

# MINNESOTA STATE COLLEGES AND UNIVERSITIES

## BOARD OF TRUSTEES

### JOINT FINANCE AND FACILITIES and HUMAN RESOURCES COMMITTEE

#### MEETING MINUTES

May 15, 2012

*Finance and Facilities Committee Members Present: Co-Chair Dan McElroy, Trustees Jacob Englund, Clarence Hightower, Philip Krinkie, Tom Renier, James Van Houten and Michael Vekich*

*Human Resources Board Members Present: Co-Chair Clarence Hightower, Trustees Brett Anderson, Cheryl Dickson, Dan McElroy, David Paskach, Tom Renier and Louise Sundin*

*Other Board Members Present: Trustees Duane Benson, Alfredo Oliveira, Christina Rice, and Scott Thiss*

*Leadership Council Representatives Present: Vice Chancellor Laura King and Gail Olson, Office of General Counsel*

The Minnesota State Colleges and Universities Joint Finance and Facilities Committee and Human Resources Committee held its meeting on May 15, 2012, 4<sup>th</sup> Floor, McCormick Room, 30 East 7<sup>th</sup> Street in St. Paul. Co-Chair McElroy called the meeting to order at 9:30 a.m.

#### **1. PROPOSED BOARD POLICY 1C.4 FIDUCIARY DUTY – SYSTEM PENSION PLANS – 1<sup>st</sup> Reading**

Vice Chancellor Laura King and Gail Olson from the Office of General Counsel presented the proposal for Board Policy 1C.4 Fiduciary Duty – System Pension Plans. Vice Chancellor King said the proposed policy is being presented because it was prompted by best practices and the fiduciary duty for the management of system pension plans and not due to any controversy or statutory requirement.

Vice Chancellor King stated it is the responsibility of Minnesota State Colleges and Universities (MnSCU) to select system pension plan investment options. The proposed policy codifies the fiduciary responsibilities and expectations for the system pension plans and articulates the fiduciary responsibilities of state pension plan administrators under Minn. Stat. Ch. 356A. The three defined contribution plans that the system administers are the Individual Retirement Account Plan (IRAP), Supplemental Retirement Plan (SRP) and Tax-Sheltered Annuity Program (TSA). Vice Chancellor King said the details of these plans aren't included in today's presentation but they are included in the Board packet.

Vice Chancellor King added there are federal laws that govern MnSCU pension plans. The Employee Retirement Income Security Act of 1974 (ERISA) also establishes fiduciary responsibilities. ERISA does not apply to the state plans; however, federal

standards closely reflect the common law of trusts applicable to pension plans so ERISA standards can provide useful guidance.

The establishment and eligibility criteria of the system pension plans are statutory and because the pension plans administered by the system all are defined contribution plans, the Board is not responsible for ensuring a particular benefit level. The participant's retirement benefits are based on employer and employee contributions, the investment options that the participant has chosen, and the performance of those investment funds.

Vice Chancellor King said that TIAA-CREF is the Third Party Administrator that was approved by the Board for services in March of 2011. TIAA-CREF's services include incorporating their processes, record keeping, reporting, and maintaining a customized MnSCU website. MnSCU hired the Investment Advisor firm of Hewitt EnnisKnupp to assist in the selection and monitoring of investment options available to participants in system pension plans. An employee Advisory Committee is also in place. Quarterly meetings are held with both the Investment Advisor and the Advisory Committee. In addition, technical and legal expertise on plan and related issues is provided by Leonard Street and Deinard, P.A., under appointment by the Office of the Attorney General.

Vice Chancellor King asked Gail Olson to walk the Board through the policy. Ms. Olson said that one of the ways the Board can articulate its responsibilities and limit its liability is to assign the responsibility to the administrators who also have fiduciary responsibility and act as co-fiduciaries. The shaded areas on the proposed policy are identical to state law and the standard of care and duty of loyalty set forth in statute. Ms. Olson reiterated that ERISA does not cover state pension plans and noted that MnSCU needs to comply with the IRS.

The Continuing Fiduciary Education Plan (Part 7) is covered when Vice Chancellor King presents the contract for the third party administrator to the Board, currently TIAA-CREF. Under it, the Board will be presented with education opportunities on the Third Party Administrator annually in order for the Board to provide good monitoring and administration of the plan. Ms. Olson said that the education will be provided online and periodically, experts will be brought in to give training. Indemnification and Reporting (Part 8) has on record that the Board can affirmatively say it can provide indemnification and this is one of the main reasons for having this policy.

Every fiduciary, Advisory Committee member and employees with delegations pursuant to the policy are eligible for indemnification and legal representation, assuming they were acting within the scope of their duties and that they were not negligent. An annual report will be provided to the Board including the training and also any unusual issues would be identified, although there have not been any of significance in the past. Ms. Olson stated that the system and the Board are not responsible for determining benefit levels so there is minimal vulnerability.

Trustee Benson asked about the responsibilities of the Board in relation to Subpart D, #2. Ms. Olson responded that Chapter 356A was built based on the fiduciary role in defined benefit plans and the system plans were added later. Because the state plan is not a

defined benefit plan, #2 is irrelevant. However, Ms. Olson said there was reluctance to remove any items from Chapter 356A because it is a state statute. For purposes going forward, Ms. Olson stated clarification from the legislature could be sought.

Trustee Van Houten inquired about the auditing responsibility and if the Investment Committee is part of that; the guidelines for replacing the Third Party Administrator and the length of their contract; and to clarify if the outside counsel is made by the Attorney General's office. Vice Chancellor King responded that in terms of the audit, TIAA-CREF provides annually an extract of their audited financial statements and internal control auditor's letter. The assets of the plan are employee owned and footnoted in the MnSCU financials. The Board approved a five year contract for TIAA-CREF after an RFP process. Ms. Olson said that by statute the Attorney General's office is responsible for selecting outside counsel.

Trustee Paskach asked if the Investment Advisor was under a Board approved contract. Vice Chancellor King replied that under current practice, the Advisor contract is not presented for Board approval. The contract requires detailed reporting to the Board as to the activity of the program and participants.

Trustee Paskach felt that the Board should be responsible for the selection of the Investment Advisor as well as the Third Party Administrator and Trustee McElroy agreed and requested that change be made for the second reading.

Trustee Thiss asked why there is no Trustee serving on the Investment Committee. Vice Chancellor King said it was considered but concluded that it was in the interest of the Board not to participate in order to illuminate the Board's fiduciary role versus the role of the co-fiduciaries. Trustee McElroy said he agreed with Vice Chancellor King because these are defined contribution plans, not defined benefit plans and the Board's responsibility is to administer the process, not the investments. Ms. Olson added that the outside parties involved are experts and there is education in place for the Board to be able to ask the right questions.

Trustee Sundin said that in her experience, communication of options to employees has been the most troublesome. Ms. Olson agreed that often the problems are at the enrollment level and in record keeping. Trustee Sundin asked if there was any additional reporting requirement for Minnesota Management and Budget under the final omnibus pension bill. Vice Chancellor King called on Gary Janikowski from the system office who replied he was not aware of any. Trustee Sundin also asked why TRA was not included from Page 3 of the Board report. Ms. Olson said MSRS and PERA were only listed as examples on Page 3.

Trustee McElroy noted the second reading of the policy is scheduled for June and adjourned the meeting at 10:30 a.m.

Respectfully submitted,

Laury Anderson, Recorder