

**NORTH DAKOTA TEACHERS' FUND FOR RETIREMENT
MINUTES OF THE
SEPTEMBER 24, 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
Connie Flanagan, Fiscal & Investment Officer
Fay Kopp, Deputy Executive Director
Darlene Roppel, Administrative Assistant
Shelly Schumacher, Retirement Program Manager

OTHERS PRESENT: Greg Burns, NDEA
Doug Johnson, NDCEL
Rolland Larson, NDRTA
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 1:00 p.m. on Thursday, September 24, 2009, at the State Capitol, Fort Totten 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 September 24, 2009, meeting agenda.

TREASURER SCHMIDT MOVED AND MR. CORNEIL SECONDED TO APPROVE THE AGENDA AS PRESENTED.

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

NAYS: NONE

MOTION CARRIED.

MINUTES:

The Board considered the minutes of the August 17, 2009, board meeting.

TREASURER SCHMIDT MOVED AND MR. TOSO SECONDED TO APPROVE THE MINUTES OF THE AUGUST 17, 2009, BOARD MEETING.

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

NAYS: NONE

MOTION CARRIED.

ANNUAL TFFR INVESTMENT REPORT:

Mr. Steve Cochrane, Executive Director, presented the annual TFFR investment report. A copy of the presentation is on file at the Retirement and Investment Office (RIO).

Mr. Cochrane reported the net investment return for fiscal year 2009 was -27.33% which represents an investment loss of about \$475 million for the fiscal year. About 82% of the total loss is unrealized. He reviewed annual and average investment returns and explained peer group rankings reported by the State Investment Board (SIB) investment consultant, Callan Associates.

Mr. Cochrane reviewed the TFFR asset allocation which is made up of ten asset classes. Simplified, there is about 61% in stocks, 25% in bonds, 9% in real estate and 5% in other. He also reviewed capital market assumptions, projected returns, risk, and correlation used in past asset allocation studies. The next asset allocation study will be done in 2010.

Mr. Cochrane explained TFFR investment program costs. He stated investment program expenses paid by public funds have been rising in recent years. They are highly dependent on the size of the fund, asset classes and complexity of the investment program. Because TFFR has a very sophisticated investment program that invests in higher cost investment products and asset classes than the average \$2.0 billion fund, investment expenses are higher than for the average small fund. He outlined cost factors including internal vs. external management; asset allocation, use of real estate and alternatives; fund structure, such as fund of funds; cyclical funding points in private investments; market value fluctuation vs. fixed fees; quality of investment managers; extent of pure indexation; and age of comparative fund expenses. He reported the SIB will be having several consulting firms speaking at future SIB meetings about what is changing in the financial world and the best investment models. This will be helpful for both the TFFR and SIB boards in discussing possible future changes to asset allocations.

Mr. Cochran stated the estimated gross investment return for FY 2009-2010 as of September 23, 2009, is about 13.35%.

The Board discussed TFFR investment program performance, asset allocation, and expenses. After discussion,

TREASURER SCHMIDT MOVED AND DR. SANSTEAD SECONDED TO APPROVE THE ANNUAL TFFR INVESTMENT REPORT.

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

NAYS: NONE

MOTION CARRIED.

ANNUAL BUDGET AND EXPENSE REPORT:

Ms. Connie Flanagan, Fiscal and Investment Officer, provided an overview of the Retirement and Investment Office's budget and expenses. A copy of the report is on file at RIO.

Ms. Flanagan reviewed the 2009-11 budget summary approved by the 2009 Legislature and Governor. RIO's approved budget increased 9.92% over the prior biennium. Ms. Flanagan indicated that 8.45% of the total budget remained at the end of the 2007-09 biennium, which stays in the fund.

Ms. Flanagan also reviewed RIO expenses including appropriated expenses (salaries, benefits, and operating expenses) and continuing appropriations (investment expenses, member claims, actuary, audit, legal, and other continuing appropriations). She also presented an analysis of TFFR investment and administrative expenses over the last five years.

