

17th Legislative Assembly of the Northwest Territories

Standing Committee on Government Operations

Report on the Review of Bill 12:
*Northern Employee Benefits
Services Pension Plan Act*

Chair: Mr. Michael M. Nadli

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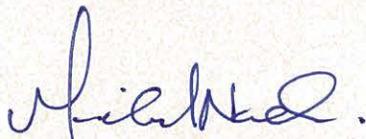
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March 5, 2015

SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Government Operations is pleased to provide its Report on the Review of Bill 12, *Northern Employee Benefits Services Pension Plan Act* and commends it to the House.



Michael M. Nadli
Chairperson

**STANDING COMMITTEE ON
GOVERNMENT OPERATIONS**

**REPORT ON THE REVIEW OF BILL 12:
*NORTHERN EMPLOYEE BENEFITS SERVICES
PENSION PLAN ACT***

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**STANDING COMMITTEE ON
GOVERNMENT OPERATIONS**

**REPORT ON THE REVIEW OF BILL 12:
*NORTHERN EMPLOYEE BENEFITS SERVICES
PENSION PLAN ACT***

INTRODUCTION

The Standing Committee on Government Operations (“the Standing Committee”) is pleased to report on its review of *Bill 12: Northern Employee Benefits Services Pension Plan Act*.

Bill 12, sponsored by the Department of Finance, sets out the legislative framework for the continuation of the Northern Employee Benefits Services (NEBS) pension plan as a multi-employer, multi-jurisdictional pension plan for employees of approved public sector employers in the Northwest Territories and Nunavut.

Bill 12 received Second Reading in the Legislative Assembly on February 27, 2014, and was referred to the Standing Committee on Government Operations for review.

BACKGROUND

NEBS has been in existence since 1979 and was incorporated as a not-for-profit corporation in 1999. At that time, the plan was regulated under the federal *Pension Benefits Standards Act (PBSA)*. In 2004, the federal Office of the Superintendent of Financial Institutions (OSFI) determined that the NEBS pension plan no longer qualified for regulation under federal legislation. This decision meant that member pension contributions were no longer protected from creditors and locking-in provisions and plan portability outside the Northwest Territories and Nunavut were lost. Additionally, while the NEBS Board of Directors continued to govern the NEBS pension plan in voluntary compliance with the PBSA, they no longer had the legislative authority to govern and manage the plan with certainty.

In 2009, the GNWT enacted the *Northern Employee Benefits Services Pension Plan Act*, as did Nunavut, which provides protection from creditors for member contributions. However, this still left NEBS conducting business in the absence of a legislative foundation. Bill 12 represents the collective efforts of the

Government of the Northwest Territories' Department of Finance and the Government of Nunavut's Department of Community and Government Services, working in collaboration with NEBS, to resolve that problem.

The multi-jurisdictional nature of the proposed legislation governing NEBS has presented unique challenges related to the development and review of Bill 12. It has created a situation in which two distinct, sovereign legislatures are simultaneously considering amendments to two separate, but virtually identical, pieces of legislation governing a single body that conducts business in both jurisdictions. Therefore, at the same time that the Standing Committee on Government Operations has been considering Bill 12, our counterpart in Nunavut, the Standing Committee on Legislation of the Legislative Assembly of Nunavut, has been considering Bill 1.

While the circumstances that have given rise to two different legislatures in two independently-governed jurisdictions considering "mirrored" legislation are unusual, they are not without precedent. The last time this situation occurred was in 2007, when both Nunavut and the Northwest Territories considered a new *Workers' Compensation Act*. Passage of this act allowed both jurisdictions to continue to share a single Workers' Safety and Compensation Commission, and to enjoy the economies of scale that come with doing so. It is in this same vein that the *Northern Employee Benefits Services Pension Plan Act* has been developed and is being considered – to allow employers and workers in both jurisdictions to participate in a single pension plan.

Given the complexity of the Bill, and the high degree of collaboration required between Nunavut and the Northwest Territories to facilitate concurrent reviews of Bill 1 and Bill 12, respectively, both Committees determined that additional time would be required to complete their reviews. Consequently, consistent with each legislature's own rules, each Standing Committee sought to extend the review period for its respective bill by an additional 120 days: On October 27, 2014, the Government of Nunavut passed *Motion 012-4(2): Extension of Review Period for Bill 1, Northern Employee Benefits Services Pension Plan Act*. On October 29, 2014, the Chair of the Standing Committee on Government Operations, in accordance with Rule 70(1) of the Rules of the Legislative Assembly of the Northwest Territories, requested in the House, under Reports of Committee on the Review of Bills, an extension by 120 days to the period of time allowed for the Standing Committee's review of Bill 12.

The Committee wishes to take this opportunity to thank their counterparts and officials in Nunavut for their timely cooperation and spirit of collaboration which contributed to the successful review of this important Bill.

THE PUBLIC REVIEW OF BILL 12

The Standing Committee on Government Operations held a public hearing on Bill 12, in Yellowknife, on September 25, 2014. The Committee anticipated that there would be some degree of stakeholder interest in Bill 12, owing to the importance placed by most individuals on matters related to their pensions. However, the turnout for the meeting exceeded the Committee's expectations. The Committee wishes to thank everyone who attended the public hearing, especially for their forbearance regarding the somewhat crowded committee room.

The Chair of the Standing Committee opened the meeting, followed by opening remarks by the Honourable J. Michael Miltenberger, Minister of Finance, and Mr. John McKee, President/Chairman of NEBS. Opening remarks were followed by presentations made by Mr. Mike Aumond, Deputy Minister, Department of Finance and Mr. Shawn Maley, Chief Executive Officer, NEBS.

The following individuals were also present as part of the delegations:

- Mr. Jamie Koe, Director of Corporate Services, Department of Finance, GNWT;
- Ms. Kelly McLaughlin, Director, Legal Services, Department of Justice, GNWT;
- Mr. Carl Bird, Director, NEBS;
- Mr. Jeff Renaud, Director, NEBS; and
- Ms. Nicole Pintkowsky, Director, Program Operations, NEBS.

The Committee received oral and written submissions from:

- Mr. Dennis Adams, a retired NEBS pensioner and former CEO of NEBS, writing as a member of the public;
- Mr. James Anderson, a member of the public;
- Mr. Jack Bourassa, Regional Executive Vice-President, North, Public Service Alliance of Canada;
- Ms. Mary Lou Cherwaty, President, Northern Territories Federation of Labour;
- Mr. Metro Huculak, Superintendent, Yellowknife Education District No. 1
- Mr. Kevin Hynes, President International Association of Fire Fighters, Local 2890
- Mr. James Infantino, Pensions and Disability Insurance Officer, National Programs Section, Membership Programs Branch, Public Service Alliance of Canada; and

- Ms. Gayla Meredith, President, and Mr. Dave Roebuck, Executive Director, Northwest Territories Teachers' Association.

Outside of the call for submissions, the Committee also received correspondence related to Bill 12 from:

- Ms. Sara Brown, Chief Executive Officer, NWT Association of Communities; and
- Mr. Shawn Maley, Chief Executive Officer, NEBS

All submissions received by the Committee are appended to this report.

WHAT WE HEARD

It is clear from the passion with which presenters spoke that pension security is an emotionally-charged subject matter and one that is very important to those who work hard to save towards their retirement. The Standing Committee found all of the submissions it received to be thoughtful and carefully considered and wishes to thank everyone who took the time to provide a submission on Bill 12. While the comments on Bill 12 were broad-ranging, the following themes emerged from the submissions:

1. General Support for NEBS Legislation but Calls for Withdrawal of Bill 12

All of the submissions we received acknowledged the need for and were supportive, in principle, of legislation to govern NEBS. There was no one who expressed the opinion that NEBS should continue to be administered in the absence of a legislative framework.

Despite the support for legislation in some form, the degree of support for Bill 12 varied and all of the submissions raised concerns regarding aspects of the Bill that were considered to be problematic.

Of the eight submissions received, one was supportive of Bill 12, but acknowledged those parts of the Bill that were likely to be contentious, and offered suggestions as to how these areas of concern might be addressed. One was supportive, provided that NEBS remained a "defined-benefits" pension plan. Three submissions called for Bill 12 to be withdrawn, or abandoned in its current form, on the basis that inadequate consultation had taken place with pension holders and called for a meaningful consultation process to be established in place of Bill 12.

Ultimately, after considering all of the input received, the Standing Committee felt that the withdrawal of Bill 12 would be counterproductive. The Committee felt that the key concerns of stakeholders could be addressed with appropriate changes to Bill 12. It is on this basis that Committee proposed 12 motions to amend the Bill which are discussed in greater detail under the section of the report titled "What We Did."

2. Lack of Consultation with Pension Beneficiaries

Going into the public hearing on Bill 12, the Committee was concerned that pension beneficiaries had not been adequately consulted during the preparation of Bill 12. This concern was substantiated by several of the presenters – some who confirmed that no consultation was undertaken with the bargaining agents representing pension beneficiaries and some who noted that, as pension-holders, they had received no information or meaningful consultation on the proposed legislation.

When asked specifically about the Government's consultation efforts, Minister Miltenberger spoke about the consultation that took place with the Nunavut Government and Mr. Aumond added that the GNWT consulted with the NEBS Board. Mr. Maley described the consultation effort by NEBS as "extensive" adding that NEBS made a point of telling beneficiaries what is going on with the development of Bill 12.

The Committee was persuaded that Bill 12 was developed in the absence of meaningful consultation with pension beneficiaries. Meaningful consultation depends on those being consulted having adequate information, time to consider it, and the ability to have input into decisions before they are made. The Committee has no reason to doubt the truth of Mr. Maley's claim that beneficiaries were provided with information about the legislation as it was being developed. However, merely providing information does not constitute consultation.

In this regard, the Committee feels that, ultimately, it is the Minister of Finance as the sponsor of the Bill who has a duty to ensure that adequate and appropriate consultation takes place with all stakeholders, including pension beneficiaries. By restricting their consultation efforts to the Government of Nunavut and NEBS Board

members and officials, this duty was not met by the Department of Finance.

3. Retroactive Reduction of Accrued Ancillary Benefits

Clauses 15(1)(a) and (b) of Bill 12 authorize the Pension Committee “at any time, from time to time,” to retroactively reduce accrued ancillary benefits and to reduce core pension benefits on a going-forward basis. Serious concerns were raised regarding this provision because it was seen to be giving the Pension Committee this power under circumstances in which a majority of the Pension Committee members represent employer members of NEBS, not employee pension holders. These concerns were exacerbated by the fact that the definition of what benefits are considered “core” versus “ancillary” is not included in the legislation, but is instead left to be defined in the plan documents.

NEBS representatives responded to this concern by noting that ancillary benefits would be defined narrowly as cost of living indexing benefits and that the Pension Committee has no intention of reducing ancillary benefits accrued before the coming-into-force date of Bill 12.

The Committee believes that the representatives of NEBS who appeared before the Committee were well-meaning and sincere in their efforts to develop legislation governing the NEBS pension plan. The Committee has no reason to disbelieve the information they were provided, which included assurances from NEBS representatives that they have no intention of reducing any benefits. These assurances notwithstanding, the Committee is aware that the legislation has the potential to long outlast the current NEBS Board and administration and that, as drafted, Bill 12 provides the authority for the retroactive reduction of accrued ancillary benefits and the future reduction of core benefits not yet accrued.

As a result of the concerns heard, the Standing Committee moved Motion 6 which, among other things, removes the ability of the NEBS Board or Pension Committee to retroactively reduce any accrued benefits. Motion 6 is discussed in further detail below, as are Motions 8 and 11, which are related to Motion 6.

4. Defined-Benefit versus Target-Benefit Model

Closely related to the proposal allowing the retroactive reduction of ancillary benefits is the issue of how Bill 12 would affect the nature of

the NEBS plan. Presenters who spoke against Bill 12 expressed the view that the NEBS plan is a defined-benefit pension model and that the provision allowing the retroactive reduction of ancillary benefits, if and when put into effect, would effectively shift NEBS to a target-benefit pension model.

A defined-benefit pension plan is a type of plan which pays a guaranteed, predetermined benefit on retirement. The plan is 'defined' in the sense that the benefit formula is specified and known in advance. On the other hand, a target-benefit pension plan is one in which future benefits are based on affordability projections and may vary as a function of the funding status of the plan. Plan members, therefore, share a greater degree of plan risk through adjustments to their benefits.

Committee found the discussion around this point to be complicated by the fact that participants did not have a shared understanding of what constitutes a "defined-benefit" plan. Both the Department of Finance and NEBS representatives put forth the proposition that by continuing to protect "core" benefits from reduction, the nature of the NEBS pension plan under Bill 12 remained a "defined-benefits" plan.

The Bill's detractors expressed the view that giving the Pension Committee the authority to retroactively reduce any accrued benefits – core or otherwise – would have the effect of changing the NEBS plan from a defined-benefit to a target-benefit model. Participants referred to this as "sacrilege" and "breaking the pension promise," arguing that NEBS employers had entered into a covenant with employees to provide a set pension benefit based on their contributions, and that to reduce this retroactively is tantamount to renegeing on this covenant.

In order to understand the significance of the shift from a defined- to a target-benefit model, Committee found it important to look at trends in pension reform the larger Canadian context. Committee's research showed that, across Canada and in other industrialized nations, there has been a movement in recent years away from defined-benefit pension models to models in which the benefits are targeted. This shift has been precipitated by the challenges faced by both public and private sector employers in keeping their pension funds solvent. The movement to a target-benefit model is one approach being employed to address the problem of pension solvency. However, it is not without its critics. Views and

perceptions around target-benefit pension models have the potential to be polarizing, depending upon one's position.

The Committee did not feel that it was necessary to reach agreement regarding what constitutes a "defined-benefit" pension. Regardless of the label used, it was clear to the Committee that the retroactive reduction of any accrued benefits – whether considered to be "ancillary" or "core," was something that pension beneficiaries did not want to see happen. At the same time, the Standing Committee is cognizant of the need for the NEBS Board and Pension Committee to have tools that allow them to maintain a solvent plan otherwise all beneficiaries are ultimately at risk of receiving little or no pension whatsoever.

To address these concerns, the Committee moved Motion 6, which has the effect of ensuring that the NEBS pension remains a defined-benefit plan. For further certainty, the term "defined-benefit" is incorporated into the Bill through Motion 1.

5. Pension Committee Governance Model

Section 11 of Bill 12, as originally drafted, authorizes the composition of the NEBS Board to be set out in the NEBS by-laws. It also gives the board the exclusive authority to appoint members or set the rules for their election to the Pension Committee, in addition to determining their numbers and length of term. Section 12 specifies that there must be at least two members on the Pension Committee who are independent to the extent that neither is a member of the Board or an employee of a participating employer. Sections 11 and 12 also establish the authorities of the NEBS Board and Pension Committee respectively.

A good deal of the input heard by the Committee pertained to this governance model established for the NEBS pension plan by Bill 12. The Committee was told that the legislation "fails to establish good governance;" that "the governance model is seriously flawed;" that it "imposes a flawed administrative process with no effective voice for the parties that bear the risk;" and that it "leaves all major decisions in the hands of the NEBS board and pension committee which are dominated by employers."

