August 6, 1991 15th Meeting
Room 10 State Office Building

LEGISLATIVE COMMISSION ON PENSIONS AND RETIREMENT

MINUTES

Representative Leo Reding, Chair of the Legislative Commission on Pensions and Retirement, called the meeting to order at 9:20 A.M.

Commission members present:

Representatives Richard Jefferson, Bob Johnson, Gerald Knickerbocker, Rich O'Connor and Leo Reding
Senators Steven Morse, Lawrence Pogemiller, Leroy Stumpf and Gene Waldorf

Rep. Johnson introduced Richard Skillman, a tax attorney with Caplin & Drysdale of Washington D.C., who provided the Commission with an overview of voluntary tax deferred compensation programs.

Mr. Skillman briefly provided background information about himself.

Sen. Waldorf questioned why there are separate laws relating to public and private pension. Mr. Skillman responded that he was not sure but the 403(b) plan was created long before the 401(k) plan, and the 457 plan was created on a separate track again.

Rep. Reding questioned why teachers were allowed to have 403(b) plans before the rest of the public sector. Mr. Skillman responded that it grew out of a policy that began in 1942 to exempt from certain restrictions employees of charitable organizations. In 1961 Congress agreed to treat public school teachers the same as employees of charitable organizations and subject to these simpler, more flexible and more liberal rules.

Mr. Skillman stated that the 403(b) program is by statute restricted to employees of charities and employees of public educational institutions. The 457 program is available to all public employees including employees of public educational institutions, however, most public school employees use the 403(b) programs.

Mr. Skillman stated that there are three areas of difference between 403(b) plans and 457 plans. The first is in the area of funding. A 403(b) plan member has direct full ownership and is fully vested in the annuity program purchased with his contributions making it portable from state to state. The 457 plan member contributions belong only to the employer. The second difference is in the area of contribution limits. The 403(b) plan member may contribute up to $9,500 per year plus a voluntary matching employer contribution up to $20,500 per year. The 457 plan employee and employer combined contribution cannot exceed a maximum of 25% of the employee's annual salary up to $7,500. The third difference is in the area of distribution. Under a 403(b) program, before an employee separates from service, the employee can borrow from the accumulations under the annuity contract and the loan itself is tax free, the employee can withdraw the money due to hardship under a non-exacting hardship standard, or at age 59 1/2 the employee can begin withdrawing the money while still employed. If the employee is retired, the money is available with great flexibility and only the amounts withdrawn are taxable. Under 457 plans, before an employee separates from service, the employee can only withdraw money from the plan if there is an unforeseeable emergency. When the employee retires, the employee must make an irrevocable election as to when the employee will receive the money from the deferred compensation plan. However, if the employee terminates service prior to age 59 1/2 and makes the required election, the employee is not subject to the 10% income tax penalty for withdrawal. Discussion followed and Mr. Skillman continued with his overview.

Rep. Reding introduced item 2.b. on the agenda, Potential Restructuring of the Benefits and Funding of the Legislators and Elective State Officers Retirement Plan.

Lawrence Martin, LCPR Executive Director, reviewed the staff memo on the Legislators and Elective State Officers Plan and noted that three issues are common to both the ESO plan and the Legislators Plan and one issue concerns only the Legislators Plan. The issues are as follows:

1. both plans lack Social Security coverage;
2. both plans provide inadequate survivor benefit coverage;
3. both plans have undesirable funding procedures; and
4. concerning only the Legislators Plan, the salary among legislators is variable.

Mr. Martin noted that historically Legislators have not been covered by Social Security since most of them have other positions that would be covered by Social Security. However, Elective State Officers should be considered for coverage by Social Security since they do not have outside employment.

Mr. Martin continued his review with information regarding survivor benefit coverage and funding the Elective State Officers Plan and the Legislators Plan. Mr. Martin also reviewed the variability of the salary among Legislators. Discussion followed.

Sen. Waldorf introduced item 1.c.ii. from the August 5, 1992 agenda, Alternatives in Providing Interstate Portability.

Rep. Johnson stated that Congress has authorized states to develop a portability system and he would like to address the portability issue on behalf of teachers at some point. Permitting teachers to become part of TIAA-CREF would provide portability. Rep. Reding stated that one of the concerns he has heard is that teachers may move just to achieve the best high five.

Lawrence Martin reviewed the staff memo on this issue and noted 12 potential alternatives in providing interstate pension portability. Mr. Martin concluded by noting that various portability alternatives could be implemented unilaterally with action limited to the state involved while other portability alternatives could only be implemented with the cooperation of one or more other states.

Elton Erdahl, TRA Executive Director, stated that providing portability comes down to cost and which state or employer should pay the additional cost to provide the benefits. He further stated that Minnesota reduced the vesting requirements to three years and that was an excellent step. A possible increase in the augmentation rate might encourage deferred members to leave their money in the TRA plan and might be another step Minnesota could take.

Rep. Johnson requested that staff look at the Canadian teacher portability options. Discussion followed.

Rep. Reding asked if there were any objection to setting the next LCPR meetings for September 16 and 17. There were no objections.

The meeting adjourned at 12:15 P.M.

Jean Liebgott

Jean Liebgott, Secretary