

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1069

2005 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1069

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1069

House Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 2/3/05

Tape Number	Side A	Side B	Meter #
1	x		0-18.9

Committee Clerk Signature

*Oliver Zinn*

Minutes: HB 1069 Relating to prior service credit under the public employees retirement system.

13 members present, 1 absent.

We will open the hearing on HB 1069.

**Sparb Collins-Executive Director of the North Dakota Public Employees System-PERS-For Testimony Attached.**

**Rep. Klemin:** The employer can elect to pay the contribution, allow the employer to make an election.

**Sparb:** Employer can elect to pick up the employee. State has elected to pay for their employees.

**Rep. Froseth:** Section 6-law enforcement, a new retirement was created for law enforcement?

**Sparb:** Working less then 32 hours a week, can't participate, but they can in Pers.

**Chairman Haas:** What is the process you use to come up with this?

**Sparb:** We start the process for the next legislature session right after this session.

**Lieutenant Colonel David Thiele-Staff Judge Advocate-For-Attached Testimony**

**Rep. Froseth:** The 4% will be based on the salary when they went into the service?

**LTC:** We want to make them feel like they have never left.

**Rep. Klemin:** This option maybe in violation. Paying a contribution for other employees and not opting to pay for the soldier coming back. You don't want to do something that is in violation of Federal Law. In order to correct this problem this problem, we need to amend the bill, to include all soldiers.

**LT. Col.-** That is correct.

**Rep. Sitte:** Fiscal note that it is going to cost the ones that have already come back, pay this biennium or next biennium?

**Rep. Froseth:** Was this reviewed?

**Sparb:** Yes, this has been reviewed.

**John Jacobson-Chairman of the Legislative Committee of the North Dakota Veterans  
Coordinating Council-For**

**Thank you very much. Any more questions on HB 1069.**

**The hearing will be closed on HB 1069.**

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1069

House Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 2/10/05

Tape Number

7

Side A

x

Side B

Meter #

28.6-40.8

Committee Clerk Signature



Minutes: Temporary employee participation in defined contribution retirement plan under the public employees retirement system and service credit for qualified military and highway patrol.

Discussion and voting.

14 members present, 0 absent.

**Chairman Haas:** The people who are serving the army national guard or the air national guard and be calling up to activity duty and then coming back to there employer and there benefit package changed while they were gone. The purpose of this amendment is to say we want to make sure that we guarantee the veterans the same terms and conditions of employment when they return from activity duty as they had when they left. These amendments were done by John Bjornson in the Legislative Council. Is there a motion on the amendment?

**Rep. Conrad:** I move the amendment.

**Chairman Haas:** Moved by Rep. Conrad, seconded by Rep. Grande. Is there any additional discussion on the amendment, if not we will take a voice vote on the amendment. All in

Page 2

House Government and Veterans Affairs Committee

Bill/Resolution Number HB 1069

Hearing Date 2/10/05

**favor of the amendment signify by saying I, oppose say no. Motion carried. What are the wishes of the committee.**

**Rep. Grande: I move a DO PASS as AMENDED.**

**Chairman Haas: Rep. Grande moves a DO PASS as AMENDED, referred to**

**Appropriations and seconded by Rep. Horter. Is there any discussion, I will ask the clerk to take the roll.**

**VOTE: YES 13 NO 0 ABSENT 1 DO PASS AS AMENDED**

**CHAIRMAN HAAS WILL CARRY THE BILL.**

**FISCAL NOTE**  
**Requested by Legislative Council**  
03/09/2005

Amendment to:       Engrossed  
                          HB 1069

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$59,508	\$96,471	\$0	\$0
Appropriations	\$0	\$0	\$59,508	\$96,471	\$0	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Section 19 will cause a fiscal impact to State of North Dakota agencies of approximately \$155,979, of which \$59,508 is general funds and \$96,471 is from other funds. The funds will cover the costs of state participating agencies paying the retirement contribution for eligible military service credit for veterans. Payment will be made for returning military members who were called to active duty prior to and after passage of this bill. The bill will have a limited fiscal impact on political subdivisions. The exact cost cannot be determined based upon the information available at this time, however, will be limited to returning veterans within those political subdivisions.

No additional fiscal impact is anticipated for future biennia, since agencies will not be paying salary when the member is away and can use some of those funds for the purchase cost if it occurs in the same biennium.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:                   Lori Laschkewitsch  
Phone Number:       328-2685

Agency:              OMB  
Date Prepared:       03/10/2005

**FISCAL NOTE**  
**Requested by Legislative Council**  
02/14/2005

Amendment to: HB 1069

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$59,508	\$96,471	\$0	\$0
Appropriations	\$0	\$0	\$59,508	\$96,471	\$0	\$0

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Section 19 will cause a fiscal impact to State of North Dakota agencies of approximately \$155,979, of which \$59,508 is general funds and \$96,471 is from other funds. The funds will cover the costs of state participating agencies paying the retirement contribution for eligible military service credit for veterans. Payment will be made for returning military members who were called to active duty prior to and after passage of this bill. The bill will have a limited fiscal impact on political subdivisions. The exact cost cannot be determined based upon the information available at this time, however, will be limited to returning veterans within those political subdivisions.

No additional fiscal impact is anticipated for future biennia, since agencies will not be paying salary when the member is away and can use some of those funds for the purchase cost if it occurs in the same biennium.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

**Name:** Lori Laschkewitsch  
**Phone Number:** 328-2685

**Agency:** OMB  
**Date Prepared:** 02/15/2005



**FISCAL NOTE**  
**Requested by Legislative Council**  
12/22/2004

Bill/Resolution No.: HB 1069

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds

Revenues

Expenditures

Appropriations

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Generally no fiscal impact except Sections 1,8 and 12 allow employers in the Highway Patrol Retirement Plan, the Hybrid Plan and the Defined Contribution Plan to elect to pick up employee contributions for eligible military service credit for veterans returning after passage of the bill, and if no election is made the default method requires employers to pick up employee contributions for this service credit in the same manner as for regular employee contributions; also allows employers to pay for eligible military service credit prior to the date of passage of the bill. For the State of North Dakota this would mean that participating agencies will be paying the employer contribution for returning military members. This provision will result in some new payments, the amount however will be dependent upon how many members are called to active duty and for how long. This may not be an incremental cost since the agency will not be paying salary when the member is away and can use some of those funds for the purchase cost if it occurs in the same biennium.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:

Sparb Collins

Agency:

Public Employees Retirement System



Phone Number:

328-3901

Date Prepared: 12/30/2004

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**House Amendments to HB 1069 - Government and Veterans Affairs Committee  
02/11/2005**

Page 1, line 1, after "new" insert "section to chapter 39-03.1, a new section to chapter 54-52, a new" and after "52-52.6-02" insert ", and a new section to chapter 54-52.6"

Page 1, line 2, after "to" insert "military service retirement credit and"

Page 1, line 4, remove "subsection 3 of"

Page 1, line 5, after the fourth comma insert "subsection 3 of section 54-52-05, section 54-52-06,"

Page 1, line 6, replace "subsection 5 of section" with "sections" and replace ", section" with "and"

Page 1, line 7, replace "sections 54-52.6-09.3 and" with "section"

Page 1, line 12, remove "and", replace "section" with "sections", and after "54-52-19.2" insert "and 54-52.6-09.3"

Page 1, line 14, after "system" insert "and retirement contributions for military service; and to provide an appropriation"

Page 1, replace lines 16 through 24 with:

**"SECTION 1. AMENDMENT.** Section 39-03.1-10.1 of the North Dakota Century Code is amended and reenacted as follows:

**39-03.1-10.1. Refund and repurchase of contributions.** Except as provided in subsection 3 section 2 of this Act, a contributor whose employment has been terminated for at least thirty days is entitled to a refund of or to repurchase contributions as follows:

1. a. If the contributor has less than ten years of service at termination of employment, the refund is payable either on application of the contributor or, if within thirty days after termination the contributor has not provided a written statement to the board waiving the refund and requesting the contributor's account remain in the fund, automatically.
- b. If the contributor has at least ten years of service at the date of termination, the contributor may apply for a refund of accumulated deductions instead of retirement benefits. By receiving the refund of accumulated deductions under this subdivision, the contributor forfeits all months of service to the date of refund and cannot use those months for any future benefit calculations.
2. A contributor who was paid a refund under subdivision a of subsection 1 may, upon reemployment, elect to repurchase the forfeited past service for the retirement program and the retiree health benefits program in accordance with the rules adopted by the board.
3. A member may elect to purchase qualified military service credit pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 [Pub. L. 103 353; 108 Stat. 3150; 38 U.S.C. 4301 4307] at any time prior to retirement by submitting a valid application and paying the member

portion pursuant to rules adopted by the board. It is the responsibility of the applicant to supply any documentation required by the board.

**SECTION 2.** A new section to chapter 39-03.1 of the North Dakota Century Code is created and enacted as follows:

**Military service under the Uniformed Services Employment and Reemployment Rights Act - Member retirement credit.** A member reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333], is entitled to receive retirement credit for the period of qualified military service. The required contribution for the credit, including payment for retiree health benefits, must be made in the same manner and by the same party as would have been made had the employee been continuously employed. If the salary the member would have received during the period of service is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased must be used. Employees must be allowed up to three times the period of military service or five years, whichever is less, to make any required payments. This provision applies to all qualifying periods of military service since October 1, 1994. Any payments made by the member to receive qualifying credit inconsistent with this provision must be refunded. Employees shall make application to the employer for credit and provide a DD Form 214 to verify service."