In illustrating this point, presenters made specific note of Section 15(3), which effectively gives employers, represented by the

NEBS Board, the power to opt out of contribution increases, thereby placing the burden for an under-funded plan fully on employees.

Three submissions called for the implementation of a joint-governance pension-plan model. The Standing Committee considered the implications of this and determined that such an approach would likely necessitate a re-write of the Bill, which would delay the implementation of pension legislation for NEBS possibly beyond the life of the 17th Assembly. The Standing Committee opted to focus its efforts on making amendments to the existing Bill, with the hope and expectation that it could be amended to address the major concerns raised, without unduly delaying the Bill's passage.

One submission expressed the opinion that it is unnecessary to change the governance structure of the plan to ensure that the needs of pension beneficiaries are considered, because the fiduciary duty of the Pension Committee members requires them to act on behalf of beneficiaries. The Minister's staff and NEBS representatives also made this assertion that NEBS Pension Committee Members will act in the interests of pension beneficiaries because they have a fiduciary obligation to do so.

The Standing Committee gave a great deal of consideration to this view. While Standing Committee members acknowledge the importance of the fiduciary obligations of Pension Committee members, the existence of this obligation alone cannot overcome the biases inherent in a governance design that favours employer over employee interests. If that were the case, observed the Standing Committee, then fiduciary duty would have resulted in a more meaningful consultation with employee pension beneficiaries during the development of Bill 12.

In response to concerns heard, the Standing Committee moved Motion 5 to mandate in the legislation the composition of the pension committee. Motions 3 and 4 are also related to the powers of the pension committee and are discussed in further detail below.

6. GNWT Powers Under Bill 12

A number of presenters raised concerns about sections of the Bill that they viewed as giving the GNWT too much power and influence over the NEBS plan and/or the NEBS Board and Pension Committee.

Section 9(1)

Some presenters expressed a concern that Sec. 9(1) of the Bill, for example, “invests enormous and far-reaching powers to the Minister, with no recourse except to the Courts,” thereby giving the GNWT too much power to override decisions.

The Committee considered these concerns but recognized that the removal of this provision from the Bill would leave the Minister unable to act in the event that there was a failure to manage the NEBS plan in compliance with the *Act*.

The Committee looked to other pieces of legislation providing similar powers to the Minister to step in and act in the event of a problem. One example is offered by Section 156 of the *Cities, Towns and Villages Act*, which allows the Minister to intervene in the affairs of a Municipal Corporation. In this case, the Minister may only act in unusual circumstances to address problems that have arisen. Similar powers are contained in Section 17 of the *Hospital Insurance and Health and Social Services Administration Act* which allows the Minister to appoint a person to act as a Public Administrator of a health or social services facility under specific circumstances where care is jeopardized.

Having reviewed similar provisions in other legislation, the Committee is of the view that the powers provided to the Minister in Sec. 9(1) of Bill 12 reasonably afford the government the authority to enforce its legislation, and only in the event that specified problems arise.

Section 10(2)

Similar concerns were raised regarding Sec. 10(2) of Bill 12. This clause specifies that, in the event that the GNWT becomes a member of NEBS, then the GNWT must adhere to the requirements of a participating member. Some presenters felt that this clause allows the GNWT to become a plan member, with too much power under Secs. 15(2) and (3).

The Committee considered this concern but determined that it was based on a lack of understanding about the purpose of the clause. The intent of the clause is to give greater certainty that if the GNWT were to join NEBS, it would enjoy no special privileges as an employer member. This clause was described by a member of the

Department of Finance delegation as a comfort clause included at the request of the NEBS Board.

The existence of clause 10(2) does not “permit” the GNWT to join NEBS. In fact it is Section 22, which defines a “public sector employer” as including “a territorial government,” that permits the GNWT to join NEBS. Therefore, the removal of clause 10(2) does not prevent the GNWT from joining NEBS. Its removal does, however, eliminate the certainty provided by the clause that the GNWT must follow the rules in the same manner as any other member employer. For this reason, the Committee determined that the clause should remain in the Bill.

OTHER ISSUES

1. Solvency versus Going-concern Valuation

Section 31 of Bill 12 sets out the requirement that the NEBS plan be funded on a going concern basis, rather than a solvency basis. Although this was not raised as a concern in any of the submissions received by the Standing Committee, the Committee gave consideration to this section of the Bill, which represents a change in the way NEBS has conducted its business in the past.

A solvency valuation is performed to determine the funded status of a plan if it were to terminate on a certain date. It is a common practice for private sector plans to be funded on a solvency basis where there is a much greater risk that a plan might wind up as a result of bankruptcy or business closure.

A going-concern valuation, by comparison, is calculated based on whether or not there is enough money now in the plan, when combined with expected new contributions, to cover the benefits of current and future retirees.

The Standing Committee was persuaded by NEBS' position that it is more appropriate that this pension be funded on a going-concern basis, as it is a type of pension plan that is likely to operate indefinitely and one which is not facing an immediate threat to its existence.

2. Limiting the Scope of Intergovernmental Agreements

In order to deal with the practicalities of operating the NEBS plan in a multi-jurisdictional environment, Bill 12 allows for the Minister responsible to enter into intergovernmental agreements respecting matters related to the NEBS plan. In some defined circumstances, the terms of an intergovernmental agreement will prevail, if there is a conflict, over some sections of the Act.

The Standing Committee acknowledged the rationale for intergovernmental agreements, given the multi-jurisdictional nature of the NEBS plan, but was concerned about ensuring in the legislation that the power afforded to governments, in entering into intergovernmental agreements, not be used in such a way as to circumvent requirements of the Act. Motion 3 addresses this concern.

3. Addressing the “50-50 Rule”

Clause 32 of Bill 12 specifies that, under the NEBS plan, the contribution rate for active members must be equal to the contribution rate for participating employers.

The Standing Committee considered the possibility that employers may wish to make pension contributions in excess of 50%, as an employment incentive to recruit and retain workers. The Committee discussed with Minister Miltenberger the option of amending the legislation to provide the flexibility to the Pension Committee to increase the employer contribution rate beyond 50%.

In declining to concur with the Committee’s proposal, the Minister offered the rationale that the trend for public sector plans across Canada is to require 50-50 cost sharing. The Minister also pointed out the inherent logic in enshrining a 50-50 cost sharing arrangement to complement the proposed amendments to clause 12 creating a 50-50 governance model for the pension committee.

The Standing Committee reviewed pension legislation across Canada, to determine how other jurisdictions addressed the matter of employee-employer contribution rates. Their research revealed that:

- All of the statutes reviewed have clauses intended to prohibit an employee’s contributions to his or her

pension from exceeding a certain level or threshold. Under the *Pension Benefits Standards Act (Canada)* and eight provincial statutes, the employee's contribution plus interest may not exceed 50%.

- The New Brunswick *Pension Benefits Act* permits the minimum employee contribution to be determined according to the relevant pension plan. However, where the pension plan is silent, then "the plan shall be deemed to have fixed the percentage at fifty per cent."
- Three jurisdictions (Manitoba, Ontario and Newfoundland and Labrador) refer to this as the "50-50 Rule." In others, it is variously referred to as the "minimum commuted value," "maximum employee cost," or the "minimum employer contribution."

The Standing Committee found that, while the effect of such provisions may be to create an environment where 50-50 cost sharing is likely to occur, the legislation is not worded to require cost-sharing. The Committee's research did not reveal any provisions in any of the statutes it reviewed that prohibit an employer from making a contribution in excess of 50%.

Therefore, while the Committee was not persuaded by the Minister's assertion that the trend across Canada is 50-50 cost-sharing, the Committee was willing to concede that the amendments to clause 12, allowing for balanced employee-employer membership on the pension committee was reasonable grounds for acceptance of the "50-50 rule."

WHAT WE DID

The Standing Committee listened intently and gave careful consideration to the opinions that were expressed at the public hearing on Bill 12.

The clause-by-clause review of the bill was held on February 19, 2015. At this meeting, the Committee moved twelve separate motions to amend Bill 12. Each of these motions was carried and Minister Miltenberger concurred with each:

Motion 1: To amend clause 2 by adding “defined benefit” after “multijurisdictional.”

This amendment clarifies, in legislation, the commitment to have the NEBS plan operate and be interpreted as a “defined benefit” plan rather than a “target benefit” plan. There is further discussion related to this motion under Motion 6, below.

Motion 2: To amend clause 7(2) to add a provision to provide that an intergovernmental agreement cannot waive any requirement under the *Act*.

This amendment provides that no provision of an inter-governmental agreement may be used to waive statutory requirements of the *Act*.

Motion 3: To amend clause 11(3)(a)(ii) to remove the power of the Board to determine the number of pension committee members.

This is a consequential motion necessitated by the amendment to clause 12 (Motion 5) which specifies the number of pension committee members. Given that the composition of the pension committee will be set in the legislation, it is no longer appropriate, and legislatively confusing, to have the current sub-clause permitting the Board to set the number, remain in the Bill.

Motion 4: To amend clause 11(3) to remove the power of the NEBS Board to approve or reject contribution rate increases for participating employers.

This motion is related to Motion 6 to amend clause 15(3) and removes the authority of the Board to approve or reject pension committee recommendations for contribution rate increases for employers.

This motion, in conjunction with Motion 6 to amend clause 15(3), means that the power to recommend and implement increases will lie with the pension committee, not the NEBS Board.

Motion 5: To amend clause 12 to set forth the composition of the pension committee.

As originally drafted, Bill 12 proposed that the pension committee be composed of two independent members and such other members as the Board determines.

The Standing Committee heard the concerns that the composition of the pension committee was seen to be weighted to favour the interests of employer members over beneficiaries, and that employees were left without an effective voice in the governance of the NEBS plan.

The Standing Committee passed a motion to amend clause 12 to provide for equal employee/employer balance, with one independent member of the pension committee. It also provides that the pension committee shall elect its own chair. The Standing Committee believes that this amendment to the Bill will implement a fair and balanced governance model for the NEBS plan.

Motion 6: To amend clause 15 to deal with the powers of the pension committee if there are insufficient assets in the plan.

As originally drafted, clause 15 of Bill 12 authorizes the pension committee, at any time, to retroactively reduce accrued ancillary benefits and to reduce core pension benefits on a going-forward basis.

In the event that there are insufficient assets to maintain the solvency of the NEBS plan, Bill 12 also requires that the pension committee request the consent of the NEBS Board to increase contributions to the pension fund before taking any actions to change or reduce benefits.

This section of the Bill, as originally written, also gives the Board the power to veto any proposed increase to the rate of contributions by employer members.

The Standing Committee listened carefully to the concerns raised by many of the presenters who viewed these authorities as placing an undue burden on employee beneficiaries to pay for the costs of an underfunded pension. This was seen to be especially problematic given the lack of employee representation on the pension committee.

As a result, the Standing Committee proposed amendments replacing clause 15 with a new clause that removes the ability of the pension committee to retroactively reduce **any** earned benefit as a way of dealing with insufficient assets in the plan.

There is one exception to this general prohibition against the retroactive reduction of accrued benefits:

- This exception occurs only in the specific case of the accrual of cost of living indexing benefits accrued after December 31, 2004, where an employer withdraws from the plan or the plan is terminated.

- If there are insufficient assets, and the employer has withdrawn or the plan has been terminated, then indexing benefits earned after December 31, 2004 are not guaranteed but are, instead, discretionary.
- This exception is in keeping with the current plan text, in which plan members only accrue a right to receive indexing benefits if the plan is not wound up or an employer has not withdrawn.

In addition to the prohibition against the retroactive reduction of accrued benefits, the amended provision gives the pension committee the authority to increase contribution rates as one of the ways of addressing an insufficiency of assets in the plan.

As well, this motion removes the clause giving the Board a veto power over contribution increases. As a result, the authority for managing pension fund solvency will rest with the pension committee.

This motion also has the effect of ensuring that the NEBS pension plan remains a defined-benefit plan. For greater certainty, this is enshrined through the proposal in Motion 1 to include the term "defined-benefit" in clause 2 of the Bill which outlines the purpose of the Act.

Motion 7: To amend clause 22(3) to refine Minister's ability to direct class of employer to apply for membership.

The purpose of this motion is to bring the language of this provision in Bill 12 in line with the language used in Nunavut's Bill 1, so that the bills mirror each other as closely as possible.

This has the effect of making the wording of this clause more precise. It removes the ability of the Minister to direct either an aboriginal government or the legislative or judicial branches of the territorial government to apply for membership in the NEBS plan.

Motion 8: To amend clause 25 to set forth what an actuarial funding report must contain in the event of a funding deficiency (options).

This is a technical amendment designed to go with the amendment to clause 15 (Motion 6). This motion eliminates the option of proposing, in an actuarial report, a retroactive reduction of benefits in the event of a funding shortfall.

Motion 9: To add a subsection to clause 25 to require tabling in the Legislative Assembly of the actuarial valuation reports.

This motion would require the Minister to table in the Legislative Assembly an actuarial valuation report within 120 days of receipt or if the Assembly is not sitting, at the first available opportunity when it next sits.

Motion 10: To add a subsection to clause 27 to require tabling of the pension committee's financial reports.

This motion requires the Minister to table in the Assembly the pension committee's financial report within 120 days of receipt, or, if the Assembly is not sitting, at the first available opportunity when it next sits.

As with Motion 9, the purpose of this motion is simply to ensure, through legislation, that this information is made available to the public. Motions 9 and 10 were favoured by the Legislative Assembly of Nunavut's Standing Committee on Legislation and were added to Bill 12, with the concurrence of this Standing Committee and the GNWT's Minister of Finance to ensure symmetry with Nunavut's Bill 1.

Motion 11: To amend clause 28(4) to provide that amendments to reduce benefits do not come into force until 60 days after notice is given to affected members.

Under the heading "Disclosure to Members", Bill 12 contains a clause requiring that 60 days' advance notice be provided to any pension beneficiary adversely affected by any decision of the pension committee to retroactively reduce accrued ancillary benefits.

With the amendment to clause 15 (Motion 6) removing the authority to retroactively reduce accrued ancillary pension benefits, such a period of advance notice is no longer necessary.

Nonetheless, the Standing Committee feels that *any* reductions to ancillary and/or core benefits planned by the pension committee on a going-forward basis warrant 60 days' advance notice to affected plan members. This amendment ensures that such notice is provided.

Motion 12: To amend clause 57(3) to provide that when the Minister cannot give 30 days' advance notice of a decision under 57(2) [being a decision to terminate the plan], the Minister must give notice as soon as possible.

As with Motion 7, the intent of this motion is to mirror the equivalent provision of the Nunavut legislation.

This amendment has the effect of ensuring, where the plan is being wound up, that whatever notice is possible is being given.

CONCLUSION

The Standing Committee on Government Operations' Review of Bill 12 is the result of a highly collaborative process. The Standing Committee wishes to thank everyone involved in the review of this Bill for their assistance and input.

During the clause-by-clause review, the Standing Committee and Minister agreed to the twelve amendments to Bill 12 outlined in the motions above.

Following the clause-by-clause review, a motion was carried to report Bill 12: *Northern Employee Benefits Services Pension Plan Act*, as amended and reprinted, as ready for consideration in Committee of the Whole.

