

Note: These minutes from the April 12, 2011, regular meeting were approved and executed at the May 10, 2011, Meeting of the Board of Trustees.

**Regular Meeting
Board of Trustees
April 12, 2011**

Public Minutes

**New Hampshire Retirement System
54 Regional Drive
Concord, New Hampshire**

Trustees: Lisa Shapiro, Ph.D., *Chair, presiding*, Danny O'Brien, *Vice Chair*, Dean Crombie, Justin Cutting, Sam Giarrusso, Rep. Ken Hawkins, Keith Hickey, Kate McGovern, Ph.D., Germano Martins, Cathy Provencher, Jill Rockey, Mike Macri. *Absent:* Sen. Jeb Bradley, Brian Morrissey.

Staff: Kim France, *Interim Executive Director*; Larry Johansen, *Director of Investments*; Jack Dianis, *Director of Finance*; Tim Crutchfield, Esq., *Chief Legal Counsel*; Denise Call, *Director of Employer Services*; Heather Fritzky, *Accounting & Finance Reporting Supervisor*; Carolyn Johnson, Esq., *Hearings Examiner*; Bill Spead, *Regulatory Compliance Officer*; Kristie Kathan, *Human Resources Coordinator*; Marty Karlon, *Public Information Officer*; and Shannan Hudgins, *Administrative Coordinator*.

Chair Lisa Shapiro called the meeting to order at 10:10 a.m., stating she would entertain a motion to accept the March 8, 2011, minutes, with comments to amend the minutes from Sen. Bradley. Ms. France explained that on advice from governance counsel, the requested change to the minutes would be reflected in the April minutes. Senator Bradley had requested that the Summary Data for Group II Members (Fire and Police) Retired in Fiscal Year 2010 memorandum shared with legislators be attached to those minutes, and the reported retiree numbers recorded as follows: "average service was 27.6 years" (as compared with 30 years as reflected in the March minutes), and that "some had contributed over \$500K" (changed from "many" contributing over \$500K in the March minutes). Ms. France affirmed that the draft minutes accurately reflected the March meeting discussion, that best practice allowed for appropriate additions in the April minutes, and that the referenced memorandum would be attached to the April meeting minutes.

Trustee Giarrusso asked to go on the record, stating that he believed the Summary Data Memorandum was only a snapshot of a small profile of retiree information for 27 firefighters in 2010, and that it distorted the truth of retiree benefits received by the 20,000-plus retirees of the System. He believed the distortion of truth was intentional and that he was not in favor distributing such data.

Trustee O'Brien requested the minutes reflect that on page 4, he was inquiring about high priority "IT" matters, and that on page 6 he exited the March Board meeting following the vote on the GRS Experience Study.

Trustee Provencher asked to go on record as stating she did not believe the System was publishing information that was distorting truth.

Moved by Trustee O'Brien, seconded by Trustee Rockey, the amended public minutes reflecting Trustee O'Brien's requested changes were approved. Trustee Hickey abstained due to his absence from the March meeting.

Moved by Trustee O'Brien, seconded by Trustee Rockey, the non-public minutes were approved. Trustee Hickey abstained due to his absence from the March meeting.

The Chair next stated she would entertain a motion to approve the Consent Agenda. Trustee O'Brien moved, with the exceptions of the discussion of disability application of M.L. and the Administrative Reconsideration of A. Brevard. Trustee Hickey noted that he knew one of the applicants but felt he could remain objective. As advised by Atty. Crutchfield, Mr. Hickey stated he would vote as he did not believe his mere knowledge of the applicant created a conflict of interest. Seconded by Trustee Provencher, the adjusted Consent Agenda was approved.

