

NHRS Legislative Committee Meeting
May 31, 2011

Note: The public minutes from the May 31, 2011 Legislative Committee meeting were approved and executed at the June 14, 2011, Committee meeting.

**Legislative Committee
of the
Board of Trustees
May 31, 2011**

THE PUBLIC MINUTES

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

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

Staff: Kim France, *Interim Executive Director*; Larry Johansen, *Director of Investments*; Jack Dianis, *Director of Finance*; Tim Crutchfield, *Chief Legal Counsel*; Nancy Miller, *Director of Member Services*; Marty Karlon, *Public Information Officer*; Bill Spead, *Regulatory Compliance Officer*; Denise Call, *Director of Employer Services*; Cecile Merrill, *Project Manager*; Shannan Hudgins, *Administrative Coordinator*.

Guest: Ian Lanoff, *Fiduciary Counsel, Groom Law Group*, via telephone

Trustee Giarrusso called the meeting to order at 4:00 p.m., requesting a motion to approve the May 10, 2011, Committee Minutes. Moved by Trustee Macri, seconded by Dr. McGovern, the motion was approved unanimously.

The Chair asked Kim France, *Interim Executive Director*, to lead the review and discussion of SB3. Ms. France focused her discussion on the most recent version of SB3, § 14, and the potential Internal Revenue Code (Code) violation of the definitely determinable benefit provision in the NHRS plan with regard to a 50/50 split of employer and employee rates. She stated there was limited IRS authority on the issue, and NHRS did not have a substantive reason to formally oppose the language. Atty. Lanoff concurred, but also did not completely dismiss the potential Code violation in the language. The ensuing discussion included plan risk, percentage of

normal cost to employees, medical subsidy issues, and the costs associated with obtaining a confirmation from the IRS.

Trustee Giarrusso then asked Ms. France to discuss SB3, § 27, Recalculation of Employer Rates; Recertification. She stated that the proposed legislation was specific in which rates were to be used, and that both she and Board Chair Shapiro and reached out to Atty. Lanoff for clarification. Ms. France then asked him to discuss his findings.

Atty. Lanoff stated that the proposed language directing the Board of Trustees to use specified rates in recertification was a direct violation of the Board's authority as protected by the New Hampshire State Constitution, as well as extant legislation. If § 27 were adopted as written, the Board of Trustees would be faced with suing the State of New Hampshire, challenging those provisions on constitutional grounds. Following discussions he had with the Board Chair and Ms. France, Atty. Lanoff stated that he believed it was in the best interest of NHRS to offer alternative language, which he had crafted and was before the Committee, to the Legislature to protect the Board's statutory authority and avoid potential litigation.

Trustee Giarrusso challenged the crafting of proposed language for the Legislature without benefit of proper process and procedure, noting that any proposed language must first be presented to the Legislative Committee. Once reviewed and vetted, the proposal would move from the Committee, to the full Board for approval and adoption. Ms. France noted the time constraints presented by the NH Legislature, stating that her goal in reaching out to the Board Chair and tapping fiduciary counsel for legal opinion was to protect the System and the assets of the Trust. Trustee Giarrusso asked to go on the record as stating he was concerned about any legislative recommendations developed in isolation, without benefit of the vetting process through the Legislative Committee to the full Board.

Following a discussion about the May 10, 2011, Board adoption of new assumptions and perceived misunderstandings of the actions taken, Trustee Giarrusso requested a copy of the May Board meeting recording, as well as a transcript of the consulting actuary's presentation. He also requested that Groom Law Group memorandum dated May 26, 2011, be added to the June Board Meeting Agenda as an action item. In explaining his request, Trustee Giarrusso asked that a letter to the Legislature be crafted noting that although the memorandum had been sent, the full Board of Trustees would review and discuss it at the June 14, 2011, meeting and then communicate its decision. A discussion of timing, particularly the Committee of Conference schedule, followed and staff emphasized the narrow window of opportunity to affect critical language

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changes in the pending legislation. Trustee Giarrusso stated he did not support the legislative language provided by Groom Law Group, nor the process by which it was provided to the Legislature, and would discuss the matter at the June 14, 2011, Board meeting.

He asked Ms. France to continue with the Agenda, and she asked the Committee to take note of the effective date of the bill, that if enacted, was July 1, 2011, as noted on page 17. She reiterated her concern that the NHRS would not be capable of implementing the legislation, and asked Mr. Spead to comment. He focused his comments on the administration of the legislation, separate from PensionGold implementation, noting that inconsistent dates regarding commencement of service and vested status existed throughout the document. Those inconsistencies both created plan administration difficulties and failed to account for every employee class. Ms. France noted that the term “vested” was not defined in the RSA, and therefore, the System could not proffer a definition for the Legislature. She also addressed the nebulous category of vested deferred members created by the legislation that left members without death benefits between their retirement date and their eligibility to receive their pension annuities. Despite her comments throughout the legislative process, this unintended consequence had only become apparent to legislators with too little time to craft very difficult language.

On a motion by Dr. McGovern, seconded by Trustee Macri, the Legislative Committee voted to report to the Board that on the advice of fiduciary counsel, the proposed language in SB3 will not impede the NHRS Board of Trustee’s authority to set the rates at 7.75% for FY 2012 and 2013.

Ms. France addressed a legislator’s request for the employer assessment spiking estimator to be developed and posted on the website prior to enactment of HB 462, noting that she had carefully discussed the timeframe for the actuary, costs, and the need to implement such a bill only when it became law. Dr. McGovern informed the Committee that in an email with Rep. Hawkins, he had told her that the Legislature did not need the estimator yet.

In reporting to the study of a Defined Contribution Plan, as directed by the Board, Ms. France asked that the scope of the study be narrowed, and reported that the cost would be between \$100-200K. She referenced SB3 §23 as the legislation establishing a study committee and asked that the Committee carefully consider the expenditure of trust funds assets for the endeavor.

Moving to other pending legislation, Mr. Dianis discussed HB2 and HB1, noting that the Senate would be voting on June 1, 2011. HB1 was the

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Budget, and HB2 had SB3 as passed by the Senate plugged into it with a contingency that allowed the following: if SB3 of the 2011 Legislative Session was passed into law, then the sections of HB2 shall not take affect. He described the provision as a placeholder in the event everything fell apart in SB3.

In his discussion of HB 1, Mr. Dianis stated that the House had a local grant provision that was no longer a part of the bill. Also, the share for the political subdivisions had been 25% but was now 0%, leaving the full amount to be borne by the political subdivisions. In the retirement budget, he stated that the IT line item had been separated out to allow for the purchase of both hardware and software, noting that the dollar amount did not change, only the allocation.

Ms. France announced that she had been asked to meet with the Governor's Staff on Wednesday, June 1, 2011, to discuss SB3. She noted that the staff expressed interest in recertification and the 2012-13 rates.

Trustee Giarrusso set the next meeting of the Committee for 9:00, June 14, 2011. On a motion by Dr. McGovern, seconded by Trustee Macri, the meeting adjourned at 5:33 p.m.

Respectfully submitted,
Shannan Hudgins