This concludes the Standing Committee's review.

APPENDIX 1

SUBMISSIONS



Northwest Territories Teachers' Association

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October 30, 2014

Standing Committee on Government Operations

Michael M. Nadli, Chair

c/o Gail Bennett, Principal Clerk, Operations

Legislative Assembly

Government of the NWT

P.O. Box 1320

Yellowknife, NT X1A 2L9

Dear Mr. Nadli,

This letter is further to our submission to your committee of September 25, 2014. I would first like to thank you and your committee members for advertising your public consultation of the aforementioned date. Without this public notice, our Association would not have had the opportunity to review and comment on this proposed legislation.

Second, the Association recognizes the need to have the Northern Employee Benefits Services (NEBS) pension plan safely under a legislated framework. This will bring stability and permanence to this pension plan.

As stated in our September 25, 2014 submission, we find the legislation as written flawed to some extent. Since the committee meeting, the NWTTA has met twice with NEBS CEO Shawn Maley and had in-depth discussions with him on our objections to the legislation. Although not in total agreement with Mr. Maley, we feel that mostly we are on the same page. However, we still have certain issues with the legislation.

These concerns have crystalized around three issues:

1. **Section 15(3)**

No amendment may be made to the NEBS plan that increases the rate of contributions that participating employers must pay to the pension fund, if the NEBS board objects to the amendment.

With a Board dominated by employers, this section will/may allow employers to place the burden of a funding deficiency squarely on the shoulders of contributing members through the reduction of accrued core and ancillary pension benefits.

2. This brings us to our next objection. This legislation does not define what a core benefit is or what an ancillary benefit is. At this point, there is no clear outline as to what would be on the table if a funding deficiency of the plan had to be addressed

..../2

3. Our third major issue is with the governance of the plan. Right now, the NEBS Board is dominated by employer appointees – six of the eight directors are employer representatives which is better than it was a few weeks ago when seven of the eight were employer appointees. NEBS is a multi-employer plan and yes, the employer is responsible for any liabilities of the plan, but the 1,700 members, most of whom are union members, have little or no say in the running of this pension plan. This must change.

In discussion with Mr. Maley, we have been assured this can be dealt with outside the legislation at the Board level. The NWTTA feels the assurance could be more forceful if the legislation mandated that the NEBS pension plan be equally trustee'd by employer and employee representatives.

NWTTA Executive Director Dave Roebuck was a trustee of both the pension plan and the health and welfare plan of Carpenters Local 1541 – Floorlayers in Vancouver, British Columbia, for 15 years and relates that the plan was trustee'd by 3 employers and 3 union members. Despite the adversarial nature of the British Columbia construction industry in the 1980's and 1990's, Mr. Roebuck reports the employers hung up their suit coats and the workers hung up their hardhats at the door every meeting of either plan. The plan took advice from its actuaries, accountants and investment managers and worked for the benefit of the plan members. All actions were by consensus and were taken to ensure the sustainability of the plan for the future benefit of the membership and the viability of the employers' businesses. All trustees took their fiduciary responsibilities very seriously. I would expect no difference here in the Northwest Territories.

In conclusion, as currently written, the legislation opens the door to take NEBS from a defined benefit pension plan to a target benefit plan. This is sacrilege to the people we, and other labour groups, represent. With the few changes recommended, the Association feels this legislation would be acceptable to our Association members.

Thank you for your attention to this very important matter.

Sincerely,



Gayla Meredith
President

- c. *NWTTA Central Executive*
NWTTA Regional Presidents
Dave Roebuck, NWTTA Executive Director
Adrien Amirault, NWTTA Assistant Executive Director
Barrie Chivers, QC, NWTTA Legal Counsel



EDUCATING FOR LIFE.

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Standing Committee on Government Operations
Michael M. Nadli, Chair
c/o Gail Bennett, Principal Clerk, Operations
Legislative Assembly
Government of the NWT
P.O. Box 1320
Yellowknife, NT X1A 2L9

October 16, 2014

The Legislature of the Northwest Territories currently has before it Bill 12 – Northern Employee Benefits Services Pension Plan Act (“**Bill 12**”), and has requested input from interested parties who may be impacted by the implementation of this legislation.

As an employer, it is the goal of the Yellowknife Education District No. 1 (the “**Education District**”) to ensure that the benefits, including the pension benefits, promised to employees are predictable and consistent with similar benefits offered throughout Canada. It is this ability to provide comparable benefits that assists the Education District in attracting and retaining the talent required to ensure that needed services are available to the community. As such, the Education District wishes to submit its comments with respect to certain elements of Bill 12 and their potential impact on the members of the Northern Employee Benefits Service Pension Plan (“**NEBS Plan**”).

Please note that, due to the voluntary compliance with the *Pension Benefits Standards Act, 1985* (Canada) (“**PBSA**”), that the NEBS Plan has historically adopted, all references to the Canadian pension legislation in the following comments are to private sector pension legislation.

Defined Terms

Bill 12 contains a number of provisions that permit the reduction of certain accrued benefits; however, there are no clear parameters in relation to what constitutes those benefits. Section 15 permits the reduction of ancillary pension benefits that accrued to a member prior to the date of the applicable amendment, while protecting “core pension benefits” that have already been earned¹. Yet, Bill 12 does not specify what falls within the category of an “ancillary pension benefit”. Rather, it leaves it to the

¹ As benefits that have not yet been earned, either “core” or “ancillary”, are not protected under Bill 12, they are excluded from these comments.

discretion of the NEBS Plan Board and Pension Committee (and, potentially, the Commissioner in Executive Council if regulations are issued in support of Bill 12) to define the applicable terms and, ultimately, determine which benefits may be subject to reduction.

A legislative enactment is not easy to amend, particularly in comparison with legislative regulations or the terms of a pension plan. In not defining certain key terms, Bill 12 suggests that “core pension benefits” and “ancillary pension benefits” may be subject to amendment thereby allowing once protected accrued benefits to be vulnerable to reduction through a possible change of categorization.

While it is acknowledged that pension legislation across Canada generally permits the reduction of benefits that have accrued in a defined benefit pension plan, such a reduction is only permissible subject to the approval of the applicable provincial or federal regulatory body. Prior to the introduction of Bill 12, the NEBS Plan voluntarily complied with the PBSA which incorporates this requirement prior to permitting the reduction of accrued benefits. Further, although the *Employment Pension Plans Act* (Alberta), which came into force on September 1, 2014, permits target benefits plans and the potential for the reduction of accrued benefits, specific criteria have been established before such a reduction can be implemented. It is further acknowledged that subsections 15(2) and 25(5) of Bill 12 require the NEBS Pension Committee to consider other options prior to recommending the reduction of benefits. However, when the governing legislation contemplates the ability to reduce certain accrued benefits and permits a body or bodies, other than the Legislature or another objective regulatory body, to determine which benefits are included within that category, no benefits are truly protected.

Recommendation: Define “core pension benefits” and “ancillary pension benefits” within the legislation to ensure that certain types of benefits (*i.e.*, benefits attributable to a formula based on earnings and years of service, bridge benefits, cost of living increases, etc.) are clearly protected or subject to potential reduction, while allowing for some discretion to add or remove other forms of benefits going forward by way of regulation.

Equal Contributions

Section 32 requires that both participating employers and active NEBS Plan members must contribute to the pension fund associated with the NEBS Plan. While this is not unusual, the requirement in subsection 32(2) that mandates that “the NEBS Plan must require that the contribution rate for active members be equal to the contribution rate for participating employers” is atypical for Canadian pension legislation. It is the understanding of the Education District that contribution rates are generally a matter of plan design left to the discretion of the applicable plan administrator; it is unusual to see a stringent requirement of this nature included within legislation due to the difficulty of changing such a provision in the future.

Not only does subsection 32(2) require that contributions must be equal between the parties, but subsection 15(2) necessitates that an increase of contributions must be entertained by the NEBS Board and Pension Committee prior to taking any action to change or reduce benefits under the NEBS Plan.

While subsection 15(2) appears to seek an injection of funds to support the financial position of the NEBS Plan, in the view of the Education District, it actually serves to limit the options available to the NEBS Board and Pension Committee.

If the active NEBS Plan members are already contributing an amount that is equal to that of the participating employers and, yet, is close to the maximum contribution amount either permissible under the *Income Tax Act* (Canada) or that is simply financially feasible for the majority of NEBS Plan members, an increase of contributions to all parties may not be a reasonable option. In allowing some discretion to be applied by either the NEBS Board or the Pension Committee in relation to funding levels for the various parties, the options for avoiding a benefit reduction expand. However, if the only option is to increase all contributions by the same level in order to remain compliant with subsection 32(2), it is the view of the Education District, that a reduction of benefits may be the default option, rather than the last resort, if the sustainability of the NEBS Plan ever becomes an issue.

Recommendation: **Remove the requirement for equal contributions and include general funding parameters in Bill 12, but allow for flexibility with respect to funding levels for both active NEBS Plan members and participating employers to be included within the NEBS Plan terms upon the recommendations of the NEBS Board and/or Pension Committee.**

Waiting Period/Vesting Period

Subsection 24(1) states that an employee may have to be employed up to two (2) years with a participating employer before becoming eligible to join the NEBS Plan. Combined with the vesting provisions in sections 38 and 39 which: (i) grant the NEBS Plan the ability to prescribe a period, not exceeding two (2) years, before a NEBS Plan member is entitled to a vested benefit; and, (ii) require an active NEBS Plan member to complete two (2) years of active membership before becoming entitled to a deferred pension, NEBS Plan members may be required to work up to four (4) years before they are eligible to receive a pension from the NEBS Plan. While waiting periods remain an option across pension regulatory jurisdictions in Canada, the general trend of Canadian pension legislation is moving to immediate vesting upon entry into a pension plan (*e.g.*, Federal, Ontario, Alberta, Manitoba, Prince Edward Island, Quebec and British Columbia (when its new legislation comes into force)). As such, in our view, the potential length of the combined waiting and vesting periods is excessive.

Further, while the vesting provisions are either set out in Bill 12 or required to be included in the NEBS Plan text, subsection 24(1) simply says that a waiting period applies to “each employee who is member of a class of employees for whom the NEBS Plan is provided ...”. It is unclear how or by whom the waiting period will be established – *e.g.*, by the NEBS Plan terms, by the individual participating employers, through an administrative policy issued by the Pension Committee, etc.

In the view of the Education District, for an employee to be required to work up to four (4) years before eligibility to receive a pension seems counter to the principles and objectives of the NEBS Plan. This is particularly emphasized in that, should an employee terminate employment prior to satisfying the waiting and vesting period requirements, they may receive nothing (if they leave before satisfying

membership eligibility) or receive a simple return of their contributions with interest (if they leave prior to completing the vesting period). As discussed above, this impact appears to be counter to the direction the majority of other jurisdictions are adopting in relation to the provision of pension plans.

Recommendation: (i) Clarify who (e.g., participating employers or NEBS Pension Committee) is responsible for establishing what, if any, waiting period will be applied to new entrants into the NEBS Plan; and, (ii) consider the implications of a vesting period on members if a waiting period is implemented.

Death Benefits

On review of section 47, the death benefits payable to the surviving spouse of an active or deferred NEBS Plan member who remains entitled to a benefit from the NEBS Plan, or a retired member of the NEBS Plan, appear to be inconsistent with the requirements of other pension legislation.

It is the understanding of the Education District that:

- 1) the common normal form of a pension payable on retirement to a pension plan member with a spouse is a joint and survivor pension with at least sixty per cent (60%) of the actuarial equivalent of the benefit in pay continuing to the surviving spouse following the death of the member; and,
- 2) for pre-retirement death benefits, where the deceased member was vested, the general requirement is to pay between sixty per cent² (60%) and one hundred per cent³ (100%) of the commuted value of the benefit that had accrued to the benefit of the member as of the date of death⁴ to the surviving spouse.

While section 47 states that, in both cases, the benefit must be equal to at least fifty per cent (50%) of the benefit that had accrued to the member or that is the actuarial equivalent of the pension in pay, it is the view of the Education District, that the death benefits contained within Bill 12 are not reflective of current Canadian pension law.

Recommendation: Re-evaluate the death benefits set out in Bill 12, and modify to reflect comparable provisions across Canada.

Closing

As the largest employer currently participating in the NEBS Plan, the Yellowknife Education District No. 1 welcomes the opportunity to provide commentary and input on the content and scope of Bill 12. As a participating employer in the NEBS Plan, the Education District desires equitable participation and

² See Nova Scotia.

³ See Federal, Alberta, Manitoba, Saskatchewan, Ontario, Newfoundland and Labrador, Prince Edward Island, Quebec, New Brunswick and British Columbia (anticipated in relation to pending legislation).

⁴ Benefits may be subject to timing and/or age of member at death in some jurisdictions; specific pension legislation should be consulted to determine conditions applicable to entitlements on death.

commitment from all parties involved. However, as an employer that is seeking to attract and retain a talented employee pool, it is imperative that the benefits, including the available pension plan, are competitive and comparable with those offered elsewhere in Canada.

With respect, we herein submit our comments on the proposed Bill 12. Should you wish additional clarification of the points outlined above, or further input on the draft legislation, we would be pleased to offer such at the request of the Legislature.

Yours truly,



Metro Huculak,
Superintendent

Section 9. (1) *Minister Acting in place of pension committee*

This section gives far too overreaching powers to the Minister, without defining the criteria in which these powers may be exercised. The entire section must be carefully scrutinized.

Section 10 (2) *In the event that the Government of the Northwest Territories becomes a participating employer, the Government is required to adhere to any requirements of a participating employer under this Act.*

How, in good conscience can this Bill contemplate the inclusion of GNWT employees in the plan without consultation or negotiation with the Union that represents these workers? Especially considering the foregoing section that provides extensive powers to the Minister.

Section 11. (2) *The bylaws made by NEBS must establish a pension committee that is to be the administrator of the NEBS plan.*

It is essential that any legislative framework for a public pension plan enshrine the rights of plan members and, if applicable, their bargaining agents, to have equal participation on any decision making Boards and committees.

Section 14. (2) (h) *the use or withdrawal of actuarial or actual funding surplus;*

The funds accumulated in pension plans are the deferred wages of workers. There should be no reason allowed for NEBS to use or withdraw workers' investments, especially without their express consent. Any surpluses should be used to enhance benefits and create contingency funds in the event of economic downturns.

Section 15. (1) - *Subject to this Act and notwithstanding any provision of the plan documents to the contrary, the pension committee may at any time and from time to time amend the NEBS plan to (a) reduce ancillary pension benefits accrued before the date of the amendment.*

There is nothing in this Bill that restricts the reduction of ancillary benefits to future service only in the event of a shortfall. In fact, the Bill gives the pension committee the power to do exactly the opposite. This could result in the reduction of benefits not only to future plan beneficiaries, but retroactively for pensioners already receiving benefits.

(b) reduce core benefits that have not yet accrued at the date of the amendment

This allows the reduction of 'core' benefits (while not yet defined), that clearly changes the intent of a Defined Benefit plan into a Target Benefit plan.