**House Amendments to HB 1069 - Government and Veterans Affairs Committee**  
**02/11/2005**

Page 2, remove lines 1 through 31

Page 5, after line 17, insert:

**"SECTION 8. AMENDMENT.** Subsection 3 of section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

3. Each employer, at its option, may pay all or a portion of the employee contributions required by subsection 2 and sections 54-52-06.1, 54-52-06.2, and 54-52-06.3 or the employee contributions required to purchase service credit on a pretax basis pursuant to subsection 6 5 of section 54-52-17.4. Employees may not receive the contributed amounts directly once the employer has elected to pay the employee contributions. The amount paid must be paid by the employer in lieu of contributions by the employee. If the state determines not to pay the contributions, the amount that would have been paid must continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the employer, they may not be included as gross income of the employee in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee or from the levy authorized by subsection 5 of section 57-15-28.1. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a contribution of a reduction in gross salary and offset against future salary increases. If employee contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions were assumed by the employer. An employer exercising its option under this subsection shall report its choice to the board in writing.

**SECTION 9. AMENDMENT.** Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-06. Employer's contribution to retirement plan.** Each governmental unit shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. For those members who elect to exercise their rights under subsection 5 of section 54 52 17.4 section 12 of this Act, the employing governmental unit, or in the case of a member not presently under covered employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit shall pay the contribution monthly, or in the case of an election made pursuant to subsection 5 of section 54 52 17.4 section 12 of this Act a lump sum, into the retirement fund from its funds appropriated for payroll and salary or any other funds available for these purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an election made pursuant to subsection 5 of section 54 52 17.4 section 12 of this Act a lump sum, is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date they became due, penalty and interest to be paid on delinquent contributions may be waived. An employer is required to submit contributions for any past eligible employee who was

employed after July 1, 1977, for which contributions were not made if the employee would have been eligible to become vested had the employee participated and if the employee elects to join the public employees retirement system. Employer contributions may not be assessed for eligible service that an employee has waived pursuant to subsection 1 of section 54-52-05. The board shall report to each session of the legislative assembly the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness."

Page 6, replace lines 13 through 31 with:

**"SECTION 11. AMENDMENT.** Section 54-52-17.4 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-17.4. Purchase of additional credit.**

1. A member may elect to purchase credit for years of service and prior service for which the member is not presently receiving credit. A member is entitled to purchase additional credit under this section for the following service or prior service, except this service is not eligible for credit if the years claimed also qualify for retirement benefits from another retirement system:
  - a. Active prior employment in the armed forces of the United States, except as provided in subsection 5 section 12 of this Act, for up to four years of credit.
  - b. Employment as a permanent employee by a public employer either within or outside the state of North Dakota.
  - c. Employment as a permanent employee by a political subdivision participating in the public employees retirement system which did not pay the cost of past service benefits under section 54-52-02.1.
  - d. Service the participating member did not elect to repurchase upon reemployment under section 54-52-02.6.
  - e. Service of an eligible employee, who exercised the privilege to withdraw from the predecessor plan to the public employees retirement system under subsection 10 of section 54-52-17 as created by section 13 of chapter 499 of the 1977 Session Laws.
  - f. Employment as a permanent employee by the federal government.
2. A participating member may elect to purchase credit for the following absences for which the participating member is not receiving service credit:
  - a. Employer-approved leave of absence; or
  - b. Months away from work while participating as a seasonal employee.
3. Supreme and district court judges under the public employees retirement system may elect to purchase credit for the following years of service:
  - a. Except as provided in subsection 5 section 12 of this Act, for up to four years of credit for active employment in the armed forces of the United States.
  - b. As a county judge in a county or counties that did not participate in the public employees retirement system under this chapter.
  - c. Participation in the public employees retirement system as a county judge may be converted to credit in the judges' retirement system.
4. The member may purchase credit under this section, or the member's employer may purchase for the member, by paying to the board an amount

equal to the actuarial cost to the fund of providing the credit. If the member purchases credit pursuant to subdivision d of subsection 1, the member must pay to the board an amount equal to the greater of the actuarial cost to the fund of providing the credit, or the amount the member received upon taking a refund of the member's account balance, plus interest at the actuarial rate of return from the time the member was issued the refund. If the member is not repurchasing all of the credit originally refunded, the member must pay a pro rata amount of the refunded amount determined by dividing the refunded amount by the number of months of credit refunded, multiplying that amount times the number of months of credit the member seeks to repurchase, and adding interest at the actuarial rate of return. The member or the member's employer shall also pay to the retiree health benefits fund established under section 54-52.1-03.2 an amount equal to the actuarial cost to that fund for the additional credit. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. The board shall adopt rules governing the purchase of additional credit under this section.

- 5- A participating member, or a member not presently under covered employment, may request credit for qualified military service pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 [Pub. L. 103 353; 108 Stat. 3150; 38 U.S.C. 4301 4307]. The member shall submit a qualified application with proof of eligible military service to the board in order to receive credit for military service. For credit on and after July 1, 1966, the member must pay four percent times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased. If the member makes the above payment, the governmental unit, or, in the case of a member not under covered employment, the last employing governmental unit, shall pay four and twelve hundredths percent times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased. In addition, the governmental unit, or in the case of a member not under covered employment the last employing governmental unit, shall pay to the retiree health benefits fund established under section 54 52.1 03.2 the percentage required by section 54 52.1 03.2 times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the member's months of credit being purchased. For credit before July 1, 1966, no contribution is required.
- 6- 5. Pursuant to rules adopted by the board, the board may allow a member to purchase service credit with either pretax or aftertax moneys, at the board's discretion. If the member elects to purchase service credit using pretax moneys, the requirements and restrictions in subsection 3 of section 54-52-05 apply to the purchase arrangement.
- 7- 6. In addition to service credit identified in this section, a vested member may purchase up to five years of service credit unrelated to any other eligible service.

**SECTION 12.** A new section to chapter 54-52 of the North Dakota Century Code is created and enacted as follows:



**Military service under the Uniformed Services Employment and Reemployment Rights Act - Member retirement credit.** A member reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333], is entitled to receive retirement credit for the period of qualified military service. The required contribution for the credit, including payment for retiree health benefits, must be made in the same manner and by the same party as would have been made had the employee been continuously employed. If the salary the member would have received during the period of service is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased must be used. Employees must be allowed up to three times the period of military service or five years, whichever is less, to make any required payments. This provision applies to all qualifying periods of military service since October 1, 1994. Any payments made by the member to receive qualifying credit inconsistent with this provision must be refunded. Employees shall make application to the employer for credit and provide a DD Form 214 to verify service."

**House Amendments to HB 1069 - Government and Veterans Affairs Committee  
02/11/2005**

Page 7, remove lines 1 through 19

**House Amendments to HB 1069 - Government and Veterans Affairs Committee  
02/11/2005**

Page 8, replace lines 19 through 31 with:

**"SECTION 16.** A new section to chapter 54-52.6 of the North Dakota Century Code is created and enacted as follows:

**Military service under the Uniformed Services Employment and Reemployment Rights Act - Member retirement credit.** A member reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333], is entitled to receive retirement credit for the period of qualified military service. The required contribution for the credit, including payment for retiree health benefits, must be made in the same manner and by the same party as would have been made had the employee been continuously employed. If the salary the member would have received during the period of service is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased must be used. Employees must be allowed up to three times the period of military service or five years, whichever is less, to make any required payments. This provision applies to all qualifying periods of military service since October 1, 1994. Any payments made by the member to receive qualifying credit inconsistent with this provision must be refunded. Employees shall make application to the employer for credit and provide a DD Form 214 to verify service."

**House Amendments to HB 1069 - Government and Veterans Affairs Committee  
02/11/2005**

Page 9, remove lines 1 through 22

**House Amendments to HB 1069 - Government and Veterans Affairs Committee  
02/11/2005**

Page 10, line 25, replace "Section" with "Sections", after "54-52-19.2" insert "and 54-52.6-09.3", and replace "is" with "are"

Page 10, after line 26, insert:

**"SECTION 19. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from other funds derived from federal funds and other income, to the following departments for the purpose of defraying the cost of paying military service retirement credit for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

AGENCY	GENERAL FUND	OTHER FUNDS
Office of management and budget	\$0	\$3,343
Judicial branch	3,144	0
Retirement and investment office	0	1,803
State department of health	5,920	10,738
Department of human services	7,614	0
Job service North Dakota	0	3,780
Highway patrol	3,824	0
Department of corrections and rehabilitation	29,778	3,053
Adjutant general	7,027	18,249
Game and fish department	0	1,932
Parks and recreation department	2,201	207
State water commission	0	2,512
Department of transportation	<u>0</u>	<u>50,854</u>
Total	\$59,508	\$96,471"

Renumber accordingly

Date: 2/10/07  
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1869

House House Government and Veterans Affairs

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 50052-0401

Action Taken Do Pass As Amended

Motion Made By Rep Grande Seconded By Rep. Horte

Representatives	Yes	No	Representatives	Yes	No
Chairman C.B. Haas			Rep. Bill Amerman		
Bette B. Grande - Vice Chairman			Rep. Kari Conrad		
Rep. Randy Boehning			Rep. Louise Potter		
Rep. Glen Froseth			Rep. Sally M. Sandvig		
Rep. Pat Galvin					
Rep. Stacey Horte					
Rep. Jim Kasper					
Rep. Lawrence R. Klemin					
Rep. Lisa Meier					
Rep. Margaret Sitte					

Total (Yes) 13 No 0

Absent 1

Floor Assignment Chairman Haas

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

Rep Conrad moved the amendments  
Rep. Grande - second the motion  
Voice vote carried

**REPORT OF STANDING COMMITTEE**

**HB 1069: Government and Veterans Affairs Committee (Rep. Haas, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1069 was placed on the Sixth order on the calendar.

