bismarck, North Dakota

Representative Bill Devlin, Chairman, called the meeting to order at 8:00 a.m.

Members present: Representatives Bill Devlin, Kim Koppelman, Scott Louser, Brandy Pyle, Mary Schneider, Nathan Toman, Robin Weisz; Senators Howard C. Anderson, Jr., Curt Kreun, Scott Meyer, David S. Rust

Members absent: Representatives Josh Boschee, Mike Schatz; Senators Jerry Klein, Nicole Poolman, Joan Heckaman

Others present: Representative Marvin E. Nelson, Rolla
See Appendix A for additional persons present.

RETIREMENT BOARD

Chairman Devlin called on Mr. Scott Miller, Executive Director, Public Employees Retirement System, for testimony (Appendix B) regarding the rules adopted by the Retirement Board. Mr. Miller said the rules apply to the withdrawal liability calculation for employers that wish to leave the main Public Employees Retirement System (PERS) plan and the retiree health insurance credit (RHIC) program. He said state law allows political subdivisions to participate in the main PERS plan and the RHIC program. He said the rules address what must occur when a political subdivision wishes to leave the main PERS plan. He said an actuarial study must be performed to determine whether the political subdivision's employees' accrued benefits exceed the assets that have been contributed over the years. He said this amount is known as exit liability. He said if the political subdivision would have an exit liability, the political subdivision must pay that liability before being allowed to leave the main PERS plan and RHIC program.

In response to a question from Senator Anderson, Mr. Miller said the Retirement Board uses an outside actuary to calculate the exit liability of a political subdivision that wants to leave the main PERS plan and RHIC program. He said the average cost of the actuary's services for this type of analysis is $12,000 to $13,000 per analysis. He said North Dakota Century Code Section 54-52-02.1(1)(b) allows the Retirement Board to assess these fees to the political subdivision. He said when a political subdivision withdraws from the plans, the employees of the political subdivision are not entitled to any additional benefits or accruals going forward.

In response to a question from Representative Koppelman, Mr. Miller said it is likely there may be more political subdivisions leaving the main PERS plan and RHIC program. He said when the first political subdivision requested information last fall on how to leave the plan, the board asked the actuary to perform the analysis. He said as a result, the board reviewed its rules on withdrawal and suggested changes that would provide the plan with a more conservative estimate of the exit liability which in turn would provide more protection to the PERS plan when a participating employer leaves. He said two rules changes accomplish this--the first is to require the actuary to use a lower interest rate to determine the present value of the employees' benefits. He said a lower interest rate will increase the amount of that liability, which is a more conservative estimate and will protect the plan. The second major rule change, he said, is to add to the rules a specific allocation for administrative expenses going forward. He said other changes in the rules clarify the exiting political subdivision is to pay any actuarial fees related to the withdrawal liability. He said the rule changes also require exiting political subdivisions to pay any cost incurred by the fund due to the withdrawal before being allowed to terminate participation. He said the Retirement Board's broad rulemaking authority allows for these changes. He said the rules in place for political subdivision withdrawal are about 20 years old but have not been used. He said the request for information on withdrawal was the reason the Retirement Board decided to review and clarify the rules.

In response to a question from Representative Weisz, Mr. Miller said when a political subdivision leaves the plan it is analogous to closing that entity's own little plan. He said a 6 to 6.5 percent rate of return was used.

In response to a question from Senator Anderson, Mr. Miller said when an employer leaves the plan, that employer's part of the PERS plan is frozen. He said an employee in that plan is eligible to receive benefits when the employee retires but there are no additional accruals to that employee's account beyond the date the employer leaves the plan.

Chairman Devlin called on Representative Marvin E. Nelson for testimony (Appendix C) regarding the rules adopted by the Retirement Board. Representative Nelson said the nursing home in Dunseith, which is a member of the PERS plan, is experiencing a $60,000 shortfall every year due to its participation in the plan. He said the nursing home would like to leave the plan but would face a $300,000 to $400,000 exit liability in doing so. He said the nursing home was told it is not allowed to leave the plan until the exit liability is paid. He said the rules did not require the payment of some of the costs of the exit liability until the proposed changes were made. He said the costs that will be assessed to the nursing home as a result of the rule changes are arbitrary. He said it is not a matter of charging appropriate fees but rather the board pulling numbers out of the air and charging those fees to the political subdivision that wants to leave the plans. He said at a minimum, he requests the committee delay the implementation of the board's rules so a legislative solution can be reached.

In response to a question from Chairman Devlin, Representative Nelson said the issue was brought to his attention last fall. He said the effect of these rules is that it will become impossible for a political subdivision to leave the plans. He said the nursing home considered applying for a low-interest loan from the Bank of North Dakota to cover the exit liability but the nursing home's request did not fit any of the Bank's programs. He said the board may have authority to charge fees and make assumptions on rate of return, but those fees and assumptions should not be arbitrary.

Representative Louser said Representative Nelson may want to consider amending one of the bills in the Government and Veterans Affairs Committee to address his concerns on fees, contributions, and multipliers.

Representative Koppelman said the Retirement Board has the statutory authority to make the proposed changes.

In response to a question from Senator Rust, Mr. Miller said holding over the rules could impact another political subdivision that wants to leave the plan before June. He said the political subdivision may have less liability than is allowed now.

In response to a question from Representative Koppelman, Mr. Miller said the time frame for a political subdivision to leave the plan is the time it takes to complete the actuarial report, usually 1 to 2 weeks, plus 60 days. He said the only comments received regarding the rules was written testimony that stated the interest rate was too high.

In response to a question from Representative Louser, Mr. Miller said six political subdivisions have joined the PERS plan since January 2018. He said 7.75 percent is the assumed net rate of return.

It was moved by Representative Koppelman, seconded by Senator Rust, and carried on a roll call vote that the proposed rules of the Retirement Board be held over to the June 2019 meeting. Representatives Devlin, Koppelman, Louser, Pyle, Schneider, Toman, and Weisz and Senators Anderson, Kreun, Meyer, and Rust voted "aye." No negative votes were cast.

No further business appearing, Chairman Devlin adjourned the meeting at 8:50 a.m.

Vonette J. Richter
Legal Division Director

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