Section 15. (2) -*If the pension committee determines that the assets of the NEBS plan and the current rate of contributions to the pension fund are insufficient to provide for full funding on the basis of a going concern valuation of the NEBS plan prepared by an actuary under subsection 25(2), the pension committee shall request the consent of the NEBS board to amend the NEBS plan to increase contributions to the pension fund before taking any action to change or reduce any pension benefits provided under the NEBS plan.*

If the Board does not agree to increase contributions necessary to sufficiently fund the plan, Bill 12 provides that benefits can be reduced to financially sustain it. In other words, employers have the unilateral right to determine whether the target benefits offered by the plan to its members will in fact be provided. This entirely undermines any basis for members to believe that the benefits they have earned, and to which they have contributed, will, in fact, be paid. This is another hallmark of a Target Benefit plan.

Section 15. (5) - *For greater certainty, subsection (4) does not apply to that portion of a core pension benefit accrued by a member before the date of amendment that is based on the earnings or service of a member projected in relation to a period after the date of amendment.*

Subsection (4) says that no reduction can be made in 'core' benefits that were accrued before the date of amendment. But the very next section contradicts this!

On first blush, the aforementioned sections give rise for huge concern, but our primary objection is with the process itself. The government and NEBS claim that work on this Bill has been ongoing for 10 years, yet NONE of the beneficiaries or bargaining agents representing these plan members has been consulted. This has created an essentially flawed piece of legislation.

In summary, Bill 12 breaks the pension promise made to workers at the time of hiring. Every worker accepted employment under the understanding that the pension plan provided income security and defined benefits.

While the NTFL supports creation of a legislative framework for the NEBS plan, we oppose:

- the targeted benefits approach taken by the Bill,
- the lack of a management structure providing for worker representation, and
- the lack of consultation in development of the Bill.

Additional concerns are contained in the submissions sent to you on behalf of the Union of Northern Workers, the Public Service Alliance of Canada and the Northwest Territories Teachers Association, all of which we support.

In closing, we respectfully submit that Bill 12 should be withdrawn; and that meaningful consultation with all affected stakeholders commence immediately with a view to creating new legislation that protects the intent and integrity of a Defined Benefit pension plan, as was promised to the workers who signed on to NEBS in the first place.

We understand that a 'clause by clause' review of this Bill will be open to the public, and hereby request direct advance notice of when this will take place.

Sincerely,



Mary Lou Cherwaty
President
Northern Territories Federation of Labour

c.c. Canadian Labour Congress
International Association of Firefighters
Northwest Territories Teachers Association
Nunavut Employees Union
Public Service Alliance of Canada
Union of Northern Workers

plans operating in the provinces, that is, subject to legislation in its own jurisdiction. Since 2004, NEBS has been seeking such legislation, and has made no secret of it.

The period since 2004 has also corresponded with some of the most difficult economic times in the history of pension plans in Canada – low interest rates, volatile investment markets, increasing life expectancy and increasingly tough pension accounting and actuarial standards. Through all of this, the Pension Committee believes it has administered the plan admirably well. Benefits and contribution rates have remained stable, which is not something that many other pension plans can claim.

Despite these successes, the NEBS Pension Plan does indeed need to exist in a legislative regime similar to that of the public sector plans operating in the provinces. In the absence of such a regime, the NEBS Pension Plan and its members face a number of legal risks and uncertainties. For example, there are no legislated minimum standards to protect plan members. Some key pension concepts such as locking in of benefit entitlements do not exist at the common law and need to be legislated. The NEBS Pension Plan also needs protections against the costs that can be incurred by employers who withdraw or do not pay contributions, which can only be provided by legislation. Funding standards for the plan also need to be clear and the Pension Committee needs the power to make tough decisions to keep the plan fully funded. These are the objectives of Bill 12.

The NTFL would have the Legislative Assembly kill Bill 12. This is a short sighted ambition that would only result in, at best, a lengthy prolongation of the legal risks and uncertainties facing the NEBS Pension Plan and its members. It is better instead to address concerns about Bill 12 now.

We propose to address the comments in the NTFL letter in the same order in which they were raised, as follows:

1. *NTFL Comments regarding the Pension Guarantee*

The NTFL commented in its letter that their biggest concern relates to the “guarantee” in the NEBS Pension Plan, and in particular, that the guarantee will disappear if Bill 12 is passed.

NEBS Response:

The NEBS Pension Plan is a defined benefit pension plan. With Bill 12 it will continue to be a defined benefit plan. A defined benefit pension plan provides a guaranteed annual lifetime pension to retirees in an amount determined by a formula. The word ‘guarantee’ is crucial. This benefit, once accrued, is a property right and cannot be taken away by a current or future plan administrator.

Despite the alarms raised by the NTFL and others, we do not believe Bill 12 creates any risk to this guarantee. As will be discussed more thoroughly below, the only benefits in the NEBS Pension Plan that will not have a full guarantee attached to it will be cost of living indexing increases on benefits earned after the coming into force of Bill 12.

2. *NTFL Comment: Glaringly absent in Bill 12 are definitions of what 'core' and 'ancillary' benefits actually are.*

NEBS Response:

We agree that Bill 12 does not define what 'core' and 'ancillary' benefits are, but we do not agree that this is a shortcoming of Bill 12.

It must be kept in mind that there is currently no legislation requiring the NEBS Pension Plan to provide any benefits at all. In place of this void, Bill 12 requires there to be a written plan text that sets out what benefits are offered and identifies which are "core" and which are "ancillary". In this way, Bill 12 sets out powers and responsibilities. However, since the Government of the Northwest Territories neither sponsors nor administers the NEBS Pension Plan and does not provide its funding, one would not expect legislation to dictate the specific benefits the plan must provide or the conditions on which they must be provided.

What the NTFL is really concerned about is that the Pension Committee might use its power to write the plan text in such a way as to designate *all* benefits in the NEBS Pension Plan 'ancillary', and thus to strip the plan of all of its guarantees.

There is no reason to be concerned about this. The Pension Committee wants the category of benefits that is "core" to be as large as reasonably and prudently possible, with the category that is "ancillary" to be as small as possible. This is why the Pension Committee, after consulting with its actuary about appropriate funding margins, wrote the plan text in a way that limits "ancillary pension benefits" to only cost of living indexing increases on benefits accrued after the coming into force of Bill 12. This should not be seen as alarming to anyone. Cost of living indexing benefits are usually not fully guaranteed in comparable public sector plans in neighbouring provinces either.

Please note that the Pension Committee is working with the GNWT to have this narrow definition of ancillary pension benefits enshrined in regulations under the new Act.

3. *NTFL Comment on Section 9.(1) Minister Acting in place of pension committee*

The NTFL commented that "This section gives far too overreaching powers to the Minister, without defining the criteria in which these powers may be exercised. The entire section must be carefully scrutinized."

NEBS Response:

We don't disagree that the Minister will have substantial powers under the new Act, but are comfortable that the existence of these powers does not mean that they will be used for nefarious purposes.

4. ***NTFL Common on Section 10(2): In the event that the Government of the Northwest Territories becomes a participating employer, the Government is required to adhere to any requirements of a participating employer under this Act.***

NEBS Response:

The NTFL is mistaken to believe that section 10(2) is intended to bring the public service into the NEBS Pension Plan. Rather, this section is intended to confirm that if the Government becomes a participating employer by virtue of the acquisition of an employer that is a participating employer, it will be subject to the same rules as any other participating employer and will not be able to exempt itself from those responsibilities merely because it is a government.

There may also be occasions where the Government wishes to cause an independent arm's-length body to enroll in the NEBS Pension Plan in order to enhance the body's actual and apparent separation from government influence. For example, bodies such as commissions of inquiry, reconciliation commissions, etc. could fall into such a category. In these cases, the Government could be considered an "employer" for certain legal purposes. If so, section 10(2) would ensure that the Government would have no special status vis-à-vis the NEBS Pension Plan.

We agree with the NTFL that any attempt to bring the public service into the NEBS Pension Plan ought to be subject to consultation or negotiation with the union that represents most of those workers. We would add that negotiation between the Government and the Pension Committee would also be necessary.

5. ***NTFL Comment on Section 11. (2): The bylaws made by NEBS must establish a pension committee that is to be the administrator of the NEBS plan.***

The NTFL goes on to say "It is essential that any legislative framework for a public pension plan enshrine the rights of plan members and, if applicable, their bargaining agents, to have equal participation on any decision making Boards and committees."

NEBS Response:

We disagree with the NTFL's view that the Pension Committee should become a constituent assembly of union and other groups' representatives. The fiduciary duty to the plan members and beneficiaries is what is paramount.

Bill 12 enshrines in legislation the principle that the body responsible for administering the NEBS Pension Plan must be a pension committee that owes a fiduciary duty to the plan members. Indeed, the Pension Committee takes its fiduciary duty to the plan members and beneficiaries very seriously, as it should. In our view, there is no room for the promotion of the interests of employers, unions or the Government around the Pension Committee table.

To our knowledge, in the time that the NEBS Pension Plan has operated under the current Pension Committee, no one has previously raised a complaint about the governance structure of the NEBS Pension Plan.

The Pension Committee is not opposed to having a discussion about governance of the NEBS Pension Plan, but such a discussion is outside of the scope of Bill 12. There is nothing in Bill 12 that prevents such a discussion from happening.

6. *NTFL Comment on Section 14.(2)(h) the use or withdrawal of actuarial or actual funding surplus;*

NEBS Response:

Section 14(2)(h) of Bill 12 requires the Pension Committee to address surpluses in the plan documents. The draft plan text adopted by the Pension Committee does so. It provides that surpluses be used to create contingency funds, restore benefits or reduce contribution rates for employees and employers equally, or improve benefits. Any surplus remaining on the wind up of the plan must be distributed to plan members and beneficiaries. As far as we are aware, we are in general agreement with the NTFL's position on these points.

7. *NTFL Comment on Section 15.(1)(a): Subject to this Act and notwithstanding any provision of the plan documents to the contrary, the pension committee may at any time and from time to time amend the NEBS plan to*

(a) reduce ancillary pension benefits accrued before the date of the amendment.

In its letter, the NTFL went on to say "There is nothing in this Bill that restricts the reduction of ancillary benefits to future service only in the event of a shortfall. In fact, the Bill gives the pension committee the power to do exactly the opposite. This could result in the reduction of benefits not only to future plan beneficiaries, but retroactively for pensioners already receiving benefits."

NEBS Response:

Bill 12 gives the Pension Committee the responsibility to define what an "ancillary pension benefit" is. The Pension Committee has done so, and narrowly defined "ancillary pension benefits" to cost of living indexing increases on benefits accrued after the date Bill 12 comes into force.

Since pensioners already receiving benefits accrued all of their benefits before Bill 12 comes into force, they will not be impacted.

Furthermore, since "ancillary pension benefits" will be narrowly defined to be cost of living indexing increases on benefits accrued after the date Bill 12 comes into force, the worst case scenario for any future pensioner is a pension that does not increase each year.

8. *NTFL Comment on Section 15.(1)(b): Subject to this Act and notwithstanding any provision of the plan documents to the contrary, the pension committee may at any time and from time to time amend the NEBS plan to*

(b) reduce core benefits that have not yet accrued at the date of the amendment

The NTFL goes on to say “This allows the reduction of 'core' benefits (while not yet defined), that clearly changes the intent of a Defined Benefit plan into a Target Benefit plan.”

NEBS Response:

The NTFL is mistaken. Every defined benefit plan can be amended to reduce benefits that have not yet accrued. That does not make it a target benefit plan.

9. *NTFL Comment on Section 15.(2): If the pension committee determines that the assets of the NEBS plan and the current rate of contributions to the pension fund are insufficient to provide for full funding on the basis of a going concern valuation of the NEBS plan prepared by an actuary under subsection 25(2), the pension committee shall request the consent of the NEBS board to amend the NEBS plan to increase contributions to the pension fund before taking any action to change or reduce any pension benefits provided under the NEBS plan.*

The NTFL goes on to say “If the Board does not agree to increase contributions necessary to sufficiently fund the plan, Bill 12 provides that benefits can be reduced to financially sustain it. In other words, employers have the unilateral right to determine whether the target benefits offered by the plan to its members will in fact be provided. This entirely undermines any basis for members to believe that the benefits they have earned, and to which they have contributed, will, in fact, be paid. This is another hallmark of a Target Benefit plan.”

NEBS Response:

If all or a substantial portion of the benefits in the NEBS Pension Plan were “ancillary pension benefits”, we would agree with the NTFL. However, “ancillary pension benefits” will be narrowly defined and will be, as the term implies, strictly ancillary to the core benefits guaranteed by the plan.

While there is nothing inherently wrong with a target benefit plan, the NEBS Pension Plan will not be one. Rather it is and will remain a defined benefit plan. Cost of living indexing benefits, which are extra benefits on top of the core defined benefits guaranteed by the NEBS Pension Plan, will be contingently provided. This is consistent with what is done in comparable public sector plans in neighbouring provinces.

10. NTFL Comment on Section 15.(5): For greater certainty, subsection (4) does not apply to that portion of a core pension benefit accrued by a member before the date of amendment that is based on the earnings or service of a member projected in relation to a period after the date of amendment.

The NTFL goes on to say "Subsection (4) says that no reduction can be made in 'core' benefits that were accrued before the date of amendment. But the very next section contradicts this!"

NEBS Response:

Subsection 15(5) is included in Bill 12 to confirm that when one looks at an accrued benefit, one must only consider the formula inputs that have been accrued to that time, and must not include actuarial projections of what those inputs might become in the future in the plan member in question continued in employment. A "for greater certainty" clause such as this is warranted because actuarial funding methods typically build in an element of projection when calculating the present costs of future benefits. Doing so is appropriate for actuarial valuations for plan funding purposes, but not so for defining what is a "core" pension benefit.

In closing, we respectfully submit that Bill 12 is a good bill that will set the stage for a stronger NEBS Pension Plan into the future. We welcome the interest the Bill has generated, and hope that the NTFL and other parties that have come forward during the legislative process will be willing to dialogue directly with the Pension Committee about their concerns and suggestions once the legislative framework set out by Bill 12 is in place.

Sincerely,

Shawn Maley, CEO
NORTHERN EMPLOYEE BENEFITS SERVICES

c.c.



Local No. 2890

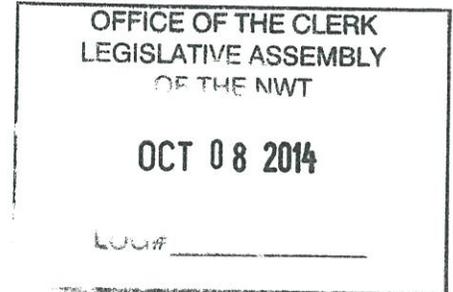
International Association of Fire Fighters

AFFILIATED WITH AFL-CIO-CLC

October 8, 2014

Michael M. Nadli, Chair
Standing Committee on Government Operations
Legislative Assembly
Government of the NWT
P.O. Box 1320
Yellowknife, NT X1A 2L9

Dear Mr. Nadli,



Bill 12 - NEBS Pension Plan Act

Please accept this letter as our submission to the Standing Committee outlining our serious concerns about many of the provisions of Bill 12 as they would affect our members.