Page 1, line 1, after "new" insert "section to chapter 39-03.1, a new section to chapter 54-52, a new" and after "52-52.6-02" insert ", and a new section to chapter 54-52.6"

Page 1, line 2, after "to" insert "military service retirement credit and"

Page 1, line 4, remove "subsection 3 of"

Page 1, line 5, after the fourth comma insert "subsection 3 of section 54-52-05, section 54-52-06,"

Page 1, line 6, replace "subsection 5 of section" with "sections" and replace ", section" with "and"

Page 1, line 7, replace "sections 54-52.6-09.3 and" with "section"

Page 1, line 12, remove "and", replace "section" with "sections", and after "54-52-19.2" insert "and 54-52.6-09.3"

Page 1, line 14, after "system" insert "and retirement contributions for military service; and to provide an appropriation"

Page 1, replace lines 16 through 24 with:

**"SECTION 1. AMENDMENT.** Section 39-03.1-10.1 of the North Dakota Century Code is amended and reenacted as follows:

**39-03.1-10.1. Refund and repurchase of contributions.** Except as provided in subsection 3 section 2 of this Act, a contributor whose employment has been terminated for at least thirty days is entitled to a refund of or to repurchase contributions as follows:

1. a. If the contributor has less than ten years of service at termination of employment, the refund is payable either on application of the contributor or, if within thirty days after termination the contributor has not provided a written statement to the board waiving the refund and requesting the contributor's account remain in the fund, automatically.
- b. If the contributor has at least ten years of service at the date of termination, the contributor may apply for a refund of accumulated deductions instead of retirement benefits. By receiving the refund of accumulated deductions under this subdivision, the contributor forfeits all months of service to the date of refund and cannot use those months for any future benefit calculations.
2. A contributor who was paid a refund under subdivision a of subsection 1 may, upon reemployment, elect to repurchase the forfeited past service for the retirement program and the retiree health benefits program in accordance with the rules adopted by the board.
3. A member may elect to purchase qualified military service credit pursuant to the Uniformed Services Employment and Reemployment Rights Act of

1994 [Pub. L. 103 353; 108 Stat. 3150; 38 U.S.C. 4301 4307] at any time prior to retirement by submitting a valid application and paying the member portion pursuant to rules adopted by the board. It is the responsibility of the applicant to supply any documentation required by the board.

**SECTION 2.** A new section to chapter 39-03.1 of the North Dakota Century Code is created and enacted as follows:

Military service under the Uniformed Services Employment and Reemployment Rights Act - Member retirement credit. A member reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333], is entitled to receive retirement credit for the period of qualified military service. The required contribution for the credit, including payment for retiree health benefits, must be made in the same manner and by the same party as would have been made had the employee been continuously employed. If the salary the member would have received during the period of service is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased must be used. Employees must be allowed up to three times the period of military service or five years, whichever is less, to make any required payments. This provision applies to all qualifying periods of military service since October 1, 1994. Any payments made by the member to receive qualifying credit inconsistent with this provision must be refunded. Employees shall make application to the employer for credit and provide a DD Form 214 to verify service."

Page 2, remove lines 1 through 31

Page 5, after line 17, insert:

**"SECTION 8. AMENDMENT.** Subsection 3 of section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

3. Each employer, at its option, may pay all or a portion of the employee contributions required by subsection 2 and sections 54-52-06.1, 54-52-06.2, and 54-52-06.3 or the employee contributions required to purchase service credit on a pretax basis pursuant to subsection 6 5 of section 54-52-17.4. Employees may not receive the contributed amounts directly once the employer has elected to pay the employee contributions. The amount paid must be paid by the employer in lieu of contributions by the employee. If the state determines not to pay the contributions, the amount that would have been paid must continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the employer, they may not be included as gross income of the employee in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee or from the levy authorized by subsection 5 of section 57-15-28.1. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a contribution of a reduction in gross salary and offset against future salary increases. If employee contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made prior to the date on which

employee contributions were assumed by the employer. An employer exercising its option under this subsection shall report its choice to the board in writing.

**SECTION 9. AMENDMENT.** Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-06. Employer's contribution to retirement plan.** Each governmental unit shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. For those members who elect to exercise their rights under subsection 5 of section 54-52-17.4 section 12 of this Act, the employing governmental unit, or in the case of a member not presently under covered employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit shall pay the contribution monthly, or in the case of an election made pursuant to subsection 5 of section 54-52-17.4 section 12 of this Act a lump sum, into the retirement fund from its funds appropriated for payroll and salary or any other funds available for these purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an election made pursuant to subsection 5 of section ~~54-52-17.4~~ section 12 of this Act a lump sum, is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date they became due, penalty and interest to be paid on delinquent contributions may be waived. An employer is required to submit contributions for any past eligible employee who was employed after July 1, 1977, for which contributions were not made if the employee would have been eligible to become vested had the employee participated and if the employee elects to join the public employees retirement system. Employer contributions may not be assessed for eligible service that an employee has waived pursuant to subsection 1 of section 54-52-05. The board shall report to each session of the legislative assembly the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness."

Page 6, replace lines 13 through 31 with:

**"SECTION 11. AMENDMENT.** Section 54-52-17.4 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-17.4. Purchase of additional credit.**

1. A member may elect to purchase credit for years of service and prior service for which the member is not presently receiving credit. A member is entitled to purchase additional credit under this section for the following service or prior service, except this service is not eligible for credit if the years claimed also qualify for retirement benefits from another retirement system:
  - a. Active prior employment in the armed forces of the United States, except as provided in subsection 5 section 12 of this Act, for up to four years of credit.
  - b. Employment as a permanent employee by a public employer either within or outside the state of North Dakota.

- c. Employment as a permanent employee by a political subdivision participating in the public employees retirement system which did not pay the cost of past service benefits under section 54-52-02.1.
  - d. Service the participating member did not elect to repurchase upon reemployment under section 54-52-02.6.
  - e. Service of an eligible employee, who exercised the privilege to withdraw from the predecessor plan to the public employees retirement system under subsection 10 of section 54-52-17 as created by section 13 of chapter 499 of the 1977 Session Laws.
  - f. Employment as a permanent employee by the federal government.
2. A participating member may elect to purchase credit for the following absences for which the participating member is not receiving service credit:
    - a. Employer-approved leave of absence; or
    - b. Months away from work while participating as a seasonal employee.
  3. Supreme and district court judges under the public employees retirement system may elect to purchase credit for the following years of service:
    - a. Except as provided in subsection 5 section 12 of this Act, for up to four years of credit for active employment in the armed forces of the United States.
    - b. As a county judge in a county or counties that did not participate in the public employees retirement system under this chapter.
    - c. Participation in the public employees retirement system as a county judge may be converted to credit in the judges' retirement system.
  4. The member may purchase credit under this section, or the member's employer may purchase for the member, by paying to the board an amount equal to the actuarial cost to the fund of providing the credit. If the member purchases credit pursuant to subdivision d of subsection 1, the member must pay to the board an amount equal to the greater of the actuarial cost to the fund of providing the credit, or the amount the member received upon taking a refund of the member's account balance, plus interest at the actuarial rate of return from the time the member was issued the refund. If the member is not repurchasing all of the credit originally refunded, the member must pay a pro rata amount of the refunded amount determined by dividing the refunded amount by the number of months of credit refunded, multiplying that amount times the number of months of credit the member seeks to repurchase, and adding interest at the actuarial rate of return. The member or the member's employer shall also pay to the retiree health benefits fund established under section 54-52.1-03.2 an amount equal to the actuarial cost to that fund for the additional credit. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. The board shall adopt rules governing the purchase of additional credit under this section.
  5. A participating member, or a member not presently under covered employment, may request credit for qualified military service pursuant to

the Uniformed Services Employment and Reemployment Rights Act of 1994 [Pub. L. 103 353; 108 Stat. 3150; 38 U.S.C. 4301-4307]. The member shall submit a qualified application with proof of eligible military service to the board in order to receive credit for military service. For credit on and after July 1, 1966, the member must pay four percent times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased. If the member makes the above payment, the governmental unit, or, in the case of a member not under covered employment, the last employing governmental unit, shall pay four and twelve hundredths percent times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased. In addition, the governmental unit, or in the case of a member not under covered employment the last employing governmental unit, shall pay to the retiree health benefits fund established under section 54-52.1-03.2 the percentage required by section 54-52.1-03.2 times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the member's months of credit being purchased. For credit before July 1, 1966, no contribution is required.

- ~~6.~~ 5. Pursuant to rules adopted by the board, the board may allow a member to purchase service credit with either pretax or aftertax moneys, at the board's discretion. If the member elects to purchase service credit using pretax moneys, the requirements and restrictions in subsection 3 of section 54-52-05 apply to the purchase arrangement.
- ~~7.~~ 6. In addition to service credit identified in this section, a vested member may purchase up to five years of service credit unrelated to any other eligible service.

**SECTION 12.** A new section to chapter 54-52 of the North Dakota Century Code is created and enacted as follows:

Military service under the Uniformed Services Employment and Reemployment Rights Act - Member retirement credit. A member reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333], is entitled to receive retirement credit for the period of qualified military service. The required contribution for the credit, including payment for retiree health benefits, must be made in the same manner and by the same party as would have been made had the employee been continuously employed. If the salary the member would have received during the period of service is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased must be used. Employees must be allowed up to three times the period of military service or five years, whichever is less, to make any required payments. This provision applies to all qualifying periods of military service



since October 1, 1994. Any payments made by the member to receive qualifying credit inconsistent with this provision must be refunded. Employees shall make application to the employer for credit and provide a DD Form 214 to verify service."

