

**NORTH DAKOTA TEACHERS' FUND FOR RETIREMENT  
MINUTES OF THE  
AUGUST 17, 2009, BOARD MEETING**

**BOARD MEMBERS PRESENT:** Mike Gessner, President  
Clarence Corneil, Trustee  
Kim Franz, Trustee  
Lowell Latimer, Vice President  
Wayne Sanstead, State Superintendent  
Kelly Schmidt, State Treasurer  
Bob Toso, Trustee

**STAFF PRESENT:** Steve Cochrane, Executive Director  
Fay Kopp, Deputy Executive Director  
Darlene Roppel, Administrative Assistant  
Shelly Schumacher, Retirement Program Manager

**OTHERS PRESENT:** Greg Burns, NDEA  
Chris Conradi, GRS  
Dakota Draper, NDEA  
Doug Johnson, NDCEL  
Gloria Lokken, NDEA-Retired  
Bev Nielson, NDSBA  
Ken Tupa, NDRTA  
Aaron Webb, Attorney General's Office

**CALL TO ORDER:**

Mr. Mike Gessner, President of the Teachers' Fund for Retirement (TFFR) Board of Trustees, called the meeting to order at 8:30 a.m. on Monday, August 17, 2009, at the State Capitol, Peace Garden Room, Bismarck, ND.

**THE FOLLOWING MEMBERS WERE PRESENT REPRESENTING A QUORUM: PRESIDENT GESSNER, MR. CORNEIL, MRS. FRANZ, DR. LATIMER, DR. SANSTEAD, TREASURER SCHMIDT, AND MR. TOSO.**

**APPROVAL OF AGENDA:**

The Board considered the meeting agenda. Mrs. Fay Kopp, Deputy Executive Director, requested the addition of the draft 2009 National Council on Teacher Quality (NCTQ) report to Item 11.

**TREASURER SCHMIDT MOVED AND MR. CORNEIL SECONDED TO APPROVE THE AGENDA WITH THE ADDITION.**

**AYES: TREASURER SCHMIDT, MRS. FRANZ, DR. SANSTEAD, MR. TOSO, PRESIDENT GESSNER, MR. CORNEIL, AND DR. LATIMER.**

**NAYS: NONE**

**MOTION CARRIED.**

## TFFR FUNDING IMPROVEMENT STUDY:

President Gessner welcomed the member and employer interest group representatives to the first formal meeting of the TFFR Funding Improvement Study Group. The study group will discuss TFFR funding, legal, and actuarial issues and consider possible benefit and contribution changes to meet current and future pension obligations. These discussions will continue throughout the fiscal year, and will be on the agenda of future TFFR board meetings. He invited active participation by all.

### **A. Study Overview - Mrs. Fay Kopp**

Mrs. Kopp outlined the TFFR Funding Improvement Study objectives and process. TFFR is faced with declining funding levels stemming from the historic market downturn and significant investment losses in 2008 and 2009. Because protecting the long term solvency of the TFFR plan is the Board's fiduciary responsibility, the Board is studying TFFR funding improvement options intended to support this financial obligation. Consequently, the Board will review each component of the retirement funding equation: contributions plus investment earnings equal benefits plus expenses. At the August meeting, legal, actuarial, contributions and benefits will be considered. At the September meeting, investments and expenses will be discussed, and in October, the 2009 actuarial report and updated projections will be presented. The Board and study group will continue evaluating various options and alternatives throughout the winter, and proposed legislation will be filed with the Legislative Employee Benefits Program Committee (EBPC) by April 1, 2010.

### **B. Legal - Aaron Webb**

Mr. Aaron Webb, ND State Attorney General's office, responded to questions he had been asked to research concerning constitutional issues relating to changing pension benefits and/or contributions.

- 1) Who is responsible for paying current and future pension benefits should the TFFR trust fund become insolvent?

Upon Mr. Webb's preliminary review, it appears the state would be obligated to make funds available, for payments required by law, to be paid to TFFR beneficiaries.

- 2) Can the State increase retirement contribution levels for active members of the TFFR plan?
- 3) Can the State reduce or modify TFFR pension benefits for members?

Questions 2 and 3 relate to whether the State would have the authority/power to unilaterally change the benefit structures contained within the current law to the disadvantage of any TFFR

members. In responding to these questions, Mr. Webb reviewed various pension entitlement theories across the states: gratuity, qualification, contracts, and other theories. He also outlined North Dakota case law from 1948 - 1967. Mr. Webb stated the Board has choices to make. The Board could choose to not propose a change to the existing benefit structure to the member's detriment (i.e. increase member contribution level or reduce member benefits). This would be the most defensible position for the Board and the State, as it would not trigger a constitutional challenge. On the other hand, the Board could propose to modify the existing benefit structure to the member's detriment (i.e. increase member contribution level or reduce member benefits). If approved by the Legislature, it would likely trigger a constitutional challenge, and the Supreme Court would need to make the decision based on modern law.