Unique pension requirements for Fire Fighters

Fire Fighters play a unique role in ensuring public safety. Throughout their professional careers they are exposed to dangerous and physically demanding tasks. They place a high value on guaranteed pensions, indexed to inflation, that will allow them to retire with dignity at an age earlier than most other occupations. Fire Fighters need a pension plan that allows them to retire at an earlier age than most other occupations because of the strenuous physical demands of their occupation. Fire Fighters need a pension plan that is indexed to inflation because they retire at earlier ages and will receive their pensions for longer time periods than most other occupations. Fire Fighters are willing to pay relatively high pension contributions to secure the adequacy of their pensions.

Governance

We believe that the governance model described in Bill 12 is seriously flawed. Sections 11 through 14 would leave major decisions over plan benefits and contributions in the hands of the NEBS board and the pension committee. Both of these are dominated by employers. Section 9 will also permit the Government of the NWT to override any decisions made by the NEBS board and pension committee.

We recommend that the governance model be changed to a jointly sponsored model such as the one that has operated successfully for many years in the B.C. public sector pension plans (Municipal, College, Teachers and Public Service) and many Ontario public sector plans (such as OMERS, HOOPP and CAAT). That model would include two Plan Sponsor groups: one representing the employers and the other representing the plan members. The Plan Sponsors would make all the major decisions about the plan benefits and contributions. Some form of dispute resolution process, such as the appointment of an independent arbitrator, would be required in the event of a deadlock

between the Plan Sponsor groups. That model would also include a group of Trustees appointed by the Plan Sponsors. The Trustees would be independent pension experts responsible for the operation of the plan, with expertise in various matters important to the efficient operation of the plan, such as actuarial, administration, investment and legal. The Trustees would have a fiduciary responsibility to operate the plan **in the best interests of the plan beneficiaries**.

Many pension experts have endorsed this jointly sponsored model as the model recommended to reflect the interests of both the employers and the plan members in the most effective way.

Once this jointly sponsored model has been adopted, the Government of NWT would have no further involvement with the plan, unless it became involved as part of the employer Plan Sponsor group because it was an employer of plan members.

Shared Risk Plan

We believe that the plan should continue as a Defined Benefit (DB) plan. The risks of good and bad experience should continue to be shared equally between the employers and the plan members.

The plan has already operated for many years as a DB plan with the contributions shared equally between the employers and plan members. We understand that the plan is currently fully funded on a going concern basis, although we have not seen the most recent actuarial report. This means that the plan has assets equal to at least 100% of its accrued liabilities. If so, it has been managed more successfully than most other DB plans in Canada. Most other DB plans in Canada currently have assets closer to 90% of their accrued liabilities.

Under the jointly sponsored model, the Plan Sponsors would consider how to share the future good and bad experience. If the experience was good, they could consider benefit improvements or reductions in contribution rates. If the experience was bad, they could consider benefit reductions or increases in contribution rates. The changes, positive or negative, would be shared equally between employers and plan members.

The proposals in Bill 12 would not share the future experience equally. In particular, Section 15:

- distinguishes between core and ancillary benefits, without providing any definition of what are core and what are ancillary,
- allows past accrued and future ancillary benefits to be reduced,
- allows future core benefits to be reduced,
- requires the (employer dominated) pension committee to request the (employer dominated) NEBS board to increase contributions before any benefits are reduced, and
- allows the NEBS board to refuse to accept any proposed increase in employer contributions.

In effect, Section 15 ultimately requires the plan members to bear all of the risks of poor experience either through benefit reductions or member only contribution increases. When combined with Section 32(2) of Bill 12, Section 15 requires any poor experience to be borne by members through benefit reductions – member only contribution increases are effectively prohibited.

We respectfully suggest that Section 15 does not share the risks fairly between employers and plan members. It converts the existing DB plan into a Target Benefit (TB) plan with the plan members bearing all of the risks.

Registration under PBSA(1985)

We agree with Section 5 of Bill 12 that states that the plan is not required to be registered under the federal PBSA(1985). However, we believe that it would be highly desirable that Bill 12 include a requirement that the plan should voluntarily follow most of the requirements of the federal PBSA(1985), with the exception of the solvency funding rules. The plan should be excluded from solvency funding because it is a public sector multi-employer plan where the likelihood of the employers being wound up is extremely remote. (Section 31(2) of Bill 12 exempts the plan from solvency funding.) The PBSA(1985) contains many features that promote good plan governance and the protection of the interests of plan members.

We recognize that, in section 2.1 of the existing Terms of Reference of the existing Pension Committee, the existing Pension Committee and the NEBS Board have already indicated that they will voluntarily comply with the PBSA(1985). However, we suggest that this voluntary compliance be included in the proposed legislation.

Withdrawing employers

Section 56 sets out conditions for an employer to withdraw from the plan. It contemplates an employer withdrawing from the plan for all of its employees. We suggest that Section 56 be expanded to include provisions for an employer to withdraw from the plan only for certain designated classes of employees, such as Fire Fighters, who have unique pension needs. These unique pension needs for Fire Fighters may be satisfied more effectively by participation in another pension plan.

Support for other submissions

We support the submission made by the NWTTA, in particular their concerns about Sections 9, 10 and 15 of Bill 12.

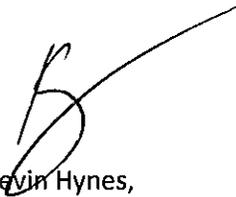
Our submission echoes the concerns of the NWTTA about plan governance and provides more detailed suggestions on plan governance. Our submission also shares the NWTTA concerns that the effect of Bill 12 is to change the plan from a Defined Benefit plan, where risks are shared equally between employers and plan members, to a Target Benefit plan, where the risks of adverse experience may be borne by the plan members only.

We support the submission made by PSAC, in particular that Bill 12 be withdrawn and a reasonable consultation process be established to deal with:

- Maintaining the plan as a Defined Benefit (DB) plan;
- Improving plan governance to provide plan members with significant representation on the Plan Sponsors committee or other governing body;
- Establishing a funding and benefits policy for the plan to provide guidance for future funding decisions to be made by the Plan Sponsors committee or other governing body.

We would be pleased to answer any questions that you may have about our submission.

Yours truly,



Kevin Hynes,
President, IAFF Local 2890

cc: Darly Dolynny,
Member, Standing Committee on Government Operations

Gail Bennett,
Principal Clerk, Operations

NEBS plan could be reduced in this way, the NEBS plan could be described as a target benefit plan, but this is not the case.

The Pension Committee has now approved in principle a plan text that defines “ancillary pension benefit” narrowly. In the new plan text, only cost of living indexing benefits accrued after the coming into force of Bill 12 will be “ancillary pension benefits”. All other benefits, constituting the vast majority of benefits under the NEBS plan by value, are “core pension benefits” which cannot be reduced.

While permitting indexing benefits to be reduced in certain circumstances makes those particular benefits contingent on funding, it does not make the plan a ‘target benefit plan’. Indeed by making indexing benefits contingent on funding availability the NEBS plan will be in very good company with many other pension plans for the broader public sector at the provincial / territorial level in Canada, none of which, to the Pension Committee’s knowledge, is known as a target benefit plan.

WILL BILL 12 PERMIT REDUCED PENSIONS FOR TODAY’S PENSIONERS?

No, pensioners will not be impacted at all. While Bill 12 does permit the Pension Committee to declare accrued benefits of pensioners or active members to be “ancillary pension benefits”, the Pension Committee has no interest in doing this. In the plan text approved in principle on October 2nd, all benefits accrued prior to the coming into force of Bill 12 by members, including active members, deferred members, pensioners, and surviving spouses of deceased members, are declared “core pension benefits”. “Core pension benefits” and “ancillary pension benefits” are the only two kinds of benefits in the NEBS plan. “Core pension benefits” cannot be reduced.

WILL BILL 12 REDUCE THE ACCRUED BENEFITS OF TODAY’S ACTIVE PLAN MEMBERS?

No. With the plan text adopted by the Pension Committee on October 2nd, no benefits of any kind accrued prior to the in-force date of Bill 12 may be reduced. This includes the right to receive future cost of living (indexing) increases on benefits accrued prior to that date. All future benefits, i.e. those that will accrue in the future, with the exception of future indexing on future benefits, are also “core pension benefits” that cannot be reduced. It is very important to emphasize too, that by narrowly defining “ancillary pension benefits” to just cost of living indexing, as the plan text does, no person’s pension in a year can ever be less than it was the year before. In this sense, the worst case scenario is a pension that does not increase from one year to the next. Even this possibility is extremely unlikely.

WHY DOES THE PLAN NEED TO HAVE BENEFITS THAT CAN BE REDUCED?

As many in the North are aware, some events (historically low interest rates, rigid federal funding rules and employer withdrawals) have threatened the NEBS plan’s stability in recent years. Despite this, the Pension Committee has an admirable track record of maintaining benefit levels and contribution rates. In fact, to our knowledge since the Plan’s inception, benefits have not been reduced and the current contribution rates of 8% employee and 8% employer have remained the same since 2002.

It is important to recall that the Pension Committee currently has the power to reduce or eliminate future benefits. For example, even in the absence of Bill 12, the Pension Committee could amend the plan to eliminate future indexing if it anticipated that there might be no money

for pay for it in later years. What the Pension Committee does not have is the power to make future benefits contingent on the availability of future funding. Due to tight budgets for employers and employees alike, the Pension Committee also has limited practical abilities to increase contribution rates. It is better for all plan stakeholders to have stable contribution rates rather than spikes in rates of the sort that have plagued many other defined benefit plans in Canada, and it is better for plan members to have contingent indexing than no indexing at all.

WHY CAN'T BILL 12 REQUIRE CONTRIBUTION RATE INCREASES INSTEAD OF PERMITTING BENEFIT REDUCTIONS?

Contributions to the NEBS plan are shared 50/50 by the employers and employees. Any contribution rate increase hurts employees just as surely as benefit reductions would. Contribution rate increases for employees reduce those employees' take home pay. For employers, rate increases will tend to require cuts to the services they provide to their clients (given the nature of most employers in the NEBS plan, the clients are usually members of the public), or require greater revenue generation to offset the contribution increases (given the nature of most employers in the NEBS plan, revenue will usually have to come from increased territorial government funding or public user fees). Consequently, it is not necessarily in anyone's interests to increase contribution rates. That being said, Bill 12 is drafted so as to give preference to contribution rate increases over reductions in ancillary pension benefits.

In practice, the Pension Committee anticipates and hopes that if action is ever needed to address funding shortfalls, the processes set out in Bill 12 will result in compromises in which modest contribution rate increases alone, or paired with modest (indeed, ideally also temporary and reversible) reductions in future indexing, will suffice to balance the fund.

SHOULDN'T BILL 12 REQUIRE THE PENSION COMMITTEE TO USE MORE CONSERVATIVE FUNDING METHODS AND ASSUMPTIONS, IN ORDER TO AVOID FUNDING SHORTFALLS IN THE FIRST PLACE?

Bill 12 requires the Pension Committee to develop, maintain and abide by a funding policy that takes conservatism and careful risk management into account.

The new legislation is designed to give the Pension Committee the tools to maintain the Plan's stability and strength even in the event of the most challenging financial circumstances that the NEBS plan could face in the future. The obligation to seek contribution rate increases and the power to reduce ancillary pension benefits are very much a part of a conservative plan framework.

WHY DOES BILL 12 NOT CONVERT THE NEBS PLAN INTO A JOINTLY SPONSORED PLAN?

Some witnesses at the Standing Committee's public meeting put forward a position that Bill 12 is flawed because it does not cause the NEBS plan to become a jointly sponsored plan, presumably one in which one or more unions or other interest groups would appoint members to the Pension Committee. The Pension Committee was very surprised to hear these positions because the current sponsorship structure of the NEBS plan has always worked well in the past, and the Pension Committee does not recall ever having received any complaints about the structure.

The participating employers are the sponsors of the plan. Bill 12 was never intended to change this fact. Bill 12 was instead intended to provide a sound and sustainable legal and financial framework for the NEBS plan while setting out the most important pension benefit standards typically found in pension legislation in Canada

The Pension Committee does not believe it is appropriate to address sponsorship at this time and in this forum since these points are outside the scope of Bill 12, and furthermore, are not a matter that requires legislative intervention to change. If the witnesses who raised this issue in the public meeting wish to advance it further, it should be done at another time and in another forum. The passage of Bill 12 will not make it any more difficult to do so.

WHAT ABOUT REPRESENTATION ON THE PENSION COMMITTEE? DON'T THE PARTICIPATING EMPLOYERS HAVE ALL THE POWER?

Some witnesses at the Standing Committee's public meeting argued or suggested that the Pension Committee members were appointed by the participating employers in order to advance the employers' interests alone, even at the expense of plan members. This is not the case.

Northern Employee Benefits Services maintains an election process through which individuals become board members. While the participating employers have votes based on the number of people they employ who participate in the NEBS benefit programs, the director candidates are by no means representatives of or in any way beholden to the employers. Directors in turn appoint the Pension Committee. In practice, for a number of practical reasons, directors have historically appointed themselves to the Pension Committee, although Bill 12 will for the first time require additional Pension Committee members who must be independent of NEBS.

All pension committee members have a fiduciary duty to the plan members. This fiduciary duty is clearly recognized in law, and is expressly recognized in Bill 12. It overrides any duties a Pension Committee may have to the NEBS board, to their employer or anyone else. Furthermore, while there is no requirement for it, in practice most pension committee members happen to be plan members themselves. Somewhat complex as these arrangements may be, the Pension Committee does not act as a representative body for anyone other than the plan members.

WHY DOES BILL 12 NOT SPELL OUT DISPUTE RESOLUTION RULES FOR PLAN MEMBERS?

Another issue raised in the public meeting that is not addressed in Bill 12 is that of dispute resolution. It goes without saying that members need to be treated, and have an expectation of being treated, fairly in all decisions made by the Pension Committee or administrative staff in relation to the NEBS plan. The Pension Committee for its part is subject to a fiduciary duty to the plan members when making any decisions and in reconsidering any that are appealed. Consistent with this duty, the Pension Committee already has a dispute resolution and appeal policy in place. The Pension Committee intends to update this policy, along with a number of others, to coincide with the coming into force of Bill 12 and will better publicize it when this is done. As important as they are, details of such a policy belong in a policy document and not in legislation.

WHY IS BILL 12 BEING THRUST ON THE PUBLIC WITHOUT NOTICE?

The Pension Committee does not agree with the argument that Bill 12 has been thrust upon the public without notice. The need for developing legislation to protect and provide long term stability for the NEBS plan has been well known for some time. NEBS has been advising participating employers and plan members through notices and newsletters for years. Bill 12 has been a public document since early in 2014 and has now gone through 1st and 2nd reading in the both the NWT and Nunavut Legislatures. It has not been hidden from public view.

WHAT IS THE FINANCIAL POSITION OF THE NEBS PLAN RIGHT NOW?

The NEBS plan is in sound financial shape right now when measured by conventional public sector pension funding standards. Public sector pension plans are generally required to be funded on a going concern basis but not on a solvency basis. The actuarial analysis reported to the Pension Committee in their meetings last week confirmed that the plan is within a rounding error of being fully funded on a going concern basis (an estimated \$300,000 shortfall on assets and liabilities of well over \$100 million) and that contribution rates are sufficient to provide all accrued and future benefits, including those that would become “ancillary pension benefits” upon the coming into force of Bill 12.