Page 7, remove lines 1 through 19

Page 8, replace lines 19 through 31 with:

**"SECTION 16.** A new section to chapter 54-52.6 of the North Dakota Century Code is created and enacted as follows:

Military service under the Uniformed Services Employment and Reemployment Rights Act - Member retirement credit. A member reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333], is entitled to receive retirement credit for the period of qualified military service. The required contribution for the credit, including payment for retiree health benefits, must be made in the same manner and by the same party as would have been made had the employee been continuously employed. If the salary the member would have received during the period of service is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased must be used. Employees must be allowed up to three times the period of military service or five years, whichever is less, to make any required payments. This provision applies to all qualifying periods of military service since October 1, 1994. Any payments made by the member to receive qualifying credit inconsistent with this provision must be refunded. Employees shall make application to the employer for credit and provide a DD Form 214 to verify service."

Page 9, remove lines 1 through 22

Page 10, line 25, replace "Section" with "Sections", after "54-52-19.2" insert "and 54-52.6-09.3", and replace "is" with "are"

Page 10, after line 26, insert:

**"SECTION 19. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from other funds derived from federal funds and other income, to the following departments for the purpose of defraying the cost of paying military service retirement credit for the biennium beginning July 1, 2005, and ending June 30, 2007, as follows:

AGENCY	GENERAL FUND	OTHER FUNDS
Office of management and budget	\$0	\$3,343
Judicial branch	3,144	0
Retirement and investment office	0	1,803
State department of health	5,920	10,738
Department of human services	7,614	0
Job service North Dakota	0	3,780
Highway patrol	3,824	0
Department of corrections and rehabilitation	29,778	3,053
Adjutant general	7,027	18,249
Game and fish department	0	1,932

**REPORT OF STANDING COMMITTEE (410)**  
**February 11, 2005 11:07 a.m.**

**Module No: HR-28-2529**  
**Carrier: Haas**  
**Insert LC: 50052.0401 Title: .0500**

Parks and recreation department	2,201	207
State water commission	0	2,512
Department of transportation	<u>0</u>	<u>50,854</u>
Total	\$59,508	\$96,471"

Renumber accordingly

2005 HOUSE APPROPRIATIONS

HB 1069

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1069  
Military Service Retirement Credit

House Appropriations Full Committee

☐ Conference Committee

Hearing Date February 15, 2005

Tape Number

3

Side A

X

Side B

Meter #

#31.0 - #46.5

Committee Clerk Signature

*Chris Alexander*

Minutes:

**Rep. Ken Svedjan, Chairman** opened the discussion on HB1069.

**Rep Haas** explained that PERS has held the policy that when service personnel were called up to active duty, they were not receiving service credit. Normally the service people would pay a 4% contribution and the employer would pay a 5.12% contribution and then they could receive their service credit when the personnel returned to their job. PERS wanted it put in code that the employer had the "option" of paying the employees share, because since 1983 practically all of the service people had their share of the contribution paid by their employers. Also, in some instances, prior to going to active duty the service personnel were getting their half of the contributions paid by their employers, since returning the employer says that if they want their service credit they have to pay their part of the contribution. The committee does not believe this is right. The fiscal note deals with retroactive payments for service people treated this way.

Page 11 section 12 says that when the veteran comes back the employer has to continue the

agreement set in place before the veteran left. If the employer was paying for the contributions before the veteran left, then the employer would still be obligated to pay for those contributions when the veteran returns.

**Rep. Ralph Metcalf** asked if this covered things that happened years ago.

**Rep Haas** answered that the amendment is what added the fiscal note. This is to take care of the past sins of the employers who did not pay the employee's share for the veteran when they returned to work.

**Rep. Ken Svedjan, Chairman** clarified that the employer in this case is the state or a subdivision

**Rep. Ralph Metcalf** asked why this would be retroactive if that was the procedure of the state at the time.

**Rep Haas** explained that it was dependent on the agreement prior to the veteran being called up. The agreement will be the same when they return. The question is the service credit question that now the employer has the option to pay the employees share for this or not. This bill says the employer does not have this option. If the employer was paying the contributions before the veteran left and the veteran wants that service credit, then the employer would have to pay it still upon the veteran's return. (meter Tape #3, side A, #37.9)

**Rep. Tom Brusegaard** asked if the employers were following the proper policy and procedure at the time.

**Rep Haas** explained that PERS says they were, but that has been challenged because this in essence penalizes the veteran for their active service in the military.

**Rep. Ken Svedjan, Chairman** asked if this is specific to individuals who were called up and asked if this was like TFFR for teachers who have the right to pay their own, only this way we would pay it for them

**Rep Haas** answered that this was correct and that this related specifically for the PERS fund and for veterans.

**Rep. Ralph Metcalf** commented that we need to take this slow, since this would the apply to all those who volunteer for training We need to be careful, because if you do this for one group you will have to do this for all groups.

**Rep Haas** answered that this was not discussed. This is for a person employed with an agency that pays into the PERS fund and gets called up for active duty and wants to receive service credit for the time that they were gone.

**Rep. Al Carlson** moved a Do Pass on HB1069

**Rep. Mike Timm, Vice Chairman** seconded

**Rep. Al Carlson** supported the bill by saying that this issue was considered in the employee benefits committee and came out of that committee with a positive recommendation.

**Rep. Mike Timm, Vice Chairman** asked for a definition of service credit

**Rep Haas** answered that the employer would have to pay the percentage of the veteran's salary as a contribution to PERS for their retirement benefits during the time they were in active duty.

**Rep. Jeff Delzer** asked if the money was already in the Governor's budget

**Rep. Ken Svedjan, Chairman** answered no.

**Rep. Jeff Delzer** asked if this was only specific to those service people who were called up, rather than it pertaining to folks who quit their employ to join up.

Page 4

House Appropriations Committee

Bill/Resolution Number HB1069

Hearing Date February 15, 2005

**Rep Haas** answered that it was for all service people called up to active duty.

**Rep. Ken Svedjan, Chairman** called for a roll call vote on the Do Pass motion on HB1069.

Motion carried with a vote of 22 yeas, 0 neas, and 1 absence. Rep Haas will carry the bill.

**Rep. Ken Svedjan, Chairman** closed the discussion on HB1069.

Date: **February 15, 2005**  
Roll Call Vote #: **1**

**2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. HB1069**

House Appropriations - Full Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken **DO PASS**

Motion Made By **Rep Carlson**

Seconded By **Rep Timm**

<b>Representatives</b>	<b>Yes</b>	<b>No</b>	<b>Representatives</b>	<b>Yes</b>	<b>No</b>
Rep. Ken Svedjan, Chairman	X		Rep. Bob Skarphol	X	
Rep. Mike Timm, Vice Chairman	X		Rep. David Monson	X	
Rep. Bob Martinson	X		Rep. Eliot Glassheim	X	
Rep. Tom Brusegaard	X		Rep. Jeff Delzer	X	
Rep. Earl Rennerfeldt	X		Rep. Chet Pollert	X	
Rep. Francis J. Wald	X		Rep. Larry Bellew	X	
Rep. Ole Aarsvold	X		Rep. Alon C. Wieland	X	
Rep. Pam Gulleason	X		Rep. James Kerzman	AB	
Rep. Ron Carlisle	X		Rep. Ralph Metcalf	X	
Rep. Keith Kempenich	X				
Rep. Blair Thoreson	X				
Rep. Joe Kroeber	X				
Rep. Clark Williams	X				
Rep. Al Carlson	X				

Total Yes **22** No **0**

Absent **1**

Floor Assignment **Rep Haas**

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



REPORT OF STANDING COMMITTEE (410)  
February 16, 2005 6:02 a.m.

Module No: HR-31-3031  
Carrier: Haas  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

HB 1069, as engrossed: Appropriations Committee (Rep. Svedjan, Chairman)  
recommends **DO PASS** (22 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).  
Engrossed HB 1069 was placed on the Eleventh order on the calendar.

2005 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1069

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1069**

**Senate Government and Veterans Affairs**

**Business and Conference Committee**

Hearing Date March 4, 2005

Tape Number

1

Side A

x

Side B

Meter #

80-1989

Committee Clerk Signature



**Chairman Krebsbach** opens hearing on **HB 1069**

**Relating to prior service credit under the public employees retirement system and retirement contributions for military service.**

**(Tape 1, meter #80)**

**Sparb Collins** - PERS - See written testimony.

**(meter # 910)**

**Senator Lee** - Asked what was in HB 1071.

**Collins** - Said that the controversial provisions in HB 1071 were what they called their competitiveness provision. Also their bidding procedures. PERS can self administer. This lets bidders know PERS can do other things to the extent that this would better for over all pricing.

