

NHRS Board of Trustees  
Legislative Committee, March 17, 2011

**Note:** The public minutes from the March 17, 2011 Legislative Committee meeting were approved and executed on April 12, 2011.

**Legislative Committee  
of the  
Board of Trustees  
March 17, 2011**

**THE PUBLIC MINUTES**

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

*Committee Members:* Sam Giarrusso, *Chair*; Rep. Ken Hawkins; Mike Macri; Jill Rockey; Kate McGovern.

*Trustees:* Sen. Jeb Bradley.

*Staff:* Kim France, *Interim Executive Director*; Larry Johansen, *Director of Investments*; Jack Dianis, *Director of Finance*; Tim Crutchfield, Esq., *Chief Legal Counsel*; Nancy Miller, *Director of Member Benefits*; Bill Spead, *Regulatory Compliance Officer*; Shannan Hudgins, *Administrative Coordinator*.

Chair Giarrusso called the meeting to order at 3:32 p.m. On a motion by Rep. Hawkins, seconded by Mr. Macri, the Committee voted to accept the minutes from the March 8, 2011, Committee meeting as written.

In stating that the Board of Trustees was charged with fiduciary responsibility for the approximately 75,000 members and beneficiaries of NHRS, Mr. Giarrusso asked Ms. France to review the current legislative process. She referenced the materials before the Committee members, which included: memoranda from the prior Executive Director; the Committee Charter; and at the request of the Board Chair, memoranda from outside legal counsel. All documents addressed the particular fiduciary duty of loyalty each Trustee had to act solely in the interest of all Retirement System participants and beneficiaries.

Ms. France emphasized the importance of prudent decision making by Trustees to serve the interests of the members and beneficiaries,

referencing the legal opinions provided that defined clearly the role of a public trust fiduciary. Ms. France noted that one of the opinions provided the Board in 2009 defined fiduciary as “one who exercises discretionary authority with respect to the management or administration of a plan,” as distinct and separate from the function of the Settlor, i.e., the NH Legislature, which created the Trust. As Settlor, the NH Legislature is responsible for plan design, amendment or termination of the Plan. The role of the Board is to provide analysis and data on proposed legislation, expending trust fund assets to do so.

In addressing NHRS legislative practice, Ms. France stated that Staff would typically provide an opinion on legislation when directed by the Board of Trustees to address an issue with funding or solvency of the plan, or which could violate its qualified plan status with the IRS. Her example was HB 537, which if passed would create an Internal Revenue Code violation. She reminded the Committee that the Bill had been deemed Inexpedient to Legislate.

Following her process presentation, Committee members discussed aspects of pending legislation and the Board’s fiduciary responsibilities. Trustee Giarrusso named four categories of members and beneficiaries that drove his concerns: a) retired members; b) vested members; c) non-vested members; and d) future members. Trustee Rockey expressed her concerns about the costs of potential litigation to the System if some of the proposed legislation is passed.

Trustee McGovern stated that she believed public perception confused the unfunded liability cost for benefits already earned with the normal cost of funding future benefits which is modest when the normal cost is correctly evaluated. It was her wish that public policy makers had more facts as they deliberated legislation.

The discussion next addressed the Staff process in tracking and providing analysis of proposed legislation to the Board. Ms. France stated that the System did not become involved with providing opinions on possible contract claims concerning when vested rights attach in proposed bills, but did seek appropriate guidance from fiduciary counsel on Internal Revenue Code issues. Staff discussed the volume of legislation, repeated amendments, and the judicious use of resources in reviewing legislation before the March 31 crossover date. Mr. Giarrusso stated that the expanded tracker was useful and he encouraged Staff to continue its use after crossover. Ms. Rockey stated that legal issues and fiduciary responsibilities that needed Board attention were of most importance for Staff attention, and the Committee members concurred.

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On a motion by Trustee Rockey, seconded by Trustee McGovern, the Committee unanimously voted to invite fiduciary counsel to the April 12, 2011 Board meeting to further discuss the Board's role in the legislative process.

By consensus, the Committee set its next meeting for Tuesday, April 11, 2011, 9:00 a.m.

Moved by Trustee Rockey, seconded by Rep. Hawkins, the meeting adjourned at 4:48 p.m.

*Respectfully submitted,*  
*Shannan Hudgins*