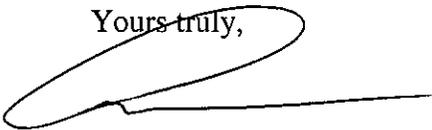
ADDITIONAL COMMENTS

The Pension Committee hopes that with the answers and explanations in this letter, it has addressed the questions and concerns raised by the Standing Committee and by the witnesses who came to the public meeting on September 25th to the Standing Committee’s satisfaction.

The Pension Committee feels strongly that January 1, 2015 ought to be the in-force date for Bill 12 and for the counterpart Bill 1 in Nunavut, which to be achieved, would require passage of Bill 12 in the fall sittings of both legislatures. Further delay or consultation on Bill 12 would serve no useful purpose and would compromise the NEBS plan’s ability to resume normal operations after a long period of legal and financial uncertainty.

In closing, the Pension Committee takes its fiduciary duty to the plan members very seriously. Operating a pension fund with in excess of \$100 million in assets and liabilities demands careful management and the ability to make tough financial decisions when circumstances warrant. Obtaining legislation that confirms the Pension Committee’s power to take tough decisions is a victory for all plan members, participating employers, the government and the public at large.

Yours truly,



Shawn Maley
Chief Executive Officer, Northern Employee Benefits Services

cc. Hon, J. Milterberger, Minister of Finance, GNWT
Brian Fleming, President, Northern Employee Benefits Services
Board of Directors, Northern Employee Benefits Services

Executive Summary

Bill 12 is theft.

It is an attempt to take the promised defined benefits away from workers, who have deferred a portion of their hard earned wages until retirement. This is in essence what transferring a Defined Benefit plan to a Target Benefit plan does to workers. It is a betrayal of the original covenants upon which workers made their decisions to accept employment under the benefits conditions provided by the NEBS defined benefit plan.

Allowing retired members' accrued pension benefits to now be reduced is a HUGELY REGRESSIVE step. The government had better think about whether 10 days of notice to strip pensioners of their accrued pension benefits is adequate consultation. Frankly, it should appear to any court that the government is trying to sneak this legislation in with minimal consultation.

Ironically, just a few days ago, the federal government proposed changes to the federal pension benefits standards regulations requiring much greater advance warning and disclosure to plan members, if/when members switch between defined benefit and target-benefit plans, precisely for this reason. The GNWT is doing exactly the opposite.

Furthermore, Northerners with no retirement security will not be able to stay in the north. They will leave; and thereby not contribute to the economy of the NWT. So, adoption of these changes will be a direct contradiction to the GNWT's stated priority of attracting and retaining up to 2,000 new residents and workers.

It is doubtful that this is truly what the Government of the Northwest Territories wants.

The NTFL urges this Standing Committee to **recommend the abandonment of Bill 12 in its current form**; and to carry out meaningful consultation with a view to creating a legislative framework that stabilizes and protects the benefits of all retired, current and future plan members.

Background

In May of this year, over 4,200 delegates gathered at the Canadian Labour Congress (CLC) Convention. They passed a resolution to protect Defined Benefit Pension Plans; "including opposing legislation that would allow employers to convert DB plans to target benefit pension plans".

The CLC represents more than 3.2 million workers in Canada. Of these workers, approximately 10,000 are members of the Northern Territories Federation of Labour (NTFL), a charter body of the CLC, dedicated to ensuring the protection of workers' rights and benefits.

As a central labour body, the NTFL is comprised of many different unions, representing workers in a vast number of occupations in both the Northwest Territories and Nunavut. Many of these workers are enrolled through their employers in the Northern Employee Benefits Pension Plan.

As an employer, the NTFL has had full-time staff registered in the Northern Employee Benefits Services (NEBS) program since 2008. While we have been looking into joining the Pension Plan, that decision will be seriously reconsidered in light of the pending legislation proposed in Bill 12.

Support

The NTFL would like to expressly confirm its support for the submissions made on behalf of the Public Service Alliance of Canada (PSAC) and the Northwest Territories Teachers' Association (NWTTA).

The PSAC has provided this Standing Committee on Government Operations with a history of the NEBS plan, an outline of the fundamental flaws in Bill 12, and sound recommendations to move forward. This accurate and well-researched information forms a factual basis for the serious concerns our organizations share. It states the shortcomings of target benefit pension plans, and shows how this conversion will damage pension and retirement security. The NTFL supports this interpretation completely.

The NWTTA raises serious specific concerns that must be addressed before a fair and comprehensive legislative framework can be adopted.

Concerns

In addition to our major objection of converting a Defined Benefit plan into a Target Benefit plan, the NTFL wishes to highlight three concerns with the proposed legislation: inadequate consultation, unfair committee representation, and the appearance of intent for the GNWT to become a participating employer.

- 1) **Inadequate Consultation:** The lack of consultation and outreach to affected stakeholders creates the impression that this government really didn't want feedback. The limited 10 day notice, published in the newspaper, does not constitute fair notice for such an important piece of legislation – especially when many stakeholders were not made aware until much later, and were made aware by sources other than the government.

- 2) **Unfair Committee Representation:** Bill 12 provides for a Pension Committee, yet appears to deny workers, now proposed to be major contributors to the plan, representation on the committee. This appears to be a nasty trend that is taking place in many of the boards and committees appointed by this government. Not only should workers have equal representation, they should be chosen by the organizations that represent workers!
- 3) **GNWT to become a Participating Employer:** Section 10 (2) of the Bill contemplates the GNWT becoming a participating employer in the plan. It is our contention that this would impose unfair, unnecessary and potentially unconstitutional constraints on free collective bargaining. Fair consultation and negotiations must prevail.

Conclusion

On June 20, 2014, an Ipsos poll of Canadians found that 94% of those surveyed agreed that "employers should live up to the commitments they have made to pensioners and employees." Workers who have planned their retirement on the basis of promised benefits must not be left in jeopardy of seniors' poverty when markets go sour.

Bill 12 fundamentally changes how pensions work, and absolves employers of their responsibility to live up to their commitments. Across the country, active movements by employers to erode or destroy previously negotiated pension arrangements are resulting in bitter disputes.

The Government of New Brunswick recently attempted a similar conversion and has now admitted that communication with plan members was inadequate. Retirees have initiated legal action in response to the inadequate and misleading information.

The NTFL urges this Standing Committee to **recommend the abandonment of Bill 12 in its current form;** and to carry out meaningful consultation with a view to creating a legislative framework that stabilizes and protects the benefits of all retired, current and future plan members.

SUBMISSION TO
STANDING COMMITTEE ON GOVERNMENT OPERATION
GOVERNMENT OF THE NORTHWEST TERRITORIES

RESPECTING BILL 12
NORTHERN EMPLOYEE BENEFITS SERVICES PENSION PLAN ACT

by
DENNIS ADAMS

SEPTEMBER 26, 2014

COPY ONE

My name is Dennis Adams. I feel compelled to make this submission to the GNWT Standing Committee on Government Operations given the events and presentations made at your public review of Bill 12, *Northern Employee Benefits Services Pension Plan Act*, September 25, 2014. I am hopeful Committee Members will give my submission consideration. I realize my submission is after-the-fact and for this I apologize. I did not initially anticipate it being necessary for me to present on this Bill.

I attended your Committee meeting as an interested individual. I am retired and receive a NEBS pension. I also receive a pension from my years working with the Government of the Northwest Territories and can say I am equally comfortable with the certainty of both pensions. I am also the past Chief Executive Officer of NEBS and want Committee Members to be aware of this fact. As you might expect, I have a declared bias. I don't believe all presenters and their supporters were perhaps as forthright about their bias.

I am making this submission strictly independent. I have not spoken with Members of the NEBS Pension Committee or staff about my intent to make this submission. I would also state I am in no manner on retainer with NEBS, nor in any way will I benefit from making this submission. In so declaring, I may be one of the few who attended the meetings, or made contributions to a submission who is not being compensated!

I simply want to see this legislation to proceed for the benefit of all.

These introductory comments aside, let me address several matters.

A key concern voiced by presenters was the legislative provision allowing reductions to Employee Member benefits. This is a valid concern, one I share as a pensioner. It is helpful to understand that most pension plans can be changed going forward. Even the Government of Canada, *Pension Benefits Standards Act*, under which the NEBS Pension Plan was once registered, allows plan sponsors to make such changes. This ability to reduce benefits “prospectively” resides in most pension legislation, federal and provincial. I am sure the Committee’s research staff can confirm this fact. The Public Service Superannuation Plan (PSSA) to which GNWT employees belong allows for such changes and only recently it was announced that a change would be made to early retirement provisions going forward. NEBS has always had this authority, which was allowed when it was registered under the PBSA and it is not seeking through this legislation anything additional.

Interestingly, the ability to reduce benefits on a go-forward, or prospective basis is not restricted under most pension legislation, changes are allowed to any benefit provision. The proposed NEBB Pension Plan legislation actually provides more protection on a go-forward basis as it distinguishes ancillary benefits that are to be considered for reduction before core benefit reductions are considered.

A valid concern expressed by many is that this legislation gives NEBS authority to reduce accrued benefits, or make retroactive changes to benefit provisions. The proposed legislation restricts this ability to ancillary, or non-core benefits. It is also a valid concern that ancillary benefits are not defined in the legislation, leaving it uncertain what might get changed on a retroactive basis. In response to the Committee’s question I believe the NEBS CEO detailed a limited list of benefits

that are being considered ancillary. With my prior involvement in the development of this legislation I can explain retroactive reductions to ancillary benefits are contemplated as a last resort, only after contribution increases have been made up to a point further increases are no longer deemed affordable, and after all reasonable reductions to benefits have been made on a go-forward basis (again, something that is allowed under legislation in most other jurisdictions).

retroactivity
Having provided this explanation, I will say I fully understand the concern some have that authority may be provided under this legislation to reduce accrued benefits. I may not be popular with the NEBS Pension Committee, staff or their advisors in offering this suggestion, but I believe this provision could, and possibly should be removed from the legislation.

I am comfortable making this suggestion for the fact the proposed legislation includes a very significant provision that the NEBS Pension Plan does not have to be funded on a solvency valuation basis. This provision places NEBS in the same position as most every other public sector pension plan and removes the need to fund the Plan on the basis of a calculation that is very volatile for the scenario of an immediate wind-up of the Plan. As was stated by the CEO, a public sector plan such as NEBS is will not be terminated, its employers will not go out of business any more so than will the Government of the Northwest Territories go out of business. Not having to fund the plan on the basis of a solvency valuation removes the need, in my opinion, for NEBS to have the authority to reduce accrued benefits in order to ensure the Plan remains sustainable.

I might mention that were this provision removed from the legislation, it would no longer be necessary to make the distinction between core and ancillary benefits. However as I mentioned earlier, maintaining this distinction will actually provide added security that ancillary benefits would be reduced first if necessary on a prospective basis. For this reason I would not recommend removing from the legislation this distinction in benefits. I do not think it is necessary under these circumstances to define core and ancillary benefits in the legislation, it could be left to be defined in regulation, which I believe is the current plan.

I will change track and comment on another point raised by several presenters, the makeup of the NEBS Pension Committee. The case was made that employees should have direct representation on the Committee, 50% representation was suggested by some.

In considering the Pension Committee's make up it is helpful to understand who are the sponsors of the NEBS Pension Plan. The sponsors are the NEBS Employer Members not their employees, who are Plan Members. As a sponsor, employers have obligations and rights their employees do not. I am confident NEBS can provide you a complete list of Employer Member obligations but I know they include being responsible for applying to be a Member, being responsible to administer the Plan provisions and enroll their employees according to the Plan's rules, ensuring payments are made, and deciding if they will withdraw for the Plan and being obligated to ensure the full pension promise is kept for all their employees in such a case, which may include making additional contributions.

As the Pension Plan sponsors, Employer Members have the authority to decide who will manage the Plan on their behalf. NEBS is structured so Employer Members can nominate persons to serve on the Board and Pension Committee and cast their vote in the elections held for these positions. Given this governance structure, it is questionable if one should provide a guarantee for employee representation and establish a separate process to place employee representatives on the Board or Pension Committee.

As noted during your meetings, a number of current Pension Committee Members (4-5) are in fact Employee Members of the Pension Plan. They were nominated and elected under the current system, which is the same one proposed in the legislation. I expect the Committee will continue to have Employee Members elected and having designated groups with guaranteed representation works against the democratic process established.

Whether a Pension Committee Member is an Employee Member of the Plan, is somewhat a moot point as all Committee Members have fiduciary duty to Employee Plan Members. Fiduciary duty is a well established legal concept that requires an individual to act on behalf of beneficiaries first and foremost,

regardless of the roles and responsibilities a Committee Member may otherwise have. An individual with fiduciary duty is not to act in the interest of anyone but the collective interest of the Plan Members, not in the interest of a particular employer, a union, government or others.

The proposed legislation provides that two Committee Members be appointed at-large, beyond those elected by Participating Employer Members. It is the Committee's prerogative under the proposed legislation to appoint these individuals for special skills or perspectives they can bring to the Committee. I do not favour changes to these provisions, which are appropriate and have served NEBS well.

I have a few comments on the phrases defined benefit plan, target benefit plan, and jointly sponsored or shared plans. These phrases were used at the Committee's meeting, sometimes incorrectly.

It was stated to the Committee that the NEBS Plan is a defined benefit plan, one that comes with a guarantee to Members for their benefits. Some disputed this, stating it will become a target benefit plan under the legislation because benefits could be reduced. The case can properly be made that as core benefits are guaranteed in the NEBS Pension Plan, it is a defined benefit plan. This case would be beyond argument if the change is made to eliminate any form of benefit reduction to accrued ancillary benefits, as suggested earlier. To repeat an earlier point, a defined benefit plan guarantees what employees have earned, it does not restrict the plan sponsor from changing provisions and benefits in the future.

The terms jointly sponsored or shared plan were used primarily in making the case employees should have equal representation on the Pension Committee. As noted earlier, the NEBS Plan is employer sponsored, it is not jointly sponsored. Jointly sponsored plans are commonly found with single employer plans where it has been negotiated under a collective agreement with employees that the plan will have shared risk and that benefits may be reduced even retroactively if parties do not want rate increases.

I'll make a final comment on the GNWT's authorities to take actions against NEBS and the Plan, including termination. I didn't hear the term but it sounded as some felt these were draconian measures. I understand the government needs to have authority to enforce its legislation. While NEBS has proven it can manage the Pension Plan without intervention, the protections afforded through the legislation is necessary for NEBS and it is appropriate therefore for the government to exercise oversight. I accept this as necessary to achieve the certainties the legislation affords NEBS, its Participating Employers and individual Plan Members.

Thank you for allowing me to express my views on the NEBS Pension Plan legislation your Committee is reviewing. I am available to explain or discuss any of these points and can be contacted by phone @ 444-9663.

I have no objection to my submission being shared with others.