Page 2  
Senate Government and Veterans Affairs  
Bill/Resolution Number **HB 1069**  
Hearing Date March 4, 2005

(meter #1260)

**Lt. Col. Dave Thiele** - See written testimony.

(meter #1580)

**Raymond Rothmann** - Veterans Coordinating Council - Strongly support this bill, request a do  
pass.

Close the hearing on HB 1069

(meter #1690)

**Senator Brown** - motioned to adopt amendments

**Senator Syverson** - seconded

Adopted

**Senator Brown** - moved do pass on amended bill to be re-referred to appropriations

**Senator Syverson** - seconded

**Senator Brown** will carry

(meter #1989)

Date: 3/4/05  
Roll Call Vote #: /

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1069

Senate **Government and Veterans Affairs**

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Move to pass amendments proposed by*

Motion Made By *Senator Brown* Seconded By *Senator Syverson*

Senators	Yes	No	Senators	Yes	No
Karen K. Krebsbach, Chairman	X		Carolyn Nelson	X	
Richard L. Brown, Vice Chairman	X				
Judy Lee	X				
John O. Syverson	X				

Total (Yes) 5 No 0

Absent 0

Floor Assignment

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

Date: 3/4/05  
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1069

Senate **Government and Veterans Affairs**

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *No Pass as amended and referred to appropriations*

Motion Made By *Senator Brown* Seconded By *Senator Syverson*

Senators	Yes	No	Senators	Yes	No
Karen K. Krebsbach, Chairman	X		Carolyn Nelson	X	
Richard L. Brown, Vice Chairman	X				
Judy Lee	X				
John O. Syverson	X				

Total (Yes) 5 No 0

Absent 0

Floor Assignment *Senator Brown*

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

**REPORT OF STANDING COMMITTEE**

**HB 1069, as engrossed:** Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the Appropriations Committee (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1069 was placed on the Sixth order on the calendar.

Page 1, line 2, after "54-52" insert ", a new section to chapter 54-52.1"

Page 1, line 5, after "system" insert "and the acceptance and expenditure of funds by the retirement board for the uniform group insurance program from third parties"

Page 1, line 16, replace "and" with "to provide a continuing appropriation;" and after "appropriation" insert "; and to provide an effective date"

Page 11, after line 25, insert:

**"SECTION 14.** A new section to chapter 54-52.1 of the North Dakota Century Code is created and enacted as follows:

Acceptance and expenditure of third-party payments - Continuing appropriation. The board may receive moneys from third parties, including the federal government, pursuant to one or more federal programs. Any money received from a third party by the board is appropriated to the board on a continuing basis for the board's use in paying benefits, premiums, or administrative expenses under the uniform group insurance program."

Page 14, line 9, replace "Sections" with "Section" and remove "and 54-52.6-09.3"

Page 14, line 10, replace "are" with "is"

Page 14, after line 10, insert:

**"SECTION 20. REPEAL.** Section 54-52.6-09.3 of the North Dakota Century Code is repealed."

Page 15, after line 3, insert:

**"SECTION 22. EFFECTIVE DATE.** Sections 3 through 7, 10, 13 through 16, 18, and 19 become effective on August 1, 2005."

Renumber accordingly

2005 SENATE APPROPRIATIONS

HB 1069



2005 SENATE STANDING COMMITTEE MINUTES


BILL/RESOLUTION NO. HB 1069

Senate Appropriations Committee

☐ Conference Committee

Hearing Date 03/14/05

Tape Number	Side A	Side B	Meter #
1	x		1473-2849

Committee Clerk Signature 

Minutes: **Chairman Holmberg** opened hearing on HB 1069.

**Sparb Collins, Executive Director NDPERS**, appeared in support of HB 1069. Written testimony was provided, see appendix I. Mr. Collins read his testimony verbatim, he spoke especially about the fiscal impact of the bill. Mr. Collins also stated that this is a reflection of a federal law USERE. Under this act, someone who is called up has the right to maintain their benefits with their employer, while they are on duty.

**Sen. Christmann:** Subsection three in you testimony, how far backd does this go?

**Mr. Collins:** It goes back to 1994.

**Lt. Colonel Dave Thick** appeared in support of HB 1069. Lt. Col. Thick stated that USERE would treat you as you have never left, to go on duty. The employer would pay the entire amount, rather than the employee paying the 4 percent as they now do in the private sector. A servicemen or women employed by the state does not have to pay a employee contribution to

Page 2

Senate Appropriations Committee

Bill/Resolution Number HB ~~1035~~ 1069

Hearing Date 03/14/05

retirement. He also stated that 1994 was the effective date of USERE, but really they are looking at servicemen from 2002 and following years.

**Sen. Mathern:** Do any of these people receive retirement and payment from the military when they are on active duty?

**Lt. Col. Thick:** There are on a points system, depending on how many days they are on active duty, for example 1 day equals 1 point. They receive the payment on average at age 60.

**John L. Jacobsen, ND Legislative Committee, ND Veterans Coordinating Council** appeared in support. Written testimony was provided, see appendix III. Due to time constraints Mr. Jacobsen opted not to read his testimony, he simply stated that the ND Veterans Coordinating Council urges a DO PASS.

A DO PASS motion was made by Sen. Grindberg, seconded by Sen. Robinson. A roll call vote was taken 12 yeas, 0 nays, and 3 absent votes were recorded. Sen. Brown will be carrying the bill.

**Chairman Holmberg** closed hearing on HB 1069.

Date 3-14-05  
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 1069

Senate SENATE APPROPRIATIONS

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Pass

Motion Made By

G

Seconded By

Rob

Senators	Yes	No	Senators	Yes	No
CHAIRMAN HOLMBERG	/		SENATOR KRAUTER		
VICE CHAIRMAN BOWMAN	/		SENATOR LINDAAS	/	
VICE CHAIRMAN GRINDBERG	/		SENATOR MATHERN	/	
SENATOR ANDRIST	/		SENATOR ROBINSON	/	
SENATOR CHRISTMANN	/		SEN. TALLACKSON	/	
SENATOR FISCHER	/				
SENATOR KILZER	/				
SENATOR KRINGSTAD	/				
SENATOR SCHOBINGER	/				
SENATOR THANE	/				

Total (Yes)

12

No

0

Absent

3

Floor Assignment

GVA Brown

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

**REPORT OF STANDING COMMITTEE (410)**  
March 14, 2005 10:54 a.m.

**Module No: SR-46-4843**  
**Carrier: Brown**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1069, as engrossed and amended: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO PASS (12 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). Engrossed HB 1069, as amended, was placed on the Fourteenth order on the calendar.**

2005 TESTIMONY

HB 1069

**REPORT OF THE LEGISLATIVE COUNCIL'S  
EMPLOYEE BENEFITS PROGRAMS COMMITTEE  
HOUSE BILL NO. 1069**

**Sponsor:** Retirement Board

**Proposal:** Revises the purchase of service credit provisions applicable to the Highway Patrolmen's retirement system for qualified military service; provides that permanent and total disability for purposes of the Highway Patrolmen's retirement system is based solely on a contributor's inability to perform the contributor's duties arising out of physical or mental impairment; for the Highway Patrolmen's retirement system provides that the joint and survivor 100 percent retirement payment option is the actuarial equivalent joint and survivor 100 percent option, the life with 10-year certain retirement benefit payment option is the actuarial equivalent life with 10-year certain option, adds an actuarially equivalent life with 20-year certain option, and eliminates the life with 5-year certain option; provides an actuarially equivalent partial lump sum distribution option with a 12-month maximum lump sum distribution for the Highway Patrolmen's retirement system; provides that the Retirement Board administer the Highway Patrolmen's retirement system plan in compliance with provisions of the federal Internal Revenue Code in effect through August 1, 2005; provides that information relating to beneficiaries under the Highway Patrolmen's retirement system may be disclosed to other beneficiaries of the same member; provides that information and records under the Highway Patrolmen's retirement system may be disclosed to the general public, but only after the board has been unable to locate the member for a period in excess of two years, and limited to the member's name and the fact that the board has been unable to locate the member; changes the definition of peace officer for purposes of PERS to require persons employed after August 1, 2005, be employed 32 hours or more per week and at least 20 weeks each year of employment; provides that participating members of the law enforcement retirement plan who begin employment after August 1, 2005, are ineligible to participate concurrently in any other retirement plan administered by PERS; requires the executive director to conduct an employee criminal history record investigation for any individual first employed by PERS after July 1, 2005, who has unescorted physical access to the office or any security-sensitive area of the office as designated by the executive director; provides that the life with 10-year certain option is the actuarially equivalent life with 10-year certain option, adds an actuarially equivalent life with 20-year certain option, and eliminates the life with 5-year certain option distribution option; provides an actuarially equivalent joint and survivor level Social

Security option, with 50 or 100 percent options, which is available only to members who retire before attaining the age at which they may begin to receive unreduced Social Security benefits; adds an actuarially equivalent partial lump sum distribution option with a 12-month maximum lump sum distribution; revises the purchase of service credit provisions applicable to PERS for qualified military service; provides that the Retirement Board administer the plan in compliance with the federal Internal Revenue Code in effect through August 1, 2005; revises the definition of eligible employee for purposes of the defined contribution plan to provide that if a participating member loses permanent employee status and becomes a temporary employee, the member may still participate in the defined contribution retirement plan; revises the military service provisions applicable to the defined contribution retirement plan; provides that a surviving spouse beneficiary may elect one or a combination of several of the methods of distribution currently provided for the defined contribution retirement plan but that a beneficiary who is not the surviving spouse may only choose a lump sum distribution of the accumulated balance; and repeals provisions relating to prior service credit under the Public Employees Retirement System

The committee amended the bill at the request of the PERS Board to remove the actuarially equivalent life with 20-year certain option.

The committee amended the bill at the request of the PERS Board to remove the expanded definition of disability under the Highway Patrolmen's retirement system and delete the employee background check provisions.

**Actuarial Analysis:** The consulting actuary reported that the proposal, as amended, will have no actuarial impact. The reported actuarial cost impact of the proposal, as submitted, on the Highway Patrolmen's retirement system is summarized in the following table:

	Valuation Results	Retirement Bill No. 52.02*
Actuarial accrued liability	\$44,468,717	\$44,524,994
Normal cost	\$1,251,027	\$1,267,787
Required contribution	\$1,026,385	\$1,047,072
Required contribution increase	-	\$20,687
As a percentage of payroll	-	.38%
Payroll	\$5,393,150	\$5,393,150

\*Assumes an increase in the number of disability retirements.