- 4) Can the State increase retirement contributions from participating employers/school districts?

Mr. Webb explained that school districts, as political subdivisions created by the State, do not have contracts clause protection, therefore the State can increase employer/school district contribution levels.

Mr. Webb's presentation is on file at the Retirement and Investment Office (RIO).

The Study Group discussed the various pension theories and legal issues, and asked Mr. Webb to continue his review and update the Board at the September meeting.

#### **C. Actuarial - Chris Conradi, Gabriel, Roeder, Smith & Company (GRS)**

Mr. Chris Conradi, GRS, described the impact of the market meltdown on TFFR. TFFR assumes assets will earn 8.00% per year net of expenses. Estimating a negative 26% return for fiscal year 2009 would result in a shortfall of about 34%. In dollar terms, that is a shortfall of about \$619 million. In order to get back to TFFR's current funding level of 82% by 2038 (assuming a -26% return for FY 2009) would require investment returns of: a) 58% in FY 2010, followed by a constant 8.00% return thereafter, or b) 17.25% for each of the next five years, followed by constant 8.00% return thereafter, or c) 10.85% return for every year from FY 2010 through FY 2038. Based on these projections, it is unlikely that future investment returns can solve the funding problem.

Mr. Conradi estimated that to get back to 82% funded status by 2038, contribution rates would have to increase by about 10%, absent any market recovery or other changes. Mr. Conradi also stated that without action, it is possible the plan could run out of money, and that cash flow pressures mean action needs to be taken soon. The problem is large;

therefore, small changes will not be sufficient. Higher contribution rates and possible benefit changes will probably be necessary.

Mr. Conradi also explained that financial markets had this kind of effect on almost all public-sector retirement plans. Plans across the country are struggling with what to do, and actions available are dependent on the state's legal environment.

Mr. Conradi's presentation is on file at RIO.

The Study Group discussed the funding information and projections, requested annual dollar cost figures for potential contribution increases, and asked Mr. Conradi to update projections after the 2009 valuation report is completed in October.

#### **D. Plan Provisions - Mrs. Kopp**

The Study Group discussed possible revenue sources including increasing employer contributions (phasing incrementally), member contributions, re-employed retiree contributions, state/general fund appropriation, pension obligation bonds, and other sources of revenue. The group also considered the possibility of a special dedicated tax levy for TFFR.

The meeting recessed at 12:05 p.m. for lunch.

The meeting reconvened at 1:00 p.m. with discussion continuing on the funding improvement study. The following people were present: President Gessner, Mrs. Franz, Dr. Latimer, Dr. Sanstead, Treasurer Schmidt, Mr. Toso, Mr. Cochrane, Mrs. Kopp, Mrs. Schumacher, Mr. Conradi, Mr. Webb, Mr. Burns and Ms. Lokken. Mr. Tupa arrived at 2:05 p.m.

The Board continued discussing other possible revenue sources including the State Common Schools Trust Fund. Treasurer Schmidt and Dr. Sanstead will follow up on this suggestion and report back at the September meeting.

The Study Group also discussed possible changes in benefit provisions including benefit multiplier, vesting period, normal and early retirement eligibility, final average salary period, eligible TFFR salary definition, interest earned on member accounts, retiree reemployment provisions, disability benefits, survivor/death benefits, service purchase provisions, service credit calculation, benefit options, and other potential benefit modifications.

The funding improvement study portion of the meeting ended at 2:35 p.m.

The meeting reconvened at 2:45 p.m. Board members present were President Gessner, Mrs. Franz, Dr. Latimer, and Dr. Sanstead.

**MINUTES:**

The Board considered the minutes of the June 25, 2009, board meeting.

**DR. LATIMER MOVED AND MRS. FRANZ SECONDED TO APPROVE THE MINUTES OF THE JUNE 25, 2009, BOARD MEETING.**

**AYES: PRESIDENT GESSNER, DR. LATIMER, DR. SANSTEAD, AND MRS. FRANZ.**

**NAYS: NONE**

**MOTION CARRIED.**

**ELECTION OF 2009-10 OFFICERS:**

**DR. LATIMER MOVED AND DR. SANSTEAD SECONDED TO KEEP THE SAME SLATE OF BOARD OFFICERS AND COMMITTEE MEMBERS FOR 2009-10 AS THE PREVIOUS YEAR.**

**AYES: DR. SANSTEAD, DR. LATIMER, PRESIDENT GESSNER AND MRS. FRANZ.**

**NAYS: NONE**

**MOTION CARRIED.**

**ANNUAL TFFR PROGRAM REVIEW:**

Mrs. Kopp reviewed the 2008-09 TFFR Program Monitoring Summary Report and the Program Manual. The following policies will be brought back to a future board meeting for review and possible changes: C-1 "Actuarial Margin", C-2 "Actuarial Review, and C-5 "Board Members' Code of Conduct".