After Board discussion,

MR. CORNEIL MOVED AND MR. TOSO SECONDED TO APPROVE THE ANNUAL BUDGET AND EXPENSE REPORT.

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

NAYS: NONE

MOTION CARRIED.

The meeting recessed at 3:00 p.m. and reconvened at 3:10 p.m.

The TFFR board was joined by interest group members Mr. Greg Burns, Ms. Gloria Lokken, Mr. Doug Johnson, Mr. Ken Tupa, Mr. Rolland Larson and Ms. Bev Nielson for the legal issues update and funding improvement discussion.

LEGAL ISSUES:

Mr. Aaron Webb, ND State Attorney General's office, gave an update on the legality of possible benefit structure changes. Mr. Webb provided additional information relating to applicable ND lawsuits in 1948, 1961, and 1967 relating to the question of whether the State of North Dakota would have the authority to change the benefit structures contained within the current law to the disadvantage of any TFFR members. He explained that in making their determination, Courts look at constitutional provisions, retirement statutes and rules, existing case law, policy grounds, modern trends, or combinations of the above.

Mr. Webb reiterated that the Board has choices to make. The Board could choose to not propose a change to the existing benefit structure (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 (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.

Mr. Webb indicated that based on his research, he believed the Supreme Court would either adopt a qualification approach providing Constitutional protection of public employee rights does not vest until a point where the member meets specific triggering requirements. Or, the Supreme Court might adopt a modified contracts approach providing that public employee pension benefits are considered earned compensation contracted for at the time of employment, the terms of which are only subject to modification under limited circumstances using various tests. The Court would adopt a formal test for determining whether specific State changes would violate employee's constitutionally protected rights. For example, under the California rule, the modifications are only acceptable if the change bears material relation to operation of the pension system and any alteration resulting in a disadvantage to the employee must be accompanied by a corresponding new advantage.

Discussion followed.

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

TFFR FUNDING IMPROVEMENT STUDY:

Mrs. Fay Kopp, Deputy Executive Director, reviewed exhibits prepared by TFFR's actuary, Gabriel, Roeder, Smith and Company (GRS), which show the

estimated dollar cost of each percent of increase in contributions. Mrs. Kopp also reviewed six scenarios projecting TFFR funded ratios based on phasing increased contributions in over a number of years.

The Board and member and employer interest group representatives discussed how funding improvement costs should be shared and implications on the State, taxpayers, school districts, new members, current members, and retired members.

Treasurer Schmidt reported she and Dr. Sanstead contacted the Attorney General's office for information on the State Common Schools Trust Fund. Due to staff changes, the information is still forthcoming. They will report back at a future meeting.

Once the Board receives the 2009 actuarial report, they will decide what types of proposals should be developed to improve TFFR's funding level.

STATE INVESTMENT BOARD UPDATE:

Mr. Cochrane reviewed the agenda items for the next SIB meeting to be held September 25, 2009.

CONSENT AGENDA:

TREASURER SCHMIDT MOVED AND MR. TOSO SECONDED TO APPROVE THE CONSENT AGENDA WHICH INCLUDED TWO DISABILITY APPLICATIONS.

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

NAYS: NONE

MOTION CARRIED.

OTHER BUSINESS:

Mrs. Kopp reviewed her response to the 2009 draft report put out by the National Council on Teacher Quality (NCTQ).

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

Mrs. Kopp gave a TFFR update at the ND Retired Teachers Association (NDRTA) convention on August 26, 2009. She will also be presenting at the North Dakota Council of Educational Leaders (NDCEL) convention on October 22, 2009 and the North Dakota School Board Association (NDSBA) convention on October 31, 2009. Mrs. Schumacher will be presenting to the ND Education Association (NDEA) - Retired members on October 22. Mrs. Kopp

will also be meeting with NDEA board and staff in January and February 2010.

The next board meeting will be held on October 22, 2009, at 1:00 p.m., at the State Capitol, Peace Garden Room, Bismarck, ND.

ADJOURNMENT:

With no further business to come before the Board, President Gessner adjourned the meeting at 4:50 p.m.

Respectfully Submitted:



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



Darlene Roppel
Reporting Secretary