Truthfully,


Dennis Adams



YELLOWKNIFE EDUCATION DISTRICT NO. 1
OF THE NORTHWEST TERRITORIES

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Michael Nadli
Standing Committee on Government Operations
Legislative Assembly of the NWT

September 25, 2014

Re: Public Review of Bill 12: Northern Employee Benefits Services Pension Plan Act

Dear Mr. Nadli:

Teachers and Education Assistants of Yellowknife Education District No.1 have recently joined the NEBS pension plan. This makes YK1 one of the largest participating employers in the NEBS pension plan.

Legislation should be in place to protect pension plans not absolve responsibility. A bill of this magnitude requires thorough review and consultation. We are requesting an opportunity to consult with the committee before providing meaningful input.

A handwritten signature in black ink that reads 'Metro Huculak'.

Metro Huculak,
Superintendent



Northwest Territories Teachers' Association

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September 25, 2014

Standing Committee on Government Operations
Michael M. Nadli, Chair
c/o Gail Bennett, Principal Clerk, Operations
Legislative Assembly
Government of the NWT
P.O. Box 1320
Yellowknife, NT X1A 2L9

As President of the Northwest Territories Teachers' Association (NWTTA), and as a new member of the NEBS pension plan courtesy of the YK1 negotiations committee's successful bargaining for a defined benefit pension plan, I am very concerned over certain provisions contained in Bill 12: Northern Employee Benefits Services Pension Plan Act.

The provisions I am most concerned about are Section 9(1)(a,b,c,d), 9(2), 9(3), Section 10(2), Section 14(2)(b), Section 15(2), Section 15(3), Section 25(5), and the overall question of governance of the plan, which will fundamentally change NEBS from a defined benefit pension plan to a 'Target Benefit' pension plan.

This is a direct attack on retirement security for employees. Target Benefit plans are not "shared risk" plans, but a transfer of risk to employees, and this cannot be supported by the NWTTA.

Specifically our objections are as follows:

- 9(1)(a,b,c,d)**
- (1) *Subject to subsections (2) and (3), the Minister may act in place of the pension committee or may appoint a person or a committee to act in place of the pension committee if*
- (a) *the Minister has determined that the NEBS plan is not sustainable;*
 - (b) *the Minister has determined that there has been a failure to manage or administer the NEBS plan in compliance with this Act or the NEBS plan;*
 - (c) *there is no pension committee and the NEBS board fails to appoint a pension committee; or*

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(d) *NEBS has requested that the Minister act or appoint a person or committee to act as administrator of the NEBS plan, as the case may be, and the Minister considers it appropriate to do so.*

(2) *Unless the Minister determines that the circumstances reasonably require otherwise, the circumstances reasonably require otherwise, the Minister shall provide 30 days' advance written notice of his or her decision under subsection (1)*

(a) *to the pension committee, in the case of a determination under paragraph (1)(a) or (b); or*

(b) *to the NEBS board, in the case of a determination under paragraph (1)(c).*

(3) *The NEBS board or the pension committee that existed immediately before the exercise of the Minister's power described in subsection (1) may, within 30 days after it receives notice of a decision under paragraph (1)(a), (b), or (c), appeal the decision to the Court by filing a Notice of Appeal with the Court and serving it on the Minister.*

This section invests enormous and far reaching powers to the Minister, especially in reference to (a) and (b) where the "Minister determines" the NEBS plan is not sustainable or there has been a failure to manage or administer the plan according to this Act or NEBS plan. By what criteria will the Minister make the decision to supplant the pension committee? The only seeming restraint is the 30 days notice in advance contained in (c). The recourse is the appeal to the Court.

10(2) *In the event that the Government of the Northwest Territories becomes a participating employer, the Government is required to adhere to any requirements of a participating employer under this Act.*

The impact of this section can be seen by reviewing Section 15(2) and Section 15(3) comments. If the GNWT does become a participating employer, it will be a "whale amongst minnows" and will be capable of running the plan the way it sees fit using the provisions of Section 15(2) and Section 15(3).

14(2)(b) *The use or withdrawal of actuarial or actual surplus*

The so-called "crisis" in defined benefit pension plans was in large part created by greedy and short-sighted employers being allowed by the Federal Government to use surpluses or take contribution holidays during times when investments were creating double-digit returns. These surpluses should have been used to enhance employee benefits and create contingency funds for when economic times changed for the worse. They weren't, and shortfalls plus the meltdown of 2008 created this "crisis".

15(2) *If the pension committee determines that the assets of the NEBS plan and the current rate of contributions to the pension fund are insufficient to provide for full funding on the basis of a going concern valuation of the NEBS plan prepared by an actuary under subsection 25(2), the pension committee shall request the consent of the NEBS board to amend the NEBS plan to increase contributions to the pension fund before taking any action to change or reduce any pension benefits provided under the NEBS plan.*

This section allows the NEBS board, on the advice of the Pension Committee, to increase contributions to the pension fund if the current rate of contribution is insufficient, but does not specify who will pay – employers and employees or employees alone?

The next section gives us the answer.

15(3) *No amendment may be made to the NEBS plan that increases the rate of contributions that participating employers must pay to the pension fund, if the NEBS board objects to the amendment.*

This section gives the Employers the power to opt out of any increased contributions and puts the burden on employees. I have no doubt the current NEBS Board Members (seven of whom are Employer representatives), have great integrity and have the best interests of their employees at heart. However, over time, Boards change due to retirements, relocations and resignations. Also, when 'push comes to shove', these Directors may be forced by their employers to vote a certain way which will not be in the best interests of the employees.

This section of the proposed bill is unacceptable.

25(5) *If a going concern valuation referred to in an actuarial valuation report discloses a funding deficiency, the report must recommend that special payments be made to the pension fund to amortize the deficiency over 15 years and, where the actuary who prepares the report is of the opinion that other steps are required to maintain the sustainability of the NEBS plan, the report must set out options, which may include an increase in contributions or a reduction in accrued or future accrual of ancillary pension benefits or a reduction in future accrual of core pension benefits, but may not include a reduction in accrued core pension benefits.*

Once again, when viewed in conjunction with section 15(3), the question is who pays, the employer or the employee? I would hazard an opinion that the burden will be firmly placed on the employees.

The governance model of NEBS is top heavy with employer representatives. The employers elect the Board of Directors and they report to the employer members. The actual working and retired members have little or no say in the operation of the plan.

Bill 12, as written, will impose increased risks to members of the plan. Under Bill 12, employers will have reduced or no risks and are still provided effective control of the plan and it goes further in that the Minister of Finance has the power to act in place of the administration under conditions outlined in Bill 12.

Members of the plan have no representation on the Board. This is patently unfair when members are expected to assume all risks under the plan. If I remember my history well, "taxation without representation" started the American Revolution in 1773.

Bill 12 should follow the model of governance set out for jointly sponsored pension plans. There should be equal representation on the board, joint access to all information and joint decision making on the future of the plan.

In conclusion, with amendments to these provisions, Bill 12 is a step in the right direction, but only if the NEBS pension plan remains a defined benefit pension plan and does not morph into what truly seems to be the intent of this legislation, a Target Benefit pension plan.

Thank you for your consideration of the NWTTA's views on this important matter.

Sincerely,



Gayla Meredith
President

- c. *NWTTA Central Executive*
NWTTA Regional Presidents
Dave Roebuck, NWTTA Executive Director
Adrien Amirault, NWTTA Assistant Executive Director
Barrie Chivers, QC, NWTTA Legal Counsel

SUBMISSIONS
of the
PUBLIC SERVICE ALLIANCE OF CANADA
on

**BILL 12, *NORTHERN EMPLOYEE BENEFITS SERVICES PENSION
PLAN ACT***

September 25, 2014

I. EXECUTIVE SUMMARY

Bill 12 fundamentally changes the pension agreement made by participating employers in three ways.

- Bill 12 breaks the pension promise. Bill 12 would convert the Plan from a predictable, stable defined benefit plan to a target benefit plan in which even accrued benefits could be reduced. This is a fundamental change in the terms and conditions of employment that shifts risks and costs to employees and retirees.
- Bill 12 fails to establish good governance. Bill 12 would impose a regulatory and governance framework on the Plan and its stakeholders that does not reflect the allocation of risks and rewards. Bill 12 would require employees and retirees to pay the costs of participating employers' decisions through potential cuts to benefits, but does not provide employees or retirees with any effective decision-making powers in the Plan and by extension, any ability to control the costs and risks of the Plan.
- A lack of meaningful consultation with those it affects the most. Bill 12 is being proposed without any meaningful consultation or fair and appropriate process for stakeholders to determine the best mutually acceptable Plan.

Each of these flaws will be certain to encourage resistance to the Bill itself and unnecessary litigation. Most importantly, it will ensure that the proposed pension plan will not enjoy stakeholder "buy-in" and as a result will not succeed as a pension plan.

It is the Government's obligation to provide an opportunity for meaningful consultation with stakeholders and develop a regulatory scheme and model of pension delivery that fairly reflects the pension agreement made by participating employers to their past and current employees.

II. THE PUBLIC SERVICE ALLIANCE OF CANADA

The Public Service Alliance of Canada ("PSAC") represents more than 185,000 workers in every province and territory in Canada and in locations around the world. Our members work for federal government departments and agencies, Crown Corporations, universities, casinos, community services agencies, Aboriginal communities, airports, and the security sector among others.

The PSAC represents over 1,000 members of the Northern Employees Benefits Services Pension Plan (the "Plan"), a majority of members in the Plan.

Bill 12 directly affects the pensions and terms and conditions of employment of these members and needless to say, this issue is of paramount importance to the PSAC.

III. THE NEED FOR LEGISLATED MINIMUM STANDARDS

The PSAC fully supports the introduction of an appropriate legislative framework for the administration and funding of the Plan.

About 10 years ago, when Northern Employee Benefits Services (“NEBS”) first determined that it was not subject to pension legislation – e.g., the *Pension Benefits Standards Act (Canada)* – the Plan stakeholders and in particular administrator NEBS has operated without a necessary frame of reference in decision-making. Although the Plan has attempted to voluntarily comply with the *Pension Benefits Standards Act (Canada)*, recent litigation has made it abundantly clear that the Plan requires a binding legislative framework that all stakeholders can rely upon in enforcing the pension promise.

However, the challenges facing NEBS and the Plan stakeholders are the result of a history of unilateral decisions made by the Plan’s sponsors. The Plan was originally established as a statutory pension plan in 1979 and since then has become a successor plan to the prior statutory plan..

The administration of the Plan (and prior plans) was assumed by NEBS in 1999. Since the first valuations of the Plan were conducted by NEBS in the early 2000s, the Plan has identified deficiencies in its funding.

NEBS inherited a flawed and already-underfunded Plan at the beginning of the last decade which was only exacerbated by two significant market downturns.

Against this history the introduction of Bill 12 does not merely introduce a legislative framework – it also seeks to cure past funding deficiencies by shifting risks and costs away from employers and potentially impose benefit reductions on members and retirees. Perhaps anticipating the resistance to broken promises and the transfer of costs and risks to employees, Bill 12 would absolve the Government of the Northwest Territories from “loss or damage caused by anything done or not done under this Act, the regulations or the NEBS plan.” The PSAC submits that the Government should not and must not “walk away” from its responsibility to ensure the pension promise it, and the participating employers, have made to employees and retirees for over four decades.

Bill 12 fundamentally changes the nature of NEBS and the pension promise that members and retirees have relied upon for their working careers. At the same time, Bill 12 fails to remedy several of the problems in the governance and administration of the Plan.

Specifically, Bill 12 would have the following effects:

- Fundamentally change a defined benefit plan with reliable and predictable benefits in retirement to a target benefit plan without reliable and predictable benefits in retirement.
- Transfer significant risk and cost from current employers to current and future employees.
- Impose a flawed administrative body and process on the Plan that fails to give parties that bear risks and costs any effective voice or control over those risks and costs.
- Fails to adequately or meaningfully consult stakeholders, which will result in strong resistance to the Plan and ultimately increase the risks of litigation and labour unrest.

IV. CONVERTING THE PLAN TO A TARGET BENEFIT IS A FUNDAMENTAL CHANGE IN THE PENSION PROMISE

The Plan is a defined benefit pension plan. The Plan's features are similar to other public sector pension plans in Canada.

The Plan provides defined benefits based on a formula that takes into account a member's final average salary (6 years) and years of service. It provides certain early retirement incentives and spousal and survivor benefits. Benefits in pay are indexed annually on a "consent" basis, which are *de facto* annual increases.

The Plan is not a "gold plated" pension plan, but does provide a stable and secure income in retirement. For example, according to the NEBS website, it would provide a 20-year employee a pension of about \$1,660 per month in retirement.

Members and retirees have invested in this Plan during their careers and planned their retirement in reliance of the predictability of the pension promise. The Plan's FAQ – available on the NEBS website – states plainly that the Plan will provide "a guaranteed stream of retirement payments will be payable for life." It is on this basis that employees are attracted and retained in their employment.

The Plan and the prior plans sponsors all knew that they were promising defined benefits, and all Plan stakeholders are aware that from time to time negotiated solutions to funding challenges are required but that accrued benefits were always guaranteed. Employees and pensioners have planned their retirement based on this promise.

Bill 12 imposes something completely different on members and retirees.

A. Earned Pension Promises Will be Broken

Bill 12 proposes to impose – without meaningful consultation and without bargaining – a fundamentally different pension plan on employees.

Section 15 of Bill 12 would enable NEBS, as administrator of the Plan, to:

- **reduce "ancillary" benefits accrued at any time in the past and in the future**
- **reduce "core" or ancillary benefits that accrue in the future**

Core and ancillary benefits are not clearly defined. The definitions refer to the Plan text (that does not yet define it) and to regulations which are not yet available.

These are both terms that were used in recent legislation in New Brunswick, which, it should be noted, is currently subject to a class proceeding and a constitutional challenge.

In that legislation, core benefits are basic pension benefit accruals and ancillary benefits are "additional" benefits, such as indexation, early retirement subsidies, and other benefits. The New Brunswick legislation introduces the distinction for its own purposes, namely, core and ancillary benefits may have a different probability of being paid in full (in the New Brunswick legislation,

ancillary benefits like indexation only need have a 75% chance of being paid in full), and second, the legislation permits the reduction of core and ancillary benefits.

Bill 12 uses these same terms, but introduces slightly different treatments of core and ancillary benefits than those in the New Brunswick legislation. However, the overall change to the pension promise is the same.

These new powers of NEBS to reduce some accrued benefits fundamentally changes the nature of the Plan, from one that provides a defined, reliable and predictable retirement income to one that can be significantly changed at any time.

Despite this new power to reduce some past and future benefits of employees and retirees, Bill 12 does not permit the same flexibility over contributions to the Plan. Section 15(3) states that “No amendment may be made to the NEBS plan that increases the rate of contributions that participating employers must pay to the pension fund if the NEBS Board objects to the amendment”.

This clause is seemingly included in Bill 12 because Bill 12 deems a committee of the NEBS Board to be the administrator of the Plan with an administrator’s attendant fiduciary duties. This clause would limit the ability of that committee to increase costs even if the committee, acting in its fiduciary capacity as administrator, thought it prudent and necessary to do so. Instead, if the full NEBS Board objects to the pension committee’s recommendation, plan contributions cannot be increased (but they can be decreased).