This bill would have no or minimal impact on the Public Employees Retirement System and the retiree health benefits fund.

**Committee Report:** Favorable recommendation.

**TESTIMONY OF  
SPARB COLLINS  
ON  
HOUSE BILL 1069**

Mr. Chairman, members of the committee, good morning. My name is Sparb Collins and I am Executive Director of the North Dakota Public Employees Retirement System or PERS. I appear before you today on behalf of the PERS Board and in support of this bill.

HB 1069 relates to the Highway Patrol retirement plan, the PERS Defined Contribution plan and the PERS hybrid plan including the Judges plan, Law Enforcement plan and the National Guard plan. This bill proposes to make changes in benefit payment options for several of our systems; update provisions relating to members returning to employment from active duty, update our federal compliance provisions and make changes to the eligibility for the new Law Enforcement Plan and Defined Contribution plan.

Sections 1, 8 and 12 change the provisions relating to members who return to covered employment from active duty. Section 1 applies to the Highway Patrol plan, section 8 to the PERS plan and section 12 to the PERS Defined Contribution plan. Specifically the changes in these sections provide:

1. For eligible veterans returning after the passage of the bill, the employer may elect to pay the employee contribution for missed service for returning veterans.
2. If the employer does not make an election, the bill establishes a default election that would have the employer pay the cost if they are picking up the employee contribution and not pay the cost if they are not (the State of North Dakota presently picks up the contribution pursuant to Legislative action in the 1980's and this would be the default unless specified otherwise by the Legislature.)
3. Allows the employer to pay for past eligible military service if they so elect.

By making these changes, each of our participating employers will be able to decide how to comply with the Uniformed Services Employment and Reemployment Rights Act instead of the PERS plan specifying a method as provided in the existing statute.

Section 2 and section 7 make changes in the benefit options for members. Section 2 relates to the Highway Patrol plan and section 7 the PERS plan. Specifically these sections eliminate the 5 year term certain option and add a 20 year term certain option for members. In addition, these sections make available a new option to allow a member to receive a lump sum benefit at retirement equal to one year's benefit in cash providing that the monthly lifetime benefit is permanently reduced.

Section 3 and section 9 update the federal compliance provisions necessary for us to maintain our plans qualified status. Section 3 relates to the Highway Patrol Plan and section 9 relates to the PERS plan.

Section 4 relates to the Highway Patrol Retirement plan and standardizes the confidentiality provisions to be the same as the PERS plan. Specifically the changes provide:

- Adds wording to the Highway Patrol Plan relating to sharing information with beneficiaries upon the death of a member.
- Adds wording to the Highway Patrol Plan to facilitate locating a member.

Section 5 relates to the Highway Patrol Retirement plan and allows the employer to pay the cost for purchasing sick leave for members of the Highway Patrol. This language was added to the PERS plan last session.

Section 6 relates to the new Law Enforcement Plan and changes the eligibility requirement from 20 hours per week to 32 hours per week and provides they would be ineligible to concurrently participate in another PERS plan. The purpose of this change is



to more clearly focus the enhanced benefits in the Law Enforcement Plan to full time officers and to address some actuarial funding issues that emerged with dual membership at the 20 hour per week eligibility threshold. Participants in the plan who are under 32 hours a week are grandfathered.

Sections 7, 8, and 9 we addressed previously.

Section 10 relates to the PERS Defined Contribution plan and allows a member of that plan who loses permanent employee status, the ability to continue in the plan as a temporary employee. Present statute requires that they return to the PERS hybrid plan. This change allows them to maintain the continuity of their retirement plan in a single plan instead of being forced to change.

Section 11 establishes the methodology for continued participation as a temporary employee in the defined contribution plan. These conditions are the same as those for temporary employees in the hybrid plan.

Section 13 also relates to the defined contribution plan and clarifies/standardizes the payout options for beneficiaries that are not a surviving spouse, to be the same as our other retirement plans.

Section 14 repeals a section of our statute that has expired.

The provisions of this bill have been reviewed by the PERS actuary and determined to have no actuarial effect on the retirement plans. These provisions have also been reviewed by the Legislative Employee Benefits Committee and given a favorable recommendation. The fiscal note to this bill indicates generally no fiscal impact. However, the review does note that sections 1, 8 and 12 will result in some new payments, and the amount will be dependent upon how many members are called to active duty and for how long. It also notes it may not be an incremental cost since the agency will not be paying salary when the member is away and can use some of those

funds for the purchase cost if it occurs in the same biennium. On behalf of the PERS Board I would request your favorable consideration of this bill. Mr. Chairman this concludes my testimony.

TESTIMONY OF  
LTC DAVID THIELE  
STAFF JUDGE ADVOCATE  
NORTH DAKOTA NATIONAL GUARD  
BEFORE THE  
HOUSE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE  
FEBRUARY 3, 2005  
HOUSE BILL 1069

Mr. Chairman, Members of the Committee,

House Bill 1069 is the first step to correcting a serious problem for our mobilized soldiers and airman who are state or political subdivision employees. Under N.D.C.C. § 54-52-05, the employer (state) can pay the employee's share (4%) of the retirement contributions. Since 1983 virtually every state agency and many political subdivisions have been paying the employee contribution into the state retirement fund. The problem is that when our mobilized soldiers have returned to employment they have been advised that the 4% that is normally funded by the employer on their behalf will not be paid for the period of mobilization. We believe this is a direct violation of the Uniformed Services Employment and Reemployment Rights Act of 1994 [*Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333*]. The following language is from USERRA:

*An employer reemploying a person under this chapter shall, with respect to a period of service described in subsection (a)(2)(b), be liable to an employee pension benefit plan for funding any obligation of the plan to provide benefits described in subsection (a)(2) and shall allocate the amount of any employer contribution for the person in the same manner and to the extent the allocation occurs for other employees during the period of service... (38 U.S.C. 4318)*

Our returning soldiers whose employers had funded the 4% employee share have been advised that in order to receive retirement credit they must pay the 4%. This, in effect, penalizes the soldier for their military service. Some soldiers elected to pay the 4% to receive the credit; others chose to not make the payment. In 2003 the U.S. Department of Labor filed notice of a claim made by one of our soldiers alleging a violation of USERRA against the State of North Dakota (see attached letter). We have now been informed that the case has been referred to the US Attorney's Office for action. Without debating the merits of prior Attorney General Opinions we believe that the state will lose an action brought for violation of USERRA for failure to pay the employee share for returning mobilized veterans.

HB 1069 allows the employer **the option** to pay the 4% for returning veterans. It needs to be noted that employers who pay the 4% employee contribution for their employees but elect to not pay the 4% for returning veterans will, in our opinion, be in violation of USERRA. If this language remains optional it is critical that we educate our agencies and provide direction. HB 1069 also does not address the problem for veterans who have already returned and their employer has refused to pay the 4%. We are working with the Office of Management and Budget and the Governor's staff to create an amendment, likely to the OMB budget, which will address this situation. We would also note that payment of the 4% employee share moving forward will not result in a budget increase to any agency. Salaries, including the 4%, are already in the budget and if the position is backfilled it is with temporary non-benefit employees.

Our soldiers and airman need to know that they will not be penalized in the workplace as a result of their military service. We have been blessed with incredible support from employers across the state and not only have we had very few problems but we routinely hear of employers going well beyond what is required by law. We are currently being recognized at the national level for several legislative initiatives supporting our troops. The adjusted compensation bill (SB 2146) and the increase in tuition assistance are both seen as shining examples of what a state can do to support its soldiers and airman in this difficult time. We need to ensure that as a state we set the

example for all employers in our treatment of mobilized soldiers and airman. On behalf of the entire National Guard, including the nearly 3,000 soldiers and airman who have been mobilized since 2001, we respectfully request the committee vote do pass on HB 1069.

Thank you Mr. Chairman and members of the committee. I would be pleased to respond to any questions.



October 3, 2003

Office of Staff Judge Advocate  
PO Box 5511  
Bismarck, North Dakota 58506-5511  
ATTN: LTC Al Dohrmann

Dear LTC Dohrmann:

During your telephone conversation with State Director Jerry Meske on July 22, 2003, you requested information about the Uniformed Services Employment and Reemployment Rights Act (USERRA) case that involved the North Dakota Public Employees Retirement System. Under the Freedom of Information Act (FOIA) documents on an open case cannot be released. However, the sections of the USERRA law that apply in this case include:

Section 4318(a)(2)(A) states "A person reemployed under this chapter shall be treated as not having incurred a break in service with the employer or employers maintaining the plan by reason of such person's period or periods of service in the uniformed services." Section 4318(b)(1) clarifies that an employer shall allocate the amount of any employer contribution for the person in the same manner and to the same extent allocation occurs for other employees during the period of service.

Section 4318(b)(1)(2) states "A person reemployed under this chapter shall be entitled to accrued benefits pursuant to subsection (a) that are contingent on the making of, or derived from, employee contributions or elective deferrals (as defined in section 402(g)(3) of the Internal Revenue Code of 1986) only to the extent the person makes payment to the plan with respect to such contributions or deferrals. No such payment may exceed the amount the person would have been permitted or required to contribute had the person remained continuously employed by the employer throughout the period of service described in subsection (a)(2)(B). Any payment to the plan described in this paragraph shall be made during the period beginning with the date of reemployment and whose duration is three times the period of the person's services in the uniformed services, such payment period not to exceed five years."