Because an Administrative Reconsideration is reviewed by the Board in the public forum, the Chair requested discussion of A. Brevard's challenge of Staff's calculation of her annual rate of compensation to determine the cost to purchase service credit. When questioned about the apparent delay in presenting administrative reconsiderations to the Board, Atty. Johnson confirmed that the backlog of reconsiderations was on a schedule for Board action. She was finishing the final 2008 reconsideration, and she had four cases from 2009 to bring before the Board, balanced with presenting more current cases. She confirmed that Ms. Brevard had not suffered a delay in receiving pension benefits, and that the \$60K annual salary – the basis of her challenge – was most likely used in the calculation of her highest three years of salary. Moved by Rep. Hawkins, seconded by Trustee O'Brien, to approve the Hearings

Examiner's recommendation that the Board of Trustees uphold its decision of 5/13/08. The motion passed unanimously.

Trustee O'Brien removed the discussion of M.L. and moved that the Hearings Examiner's recommendation be approved. Seconded by Trustee Hickey, the motion carried unanimously.

The Chair moved to the Legislative Committee report and asked Trustee Giarrusso for his comments. After a brief synopsis of that morning's Committee meeting that included discussion of IRS issues with proposed legislation and fiduciary responsibilities of trustees, he asked the Interim Executive Director to introduce fiduciary counsel. Ms. France introduced Attorney Ian Lanoff and his associate, Attorney Kim Dahm from the Groom Law Group in Washington D.C., and governance consultant Nancy Williams, Esq., of Hewitt EnnisKnupp, each of whom would address the Board.

Atty. Lanoff opened his remarks by addressing the question, "To whom do you owe your fiduciary duty of loyalty?" Under New Hampshire law, he stated that Board of Trustee members were required to act solely in the interest of participants and beneficiaries and for the exclusive purpose of protecting the benefits of members and paying administrative expenses. He emphasized that while Trustees had a duty to current members of the System, that duty did not extend to future hires, and added that Trustees were bound by the Internal Revenue Code's Exclusive Benefit Rule.

Atty. Lanoff next addressed the role of the Board in connection to the legislative proposals affecting the NHRS he was asked to review. Atty. Lanoff stated the following conditions that would require Trustee action. Firstly, as trustees they were required to comply with statutory standards in reviewing any proposed legislation that the System's consulting actuary had stated would result in a reduction of the funding status of the System. Secondly, with regard to any current legislation that proposed to reduce benefits for some or all members of the System, Trustees had a clear duty to review and identify any legislative provisions that NHRS counsel advised would violate the Federal Internal Revenue Code (Code). Thirdly, Atty. Lanoff stated that in reviewing whether Trustees had a responsibility to object or oppose provisions that would reduce benefits, he believed they did not have such a responsibility absent a funding or Code issue.

The Chair asked Atty. Lanoff to address overall fiduciary responsibility of individual Board members, and he referred to his presentation handout. In acknowledging the difficulty of the concept, Atty. Lanoff focused on the legal requirement that Trustees wear only "one hat" when performing

NHRS duties: the hat of a fiduciary. He stressed that all Trustees had to act in a fair and impartial manner for the benefit of the whole System, even when tasked with reviewing legislation that could reduce benefits for the particular body that nominated them to the Board. Noting that NHRS was the only Board he worked with that had legislator-Trustees, he stated that Board members must be willing to recuse themselves if their actions outside the Board room compromised their ability to perform their duty of loyalty to all System members. He cautioned Trustees to be cognizant of their roles outside the Board room, and when speaking publicly, the NHRS ethics rules require them to openly declare they are not speaking as a Trustee of the NHRS. Alleged violations are to be reported to the Board Chair or Vice Chair, who will work with counsel, both internal and consulting, to facilitate an appropriate response.

Dr. Shapiro asked that Nancy Williams speak to the Board regarding fiduciary responsibility regarding legislation from a best-practice governance perspective. In her remarks, Atty. Williams focused on what a Board is required to do in contrast to what it may do in its role as protector of a pension trust. She suggested a brief, two-page public statement from Trustees with accurate information regarding the NHRS and pending legislation that would serve to inform and assist all constituents in turbulent times. She urged the Board to proactively inform the debate, expanding upon the successful "NHRS 101" sessions staff has presented statewide.