**MRS. FRANZ MOVED AND DR. LATIMER SECONDED TO APPROVE THE ANNUAL TFFR PROGRAM AND POLICIES REVIEW.**

**AYES: MRS. FRANZ, PRESIDENT GESSNER, DR. LATIMER, AND DR. SANSTEAD.**

**NAYS: NONE**

**MOTION CARRIED.**

**2008-09 TFFR BOARD ACCOMPLISHMENTS:**

Mrs. Kopp reviewed the 2008-09 TFFR Board Accomplishments Report.

**DR. SANSTEAD MOVED AND MRS. FRANZ SECONDED TO ACCEPT THE 2008-09 TFFR BOARD ACCOMPLISHMENTS REPORT.**

**AYES: DR. LATIMER, MRS. FRANZ, DR. SANSTEAD AND PRESIDENT GESSNER.**

**NAYS: NONE**

**MOTION CARRIED.**

**ANNUAL CUSTOMER SATISFACTION REPORTS:**

Mrs. Kopp reported on the annual TFFR Customer Satisfaction Surveys that were received from North Dakota Education Association (NDEA), North Dakota Council of Educational Leaders (NDCEL), North Dakota Retired

Teachers Association (NDRTA), North Dakota School Boards Association (NDSBA), and the North Dakota School Business Managers Association (NDSBMA). Mrs. Kopp also presented member and employer ratings and comments from benefits counseling sessions, pre-retirement seminars, business manager workshops, retirement 101 and Invest North Dakota presentations. Overall the ratings were above average and excellent with very positive and encouraging comments.

**DR. LATIMER MOVED AND DR. SANSTEAD SECONDED TO APPROVE THE TFFR ANNUAL CUSTOMER SATISFACTION REPORTS.**

**AYES: DR. SANSTEAD, MRS. FRANZ, PRESIDENT GESSNER AND DR. LATIMER.**

**NAYS: NONE**

**MOTION CARRIED.**

President Gessner requested the Board's input for completion of the State Investment Board (SIB) annual Customer Satisfaction Survey. The Board rated the RIO staff and the services provided as excellent in all areas.

**DR. SANSTEAD MOVED AND DR. LATIMER SECONDED TO SUBMIT THE TFFR BOARD COMMENTS ON SIB'S ANNUAL CUSTOMER SATISFACTION SURVEY.**

**AYES: DR. SANSTEAD, DR. LATIMER, PRESIDENT GESSNER AND MRS. FRANZ.**

**NAYS: NONE**

**MOTION CARRIED.**

**INVESTMENT UPDATE:**

Mr. Steve Cochrane, Executive Director, reported fiscal year performance from July 1, 2009 to August 16, 2009 is estimated at 7%. The estimated investment return for FY 2008-09 is -27%. The agenda items for the next State Investment Board meeting to be held August 28, 2009, were reviewed.

**RETIREE SUPPLEMENTAL PAYMENT IMPLEMENTATION PLAN:**

Mrs. Shelly Schumacher, Retirement Program Manager, presented the supplemental retiree benefit payment implementation plan for SB 2277. The supplemental payment will be paid to all retirees and beneficiaries with a retirement date before January 1, 2009 and who receive a December 1, 2009 benefit payment. It will be a separate payment around December 15, 2009 and will be taxable income included on 2009 1099R forms. A notice will be sent to each retiree in early December.

**MRS. FRANZ MOVED AND DR. SANSTEAD SECONDED TO APPROVE THE 2009 RETIREE SUPPLEMENTAL PAYMENT IMPLEMENTATION PLAN.**

**AYES: DR. LATIMER, MRS. FRANZ, DR. SANSTEAD AND PRESIDENT GESSNER.**

**NAYS: NONE**

**MOTION CARRIED.**

**LEGISLATIVE UPDATE:**

Mrs. Kopp reported on the EBPC meeting held August 6, 2009. The next meeting will be held on October 26, 2009. Mr. Conradi will be presenting the 2009 TFFR Valuation Report at this meeting and at the October 22, 2009 TFFR board meeting. There will be another EBPC meeting on December 17, 2009.

**OTHER BUSINESS:**

Mrs. Kopp reviewed a 2009 draft report put out by the National Council on Teacher Quality. Mrs. Kopp will respond to their analysis of the ND TFFR.

The National Council on Teacher Retirement (NCTR) annual convention in Indian Wells, CA, on October 10-15, 2009, will be attended by Mr. Corneil, Mrs. Franz, and Dr. Latimer.

The next board meeting will be held on September 24, 2009, at 1:00 p.m., at the State Capitol, Ft. Totten Room, Bismarck, ND.

**ADJOURNMENT:**

With no further business to come before the Board, President Gessner adjourned the meeting at 4:30 p.m.

Respectfully Submitted:

  
Mr. Mike Gessner, President  
Teachers' Fund for Retirement Board

  
Darlene Roppel  
Reporting Secretary