The investigation found that the North Dakota Public Employees Retirement System (NDPERS) has offered the claimant the opportunity to purchase the eight months of active duty time. This is in direct conflict with Sections 4318(a)(2)(A) and 4318(b)(1) in that the claimant was not being treated as if he/she had remained employed and the NDPERS is not allocating the employer's contribution for the person in the same manner and to the same extent the allocation occurs for other employees during the period of service. No other full-time, permanent employees were required to pay the employees 4½ % match.

In addition, Section 4318(b)(1)(2) states "no such payment may exceed the amount the person would have been permitted or required to contribute had the person been continuously employed by the employer." Again, if the claimant had been continuously employed he/she would not have been required to pay the 4½%.

The state of North Dakota's position is that the 4½% Agency Contribution was given to employees several years ago in lieu of a pay raise and that the employee contribution is part of their compensation package which is paid to an employee for being on the job. Because the claimant was not on the job and USERRA does not require an employer to pay the employee's wages while they are in the uniformed service and the 4½% agency contribution is part of his/her wage, the Agency is not required to pay it. The Agency will allow the claimant to pay the 4½% and the employer will then pay the 5.12% employer contribution.

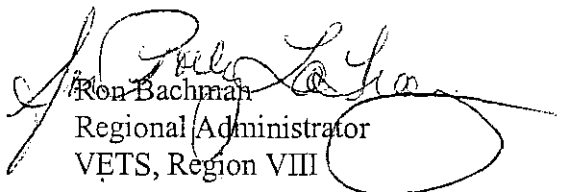
The State of North Dakota also believes that Title 26, Subtitle A, Chapter 1, subchapter D, Part I, subpart B, Section 414(h)(B) supports their decision to not pay the employees contribution because under North Dakota's plan for tax treatment the contribution is not treated as being made by the employer.

The investigator reviewed Title 26 and agreed with North Dakota that the tax implication is Section 414(h)(b). Under the North Dakota plan they may not be taxed because the pension contribution is designated as an employee contribution. However, under Title 26, Subtitle A, Chapter 1, Subchapter D, Part I, Subpart B, Section 414(u)(8) regarding USERRA requirements for qualified retirement plans, North Dakota is failing to comply with the IRS regulations. Section 414(u)(8) repeats what is covered in the USERRA law and states no such payment to the retirement plan can exceed the amount the individual would have been required to make had the individual been continuously employed. The claimant would not have been required to pay the 4½% had he/she been continuously employed.

Additionally, Section 4302 of USERRA specifically states that "this Chapter supersedes any State law,...that reduces, limits or eliminates in any manner any right or benefit provided by this chapter...".

If you have any questions or want to discuss this further, please contact this Office at (312)353-0970 or DVET Jerry Meske at (701)250-4337.

Sincerely,

  
Ron Bachman  
Regional Administrator  
VETS, Region VIII

## North Dakota Veteran's Coordinating Council

My name is John L. Jacobsen. I am the chairman of the Legislative Committee of the North Dakota Veterans Coordinating Council. I am a member of both the VFW and the American Legion. I am also a member of the VFW National Legislative Committee. We work directly with our Members of Congress on legislation at the national level.

I served 29 years in the ND National Guard and the US Army Reserve, retiring in 1995 with the rank of Colonel. I served on active duty in 1991 in the Persian Gulf stationed in the United Arab Emirates.

The NDVCC membership is comprised of 15 members representing the five (5) veterans' organizations in the state. (3 from each organization) They are:

- American Legion
- AMVETS
- Disabled American Veterans (DAV)
- Veterans of Foreign Wars (VFW)
- Vietnam Veterans of America (VVA)

These organizations represent approximately 60,000 veterans currently living in North Dakota.

I am a member of the Legislative Committee of the NDVCC. I am not a member of the NDVCC but report directly to them. In order for the Legislative Committee to support any bill brought up before our Legislature, concurrence must be unanimous, that is all 15 members must agree that we should support the bill. A single negative response will kill our support.



TESTIMONY OF  
SPARB COLLINS  
ON  
ENGROSSED HOUSE BILL 1069

Madame Chair, members of the committee, good morning. My name is Sparb Collins and I am Executive Director of the North Dakota Public Employees Retirement System or PERS. I appear before you today on behalf of the PERS Board and in support of this bill.

HB 1069 relates to the Highway Patrol retirement plan, the PERS Defined Contribution plan and the PERS hybrid plan including the Judges plan, Law Enforcement plan and the National Guard plan. This bill proposes to make changes in benefit payment options for several of our systems; update provisions relating to members returning to employment from active duty, update our federal compliance provisions and make changes to the eligibility for the new Law Enforcement Plan and Defined Contribution plan.

Sections 1, 2, 8, 9, 11, 12, 16 and 19 as amended by the House change the provisions relating to members who return to covered employment from active military duty.

Section 1 and 2 apply to the Highway Patrol plan, sections 8, 9 11 and 12 to the PERS plan, section 16 to the PERS Defined Contribution plan and section 19 provides an appropriation. Specifically the changes in these sections provide:

1. For eligible veterans returning after the passage of the bill, the employer must pay the employee contribution for missed service for returning veterans.
2. For eligible veterans who returned to service since the passage of the Uniform Services Employment and Reemployment Rights Act the employer must pay the employee contribution for that service. An appropriation is provided in section 19 for this purpose.

3. Provides that any past payments made by returning veterans that would qualify for employer payment would be refunded and paid by the employer.

The above changes our present statute which requires the returning eligible veteran to pay the employee contribution for past service.

Section 3 and section 10 make changes in the benefit options for our members. Section 3 relates to the Highway Patrol plan and section 10 to the PERS plan. Specifically these sections eliminate the 5 year term certain option and add a 20 year term certain option for members. In addition, these sections make available a new option to allow a member to receive a lump sum benefit at retirement equal to one year's benefit in cash providing that the monthly lifetime benefit is permanently reduced.

Section 4 and section 13 update the federal compliance provisions necessary for us to maintain our plans qualified status pursuant to the IRS requirements. Section 4 relates to the Highway Patrol Plan and section 13 relates to the PERS plan.

Section 5 relates to the Highway Patrol Retirement plan and standardizes the confidentiality provisions to be the same as the PERS plan. Specifically the changes provide:

- Adds wording to the Highway Patrol Plan relating to sharing information with beneficiaries upon the death of a member.
- Adds wording to the Highway Patrol Plan to facilitate locating a member.

Section 6 relates to the Highway Patrol Retirement plan and allows the employer to pay the cost for purchasing sick leave for members of the Highway Patrol. This language was added to the PERS plan last session.

Section 7 relates to the new Law Enforcement Plan and changes the eligibility requirement from 20 hours per week to 32 hours per week and provides they would be

ineligible to concurrently participate in another PERS plan. The purpose of this change is to more clearly focus the enhanced benefits in the Law Enforcement Plan to full time officers and to address some actuarial funding issues that emerged with dual membership at the 20 hour per week eligibility threshold. Participants in the plan who are under 32 hours a week are grandfathered.

Section 14 relates to the PERS Defined Contribution plan and allows a member of that plan who loses permanent employee status, the ability to continue in the plan as a temporary employee. Present statute requires that they return to the PERS hybrid plan. This change allows them to maintain the continuity of their retirement plan in a single plan instead of being forced to change.

Section 15 establishes the methodology for continued participation as a temporary employee in the defined contribution plan. These conditions are the same as those for temporary employees in the hybrid plan.

Section 17 also relates to the defined contribution plan and clarifies/standardizes the payout options for beneficiaries that are not a surviving spouse, to be the same as our other retirement plans.

Section 18 repeals a section of our statute that has expired.

Section 19 is an appropriation for state agencies that have eligible returning veterans who would qualify for employer payment of contributions since the passage of the federal Uniform Services Employment and Reemployment Rights Act.

Also attached is a proposed amendment. This amendment relates to the group health insurance plan for retirees and provides a continuing appropriation allowing PERS to accept and expend funds from sources other than premiums. This amendment is proposed in recognition of the new Medicare law that may provide subsidies to plans

such as PERS for continuing to providing Rx benefits to our retirees. Allowing PERS to accept these funds to the extent they are available would reduce the cost to our retirees. This provision was originally proposed as part of HB 1071 which also proposed some other changes to the uniform group insurance plan relating to having a portable health care provider network, our bidding procedure and self administration. These provisions were not passed by House and therefore this provision was also not passed. We are requesting that this be added to this bill since we may need this authority for implementing the Medicare Rx provision in a manner that is best for our retirees.

On behalf of the PERS Board I would request your favorable consideration of this bill. Madame Chair this concludes my testimony.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1069

Page 1, line 2, after "54-52" insert "a new section to chapter 54-52.1,"

Page 1, line 5, after "system" add "and the acceptance and expenditure of funds by the retirement board for the uniform group insurance program from third parties"

Page 1, line 16, after "service;" insert "to provide a continuing appropriation;"

Page 11, after line 25 insert the following:

**SECTION 14.** A new section to chapter 54-52.1 of the North Dakota Century Code is created and enacted as follows:

**Acceptance and expenditure of third-party payments – Continuing appropriation.** The board may receive moneys from third parties, including the federal government, pursuant to one or more federal programs. All moneys received from third parties by the board are appropriated to the board on a continuing basis for the board's use in paying benefits, premiums, or administrative expenses under the uniform group insurance program.