Trustee O'Brien asked for the goals the Legislative Committee had considered for review by the full Board. Trustee Giarrusso provided three items: 1) review of the three omnibus bills; 2) request for defined contribution analysis; and 3) empower the Interim Executive Director to both provide additional NHRS information to the public, and correct public misinformation, in response to Ms. France's request for clear agreement and direction from the Board. Trustee O'Brien suggested that the Legislative Committee serve as a funnel for legislative provisions requiring Board action, thereby concentrating and focusing staff time and expertise. Trustee Hickey stated that Ms. France should use her discretion in posting relevant, factual information to the NHRS website.

In response to Trustee Cutting's question regarding appropriate prioritization of information requests, Atty. Lanoff stated legislator requests were a first priority and members' requests were second – with group gatherings serving as an avenue to reduce burden on staff. He confirmed that Trustees had no duty to the average citizen.

Moved by Mr. Giarrusso, seconded by Mr. Hickey, the Board unanimously waived the attorney-client privilege caveat on the April 8, 2011, Groom Law Group Memorandum. Atty. Lanoff asked Atty. Dahm

to speak to the potential IRC violations in the three omnibus bills pending in the New Hampshire Legislature and identified the following problematic provisions. In HB 2, §166, she identified the refund of contributions to employers could potentially violate the exclusive benefit rule of the IRC, specifically that the funds of the plan would no longer be used for the exclusive benefit of participants and beneficiaries. She added that such a provision was also a prohibited transaction because funds would be returned to the Settlor. In HB 580, §33, Atty. Dahm identified the waiver of benefits provision, i.e., employees opting for more pay over an NHRS benefit, as an impermissible cash-or-deferral election, which government agencies are prohibited from having. She noted that each bill contained a provision that tried to create, or discussed the potential to create, a defined contribution plan, but not enough provision language was included to determine if such a plan met Code requirements. She recommended more attention be focused on any defined contribution plan provisions in all three bills. Atty. Lanoff suggested the Board pursue additional information from its consulting actuary on the effects of a DC plan to the NHRS benefit plan.

Moved by Mr. Hickey, seconded by Ms. Rockey, the Board unanimously approved authorizing Staff to notify the Legislature of apparent IRC violations in HB 2 §166 and HB 580 §33.

Mr. Giarrusso moved to engage NHRS consulting actuaries to perform a calculation on HB 2 §203, i.e., a review the actuarial impact of a defined contribution plan on the System. Seconded by Mr. O'Brien, the motion carried with Rep. Hawkins, and Trustees Hickey and O'Brien dissenting.

Dr. Shapiro thanked Attorneys Lanoff, Dahm and Williams for their time, counsel and considered recommendations. At 12:20 p.m., the Chair stated she would entertain a motion to temporarily adjourn the meeting to discuss collective bargaining strategy or negotiations under RSA 91-A:2, I(a). Moved by Trustee Provencher, seconded by Trustee O'Brien, the Board unanimously voted to temporarily adjourn. Trustees Crombie and Giarrusso left the Board meeting.

The Board meeting was reconvened at 1:20 p.m. and in anticipation of her early departure, the Chair made the following Committee assignments: Trustee McGovern would replace Trustee Provencher on the Governance Committee, and Trustee Hickey would join the Audit Committee. Dr. Shapiro stated that all Committees were fully staffed. She and Trustee Hickey left the meeting and Vice Chair O'Brien presided.