Renumber accordingly

TESTIMONY OF  
LTC DAVID THIELE  
STAFF JUDGE ADVOCATE  
NORTH DAKOTA NATIONAL GUARD  
BEFORE THE  
SENATE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE

Same given to Senate Appropriates

MARCH 4, 2005

ENGROSSED HOUSE BILL 1069

Madam Chair, Members of the Committee,

Engrossed House Bill 1069 corrects a serious problem for our mobilized soldiers and airman who are state or political subdivision employees. Under N.D.C.C. § 54-52-05, the employer (state) can pay the employee's share (4%) of the retirement contributions. Since 1983 virtually every state agency and many political subdivisions have been paying the employee contribution into the state retirement fund. The problem is that when our mobilized soldiers returned to employment they were advised that the 4% that is normally funded by the employer on their behalf would not be paid for the period of mobilization. We believe this is a direct violation of the Uniformed Services Employment and Reemployment Rights Act of 1994 [*Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333*]. The following language is from USERRA:

*An employer reemploying a person under this chapter shall, with respect to a period of service described in subsection (a)(2)(b), be liable to an employee pension benefit plan for funding any obligation of the plan to provide benefits described in subsection (a)(2) and shall allocate the amount of any employer contribution for the person in the same manner and to the extent the allocation occurs for other employees during the period of service... (38 U.S.C. 4318)*

We are, in effect, penalizing soldiers for their military service by requiring them to fund the employee share of the retirement credit, when had they not been mobilized

that portion would have been paid by their employer. Some soldiers elected to pay the 4% to receive the retirement credit; others chose to not make the payment. In 2003 the U.S. Department of Labor filed notice of a claim made by one of our soldiers alleging a violation of USERRA against the State of North Dakota (see attached letter). That case has since been referred to the US Attorney's Office for action.

Engrossed HB 1069 requires the employer to pay the retirement and health care contribution benefits for our returning soldiers in the same manner as would have been paid but for the military service. This is retroactive to October 1, 1994, the date USERRA was originally passed. Any soldiers or airman who paid the employee share that otherwise would have been paid by the employer had they not been mobilized will receive a refund. Most, if not all, of the soldiers and airman effected returned to their employer after mobilizations in 2002 or later. The cost to fund the prior biennium payments is \$59,508 general fund and \$96,471 in other funds. There are no additional costs moving forward as the retirement contributions are built into each agency's appropriation. Employees hired to backfill the deployed soldier's or airman's positions have been temporary employees ineligible for retirement benefits.

Our soldiers and airman need to know that they will not be penalized in the workplace as a result of their military service. We have been blessed with incredible support from employers across the state and not only have we had very few problems but we routinely hear of employers going well beyond what is required by law. We are currently being recognized at the national level for several legislative initiatives supporting our troops. The adjusted compensation bill (SB 2146) and the increase in tuition assistance are both seen as shining examples of what a state can do to support its soldiers and airman in this difficult time. We need to ensure that as a state we set the example for all employers in our treatment of mobilized soldiers and airman. On behalf of the entire National Guard, including the nearly 3,000 soldiers and airman who have been mobilized since 2001, we respectfully request the committee vote do pass on Engrossed HB 1069.

Thank you Madam Chair and members of the committee. I would be pleased to respond to any questions.

## North Dakota Veteran's Coordinating Council

1069  
My name is John L. Jacobsen. I am the chairman of the Legislative Committee of the North Dakota Veterans Coordinating Council. I am a member of both the VFW and the American Legion. I am also a member of the VFW National Legislative Committee. We work directly with our Members of Congress on legislation at the national level.

The NDVCC membership is comprised of 15 members representing the five (5) veterans' organizations in the state. (3 from each organization) They are:

- American Legion
- AMVETS
- Disabled American Veterans (DAV)
- Veterans of Foreign Wars (VFW)
- Vietnam Veterans of America (VVA)

These organizations represent approximately 61,000 veterans currently living in North Dakota.

I am a member of the Legislative Committee of the NDVCC. I am not a member of the NDVCC but report directly to them. In order for the Legislative Committee to support any bill brought up before our Legislature, concurrence must be unanimous, that is all 5 organizations must agree that we should support the bill. An organization with 2 no votes can eliminate our support of the bill.

I have been instructed to ask you to support this bill.  
Thank you.

1069



PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO 1069

Page 1, line 16, remove "and"; after "appropriation" insert "; and to provide an effective date"

Page 15, after line 3 insert the following:

**SECTION 20. EFFECTIVE DATE.** Sections 3, 4, 5, 6, 7, 10, 13, 14, 15, and 17, become effective on August 1, 2005.

Renumber accordingly

TESTIMONY OF  
SPARB COLLINS  
ON  
ENGROSSED HOUSE BILL 1069 WITH SENATE  
AMENDMENTS

Mr. Chair, members of the committee, good morning. My name is Sparb Collins and I am Executive Director of the North Dakota Public Employees Retirement System or PERS. I appear before you today on behalf of the PERS Board and in support of this bill.

HB 1069 relates to the Highway Patrol retirement plan, the PERS Defined Contribution plan and the PERS hybrid plan including the Judges plan, Law Enforcement plan and the National Guard plan. This bill proposes to make changes in benefit payment options for several of our systems; update provisions relating to members returning to employment from active military duty, update our federal compliance provisions and make changes to the eligibility for the new Law Enforcement Plan and Defined Contribution plan.

The provisions of this bill which have a fiscal effect are sections 1, 2, 8, 9, 11, 12, 17 and 21 as amended by the House and change the existing statute relating to members who return to covered employment from active military duty. Our present statute requires the returning eligible veteran to pay the employee contribution to the retirement plan in order to receive credit for past service that they missed while on active military duty. The employer pays the employer contribution. This has been viewed as inequitable by many returning veterans since the employer would have paid the employee contribution had they not been called up for active military duty. In addition questions have arisen as to whether or not our existing procedures comply with the federal Uniform Services Employment and Reemployment Rights Act (USERRA). Therefore the provisions of this bill are proposed. Section 1 and 2 apply to the Highway Patrol plan, sections 8, 9 11 and 12 to the PERS plan, section 17 to the PERS Defined Contribution plan and section 21 provides an appropriation. Specifically the changes in these sections provide:

1. For eligible veterans returning after the passage of the bill, the employer must pay the employee contribution for missed service for returning veterans.
2. For eligible veterans who returned to service since the passage of the Uniform Services Employment and Reemployment Rights Act the employer must pay the employee contribution for that service. An appropriation is provided in section 21 for this purpose.
3. Provides that any past payments made by returning veterans that would qualify for employer payment would be refunded and paid by the employer.

Section 21 is an appropriation for state agencies that have eligible returning veterans who would qualify for employer payment of contributions since the passage of the federal Uniform Services Employment and Reemployment Rights Act. In addition please note that these provisions would also affect our political subdivision members. The above changes will require all of our participating employers to pay for this service and therefore this bill appropriates funds for our state agency members to make the necessary payments.

Section 3 and section 10 make changes in the benefit options for our members. Section 3 relates to the Highway Patrol plan and section 10 to the PERS plan. Specifically these sections eliminate the 5 year term certain option and add a 20 year term certain option for members. In addition, these sections make available a new option to allow a member to receive a lump sum benefit at retirement equal to one year's benefit in cash providing that the monthly lifetime benefit is permanently reduced.

Section 4 and section 13 update the federal compliance provisions necessary for us to maintain our plans qualified status pursuant to the IRS requirements. Section 4 relates to the Highway Patrol Plan and section 13 relates to the PERS plan.

Section 5 relates to the Highway Patrol Retirement plan and standardizes the confidentiality provisions to be the same as the PERS plan. Specifically the changes provide:

- Adds wording to the Highway Patrol Plan relating to sharing information with beneficiaries upon the death of a member.
- Adds wording to the Highway Patrol Plan to facilitate locating a member.

Section 6 relates to the Highway Patrol Retirement plan and allows the employer to pay the cost for purchasing sick leave for members of the Highway Patrol. This language was added to the PERS plan last session.

Section 7 relates to the new Law Enforcement Plan and changes the eligibility requirement from 20 hours per week to 32 hours per week and provides they would be ineligible to concurrently participate in another PERS plan. The purpose of this change is to more clearly focus the enhanced benefits in the Law Enforcement Plan to full time officers and to address some actuarial funding issues that emerged with dual membership at the 20 hour per week eligibility threshold. Participants in the plan who are under 32 hours a week are grandfathered.

Section 14 provides a continuing appropriation allowing PERS to accept and expend funds from sources other than premiums. This amendment is proposed in recognition of the new Medicare law that may provide subsidies to plans such as PERS for continuing to providing Rx benefits to our retirees. Allowing PERS to accept these funds to the extent they are available would reduce the cost to our retirees.

Section 15 relates to the PERS Defined Contribution plan and allows a member of that plan who loses permanent employee status, the ability to continue in the plan as a temporary employee. Present statute requires that they return to the PERS hybrid plan.

This change allows them to maintain the continuity of their retirement plan in a single plan instead of being forced to change.

Section 16 establishes the methodology for continued participation as a temporary employee in the defined contribution plan. These conditions are the same as those for temporary employees in the hybrid plan.

Section 18 also relates to the defined contribution plan and clarifies/standardizes the payout options for beneficiaries that are not a surviving spouse, to be the same as our other retirement plans.

Sections 19 & 20 repeal certain sections of our statute that no longer apply.

Section 22 provides an effective date for sections 3, 4, 5, 6, 7, 10, 13, 14, 15, 16, 18 and 19 of August 1, 2005. The reason for the effective date is to have these benefit changes become effective at their regular time of August 1 instead on July 1 which would occur without this provision since the bill has an appropriation.

On behalf of the PERS Board I would request your favorable consideration of this bill. This bill was also reviewed by the Legislative Employee Benefits Committee and given a favorable recommendation. Mr. Chair this concludes my testimony.