Trustee Martins provided a brief Benefits Committee report, stating the Committee had developed two recoupment documents, one was the policy and one was an affidavit to be used in recoupment cases. The

Committee was also reviewing details on the medical subsidy questionnaire, and the inclusion of a Medicare eligibility question on the retirement checklist used by benefits specialists. Vice Chair O'Brien stated he would entertain a motion to take off the table the administrative recommendations of B. Surprenant and A. Hoffman and accept the Hearings Examiner's recommendations regarding the medical subsidy overpayment and recoument as recommended by the Benefits Committee. After a brief discussion, Trustee Rockey moved, seconded by Trustee Cutting, the Board unanimously approved the recommendations of the Hearings Examiner in the matters of B. Suprenant and A. Hoffman.

In addressing the Actuarial Assumptions information provided under Tab 6, Trustee O'Brien reminded the Board that a decision would have to be made at the May meeting. Trustee Provencher asked that IIC Chairman Harold Janeway be invited, and Mr. Johansen noted he would extend the invitation. Trustee Cutting requested that staff prepare an outline/timeline of preparatory steps leading up to the setting of rates. Mr. Johansen stated that the actuarial valuation as of June 30, 2011, should be prepared with the new assumptions. He confirmed that the work on the valuation would begin immediately after June 30, 2011, as NHRS staff prepared the extract of the member file to send to GRS. He emphasized that the sooner GRS had the assumptions to be used for that valuation, the more quickly they could do the valuation. Mr. Johansen cautioned that given current circumstances were highly irregular, and depending upon which omnibus bill was signed into law, if the Board is required to recertify rates, under best practices the rates to be recertified should be using the most current actuarial assumptions, not those that are five years old. The Chair's desire to have the actuarial assumptions in place at the May Board Meeting fits all those criteria. Trustee O'Brien confirmed with Trustee Cutting that this summary in the minutes served as the outline/timeline requested.

Mr. O'Brien asked for the Interim Executive Director's report, which Ms. France opened with an IT review. She stated that network assessment by Systems Engineering had been completed on April 5, 2011, that met one of the recommendations from the IT audit. Nancy Miller and Cecile Merrill were at a conference for enterprise application vendors to gather data for the System's long-term product review. Ms. France reported that the Hay Group would present its final report at the June Board meeting. She specifically addressed the influx of member requests for pension estimates and appointments with the benefits specialists, noting that pending legislation had increased member services activity. As of that morning, 22 counseling sessions were scheduled for the day, and walk-in traffic had begun at 8:10 a.m. In comparison, Ms. France noted that before this legislative session, NHRS typically had 100 appointments

a month, but April had more than 300 scheduled appointments. She concluded her remarks by stating that “NHRS 101” had been posted on the website, that group sessions were more frequently scheduled and well-attended, and that strategic realigning of existing staff resources had successfully met demand.

Before the Director of Finance, Jack Dianis, was asked to present his report to the Board, Trustee O’Brien provided a summation of his finance discussion with staff on Monday, April 11, 2011. He reported that the group looked at the type of statements the Board received, the frequency of those statements, and potential changes to the CAFR to make it more user-friendly and applicable to more areas. They discussed the creation of financial benchmarks and customer service benchmarks, as well as the development of a good board governance outline for future discussion.

Mr. Dianis referenced his report under Tab 8, directing attendees to focus on page three. He carefully explained the details of his report, pointing out the salient numbers that accurately reflected the financial position of the Retirement System.

Mr. O’Brien turned to the Governance Committee and asked Trustee Cutting for his report. Trustee Cutting referenced Atty. Crutchfield’s memorandum reviewing Admin Rule Ret. 308.03 under Tab 9, asking that Board members read and review the change in the provision found on the second page in bold lettering. He stated that the Governance Committee supported the revisions to bring the rule in line with RSA 100-A:3, VI(d)-(e), and in line with past practice. He expected a Board ruling at the May Board meeting. Mr. Cutting spoke about the accountability matrix that had been reviewed the previous day at the Governance Committee meeting, reporting that the Committee had concluded that the matrix was a piece of the investment policy, not the driver of it. Therefore, it should come after the policy, noting that Mr. Johansen and his staff had it on their work plan and were progressing through the statutory language, as appropriate. Mr. Cutting reminded the Board that an investment policy was in place. He reported that the use of committee alternates was not considered good practice in that it was disruptive if the alternate did not keep up with the committee work. Atty. Williams had contacted twenty pension systems and reported that none of them used alternates. He asked that committee workload be reviewed by the Board, and that the Board consider a change in the physical quorum requirement at meetings, allowing attendance by telephone. The Committee had asked Atty. Crutchfield to review and report on the potential change in statute.

Ms. Provencher presented the Audit Committee report, noting that the final VCP correction items were in process. She stated that Groom Law Group was drafting a policy to amend the plan, with assistance from in-house counsel. The Committee expected a draft by May, would bring it to the Board, and then expect Board review by late summer. She then referenced the Audit Tracker behind Tab 11. In her meeting with Staff in March, they had collaboratively reviewed the audit findings, revised the management review, kept earlier comments in place, and would add a legend with appropriate details.

Trustee O'Brien asked Mr. Johansen for his investment report, who opened his remarks by stating that the equity markets had started calendar year 2011 positively. The S&P 500 returned 5.4% for the first quarter of 2011, which was a positive return for the quarter in light of the continued political turmoil in North Africa and the Middle East and the devastating earthquake and nuclear crisis in Japan. While the markets retreated initially after each of these events, Mr. Johansen noted that the markets had recovered and demonstrated the strength to withstand these shocks.

He continued by reporting that the S&P 500 had closed Monday at 1324.46, up approximately 5.3% for the calendar year. The federal employment figures released earlier this month were encouraging. Employers increased payrolls by 216,000 in March, but were offset by job cuts by local governments. Local governments had reduced jobs in March in an effort to close budget gaps. Approximately 200,000 new jobs each month are needed for a sustained recovery. The unemployment rate declined further in March to 8.8% from 8.9% in February. This was the fourth consecutive monthly decline and was a full percentage point lower than November 2010. The increase in new jobs and the decrease in the unemployment rate continue to suggest underlying strength in the job market. However, there are still 13.5 million unemployed people in the US and the percentage of them who are long-term unemployed, out of work for 6 months or more, increased from 43.9% to 45.5%. At this rate of job recovery, it would take 8 years to return to the pre-recession unemployment rate of about 5%. Most of this information does reinforce other indicators of an economy that is slowly gaining momentum, the unrest in the Middle East and North Africa only exacerbates continued concerns regarding the fragile economic recovery.

The highlights of the March Investment Committee meeting and an overview of the April Investment Committee meeting were noted behind Tab 12. In addition, progress on the Work Plan, updated to include the fourth quarter of this fiscal year, and recent developments of interest are also included behind Tab 12. A brief overview of the portfolio performance for the periods ending February 28, 2011 follows. For the

three months ending February 28th, total marketable investments, which are more than 93% of investments, returned 9.2%, out performing the blended benchmark by 80 basis points. Fiscal year to date, total marketable investments returned 22.1% out performing the blended benchmark by 70 basis points. For the one year ending February 28th, total marketable investments returned 18.5% out performing the blended benchmark by 70 basis points. For the 3 years ending February 28th, total marketable investments out performed the blended benchmark by 50 basis points. For the 5 years ending February 28th, total marketable investments equaled the performance of the blended benchmark. For the 10 years ending February 28th, total marketable investments out performed the blended benchmark by 30 basis points.

With no questions following the Investment report, Mr. O'Brien asked for the legal report. Atty. Crutchfield addressed current NHRS court cases, noting that the \$65 state retiree health deduction suit should have a decision soon. Regarding the LGC suit, he reported that it would be settled on the motions because there was no dispute of material fact and there would not be a trial.

Trustee O'Brien requested a motion to adjourn. Moved by Trustee Martins, seconded by Trustee Cutting, the meeting adjourned at 2:25 p.m.

Respectfully submitted,
Shannan Hudgins