As we will note below, NEBS is and will be dominated by representatives of employers, which effectively means that employers will be at no risk of contribution increases in the Plan, and may, through NEBS, impose benefit cuts on members and retirees of the Plan if the employers deem it necessary. These cuts can be imposed without negotiation or consultation with those affected by the cuts.

The combination of the power to reduce already-accrued benefits and an effective power of participating employers to ensure no contribution increases are permitted ensures that when the Plan faces financial challenges in the future, benefits will be reduced in some way in the future.

The PSAC recognizes that Bill 12 would not permit reduction in core benefits (as yet undefined) accrued prior to any proposed amendment. That is, any core or base benefit already earned could not be reduced in the future under Bill 12.

Although this is an important protection – all accrued benefits in defined benefit plans should be protected by any minimum standards legislation – it is far too limited and limiting. The effect of this protection within a target benefit plan framework is highly problematic, because it does not permit the plan stakeholders to determine a flexible and fair solution to any funding challenge in the future. This is because, if the Plan faces future funding challenges, and at the same time both core benefits and contribution increases are effectively prohibited, the only remaining option is to cut more deeply into ancillary benefits (in particular, indexation) and more deeply into future benefits of active members.

The PSAC submits that Bill 12 framework is designed to improperly transfer risk and costs to employees and retirees and to limit the options available to manage the defined benefit promise.

In the PSAC's view, promises made must be promises kept: it is a contractual commitment. The most basic purpose of pension regulation is to ensure that people can rely on their employers' pension promises, and that those promises are kept. Bill 12 would permit pension promises to be broken.

B. No "Funding Crisis"

In 1999, NEBS was asked to administer a flawed and under-funded Plan, and in 2008, the Plan was affected by the same capital market events that hit all pension plans, around the globe.

However, 15 years later, following a series of changes including additional contributions by stakeholders, the Plan is on more stable financial ground. In fact, the most recent actuarial valuation of the Plan finds that, only six years following the general financial crisis, the Plan is now fully funded on a going concern basis. Indeed, according to reputable actuarial and human resource consulting firms, most Canadian pension plans have returned to good financial health in 2014.

In short, there is no compelling financial reason to impose, by statute, a fundamentally different form of pension promise on employees and retirees, particularly if an appropriate regulatory scheme is developed that ensures adequate contributions on a going concern basis, and specifies enforceable consequences of withdrawal of participating employers. These two issues were the two key issues facing the Plan before Bill 12, and we will discuss them below.

V. UNDER BILL 12 GOVERNANCE DOES NOT REFLECT RISK

The Plan is currently administered by NEBS. NEBS is a non-share capital corporation whose Board of Directors is the administrative decision-maker for the Plan. Over 115 employers representing 1700 employees are members of NEBS. Directors are nominated and elected by "Employer Members" of the corporation and the Board reports to the Employer Members. The Chief Executive Officer and a small staff are located in Yellowknife and manage program operations. Employer Members are kept informed of all Board activities and program matters through regular Employer Bulletins and other mailings.

In effect, the Plan is administered by its participating employers, with little and ineffective voice for members of the Plan.

The PSAC recognizes the need for a better governance arrangement for the Plan, one that reflects appropriate risks and rewards.

However, Bill 12 imposes a governance structure that is completely inappropriate, providing effective control of the Plan to an employer group who bear limited or no risks in the Plan as amended by Bill 12, and even further, permits the Minister of Finance to act in place of the administrator under certain conditions.

Bill 12 provides that the NEBS By-Laws establish a pension committee that would be the administrator of the Plan. The NEBS Board of Directors has exclusive authority to determine the

composition of the pension committee and to approve or reject any resolution or recommendation of the committee.

The current composition of the NEBS Board is continued pending any amendments to the By-Laws that the NEBS Board makes pursuant to Bill 12.

Members currently have no representation on the NEBS Board or pension committee. There is no guarantee in Bill 12 that members will have equal or any representation on the pension committee or the NEBS Board.

Bill 12 effectively ignores one of the fundamental features of good governance of pension plans: governance and decision-making should properly reflect the allocation of risks and rewards.

Bill 12 allocates full control over the Plan to participating employers (or designates) and allocates all risks under the Plan to employees. Employees will bear the cost and risks of all decisions made by their employers without adequate voice or ability to control those costs and risks.

This is a fundamental flaw in Bill 12 and will result in stakeholder opposition to the Bill.

In stark contrast, the governance arrangement for most jointly sponsored pension plans is one that properly and effectively reflects the allocation of risks and rewards in a pension plan. Most jointly sponsored pension plans are also jointly governed by a board or committee that has equal representation of employers and members. This governance arrangement ensures that both groups (including their collective bargaining agents) have equal access to information about the plan, and crucially, are required to make joint decisions about the future of the plan, reflecting their joint and negotiated objectives.

This governance arrangement has allowed employee and employer plan sponsors the full range of tools necessary to effectively sponsor their pension plans, and to adapt to changes in circumstances. It has given members confidence in a governance process that has seen contribution levels fluctuate, sometimes at the expense of wage increases, in order to sustain their pension plans. In general, respect for the autonomy of the pension governance process, and the absence of a 'contribution cap' or other legislative interference with the terms of pension governance, has been critical to the sustainability of those pension plans.

VI. A VIABLE AND SUCCESSFUL ALTERNATIVE MODEL

The PSAC and other plan stakeholders all recognize that the Plan, like many other pension plans in Canada, has just come through one of the most difficult periods in history for defined benefit pension plans.

There are, however, viable solutions to these challenges that have been developed in Canada and are now recognized as world-leading examples of prudent and efficient pension plan provision and administration. This model was developed in the public sector for the public sector, and should be the model that the Government implements in any legislation governing the Plan.

A. Jointly Sponsored and Jointly Governed Defined Benefit Pension Plans

The most successful public sector pension plan model is known as the “jointly sponsored defined benefit pension plan”. It involves a sharing of all plan costs, including deficit funding costs, jointly between members and employers, and most importantly, it maintains the defined benefit nature of the pension promise.

This model has been recognized by legislative reform in British Columbia, Alberta, Ontario and Nova Scotia, and is *de facto* employed in other jurisdictions.

In general, joint sponsorship and joint governance means that a plan’s current service costs (i.e. the cost for service accruing in the current year) are shared between the employer and the employees. In addition, if a deficiency emerges, the contributions necessary to pay down that deficiency are also shared between the employer and its employees. On the other hand, and as a *quid pro quo*, where the plan experiences a surplus, that surplus is also shared between the employer and the employees.

Because costs, risks and surpluses are shared, governance is also shared. Both employees and employers bear the cost consequences of pension design decisions, and also of pension investment and administration decisions. Accordingly, both employers and employees jointly control the processes to make these decisions.

Some of the most successful pension plans in Canada – and the world – are delivered in this model, including the British Columbia Municipal Employees’ Pension Plan, the British Columbia Public Service Pension Plan, the British Columbia Teachers’ Pension Plan, the British Columbia College Pension Plan, the Ontario Municipal Employees’ Retirement System, the Colleges of Applied Arts and Technologies Pension Plan and many others.

PSAC members already participate in many provincially-regulated plans that adopt this model, among them OMERS (covering PSAC members at the Windsor, Timmins and North Bay Airports, the Port of Prescott and Town of Moosonee), the BC Municipal Plan (covering PSAC members at Victoria Airport and BC First National Health Authority) and HOOPP (covering PSAC members at the Weeneebayko Health Authority).

The PSAC and its associated participating employer partners have direct and valuable experience developing, implementing and administering successful jointly governed defined benefit pension plans. The Government should establish a meaningful procedure to examine options for the regulation and governance of the Plan and “tap into” this experience and expertise.

B. Key Features of Jointly Sponsored Defined Benefit Plans That Address Current Issues for NEBS and the Plan

The two key governance and regulatory issues facing NEBS and the Plan (and by extension, its stakeholders, including participating employers and members of the Plan) are fair and affordable funding rules, and clear and enforceable expectations in the event of major changes, such as withdrawal from the Plan. All parties would benefit from having these two elements addressed in any regulatory change affecting the Plan.

Two key features of public sector jointly sponsored defined benefit pension plans across Canada are:

- rules requiring funding on a “going concern” basis, determined periodically on advice of a qualified actuary, and
- rules setting out the (enforceable) consequences of termination or withdrawal from a pension plan.

The PSAC supports introducing a regulatory scheme for the Plan that would codify the requirement that contributions be made to fund the Plan on a “going concern” basis, which has been the Plan’s voluntary administrative practice and is essentially provided for by Bill 12. Going concern funding rules recognize that pension plans are long term arrangements, and that, while investment returns and interest rates will fluctuate, there are reasonable, historically based returns and rates that can be used as a basis for funding a pension plan. Going concern funding rules are based on such long term returns and rates, although they are also sensitive to a changing long term environment. For plans that will endure for a long time, and can absorb the volatility of financial markets, going concern funding rules are sensible ways to fund a pension plan.

The PSAC also supports the introduction of a regulatory mechanism for determining and enforcing contributions owed to the Plan’s fund on withdrawal or termination of a participation employer in the Plan. There are several regulatory options available to address so-called “withdrawal liability”, which varies with each plan and jurisdiction across Canada. The PSAC does not make a specific recommendation for this mechanism, but submits that this issue be one of several key issues identified for a meaningful set of consultations on the future of the Plan and any regulatory change applicable to it.

VII. THE NEED FOR MEANINGFUL CONSULTATIONS

Despite long-standing recognition of the challenges facing the Plans and NEBS, the Government of the Northwest Territories has introduced fully-developed legislation that would fundamentally transform the nature of the Plan and mismatch its risks and rewards.

The Government has provided **less than 20 days’ notice** for stakeholders to analyze and provide comment on the proposed Bill.

In addition, the Government has proposed to hold information sessions less than two hours following the deadline for the receipt of submissions and comments, which presumably should be reflected in any information meetings and discussions about the Bill.

It seems clear that the Government is not committed to any meaningful consultation process or consideration of viable, effective alternatives for regulating and governing the Plan.

The PSAC submits that this process – in addition to the extraordinary changes introduced in Bill 12 – will only serve to generate resistance to the Bill itself, and will ensure that stakeholders do not support the proposed plan and governance model in the Bill.

VIII. SUMMARY OF THE PSAC POSITION

The PSAC recognizes that changes must be made to the Plan. The PSAC would support a consultation process that is based on the following:

- **establishing a legislative framework governing the Plan;**
- **would improve the governance of the Plan such that members have real and substantial representation; and**
- **would maintain the Plan as a defined benefit pension plan.**

The PSAC submits that Bill 12 be withdrawn and a meaningful consultation process be established.

However - nowhere in Section 27(3) as amended does it refer to “vacant” positions, instead saying the “*Minister may appoint the employee without competition to any position in the Public Service for which he or she is qualified*”.

Absence of the word “vacant” from the legislation would seem to put an enormous amount of power in the Minister’s hands and could lead to persons being parachuted into already occupied positions. This would be a serious infringement of any union’s collective agreement rights.

Section 18 is renumbered as 18(1) and a new part is added as 18(2):

- (2) No recommendation of the Executive Council is required for the Minister to appoint an employee without competition under sub-section (1) in order to fulfill a duty to accommodate the employee.

Currently, there are numerous cases on point across Canada pointing out that a disabled Employee requiring accommodation puts an obligation upon the Employer, the originating union and/or the receiving union.

When seeking to accommodate a disabled Employee, the Employer must establish that the accommodation is reasonably necessary, there is no possible accommodation in the original bargaining unit and that the person cannot do the pre-injury/illness work. If these criteria are met, then the Employer can look across bargaining lines, but must consult with the receiving union and show it has exhausted all avenues in the originating unit.

Subsection 34(6) is repealed or new language is substituted:

The Association agrees with the language in 34(6) and 34(6.3) and has no opinion on 34(6.1) and 34(6.2) as it does concern restricted Employees, which our Association members are not.

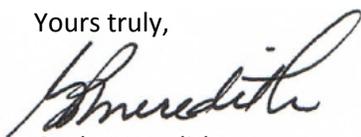
The changes proposed do address a potential for a conflict of interest with the Minister responsible by empowering the Deputy Minister to facilitate the process of applications for leave to advance an Employee’s candidacy for a political position.

Paragraph 49(1)(j) is repealed and new language is substituted:

The change reflects the changes identified in section 27(2) and new 27(3).

We appreciate being contacted by the Standing Committee for input on Bill 30. Please know that in the future, the NWTTA would appreciate being involved in the earlier stage when these legislation changes are being drafted.

Yours truly,



Gayla Meredith
President

- c. *NWTTA Central Executive*
NWTTA Regional Presidents
Dave Roebuck, NWTTA Executive Director
Adrien Amirault, NWTTA Assistant Executive Director
Barrie Chivers, QC, NWTTA Legal Counsel



May 20, 2014

Michael M. Nadli
Chairperson,
Standing Committee on Government Operations
Government of the Northwest Territories
Yellowknife, NT

Re: Delay to NEBS Legislation

Dear Mr. Nadli,

It has come to our attention that there could be a delay in the Standing Committee on Government Operations consideration of the NEBS bill later this month. It is our understanding that your committee is exercising its prerogative to initiate further consultation with the members of the NEBS Plan to ensure the legislation meets with their needs and requirements.

Please be advised that from the NWTAC's understanding, the consultation process with this Bill is now complete. Our members have discussed this issue for a number of years with NEBS and have been regularly informed of the progress and content of the Bill. In fact, as recently as May 10, NEBS presented a legislation update to all our members at our AGM in Inuvik. It is our preference that the bill proceed without delay in order to finalize the legislative security that the NEBS bill provides for the pension plan of our municipalities. Enclosed please find a long standing resolution of our association in support of the NEBS Legislation.

I thank you in advance for your attention to this matter and trust that our comments are clear but should you have any questions or require clarification, please do not hesitate to contact me.

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Yours sincerely,

A handwritten signature in black ink, appearing to be 'Sara Brown', with a long horizontal stroke extending to the right.

Sara Brown
Chief Executive Officer

Attachment: NWTAC Resolution RA-14-12-02 NEBS Pension Legislation

cc: Shawn Maley, Chief Executive Officer, NEBS

RA-14-12-02 NEBS Pension Legislation

WHEREAS the Northern Employee Benefits Services (NEBS) is a member owned, not-for-profit corporation that sponsors an insurance and health care benefits plan and a pension plan for public sector employees in the north; and

WHEREAS membership in NEBS is open to all northern public sector employers, including community governments, band councils, public housing organizations, boards and agencies of the government and non-profit organizations; and

WHEREAS the program was originally established under GNWT legislation but has been operated as an independent not-for-profit program since 1999 when it was transferred to NEBS; and

WHEREAS NEBS administers a multi-employer, public sector, defined benefits pension plan on behalf of 40 NWT Participating Employers and 500 employees; and

WHEREAS the NEBS pension plan shares portability arrangements with the GNWT's pension plan (PSSA); and

WHEREAS there is currently no existing legislation that establishes the standards for the NEBS pension plan; and

WHEREAS the establishment of such legislation would ensure the certainty and long-term security of the NEBS pension plan for its members and would serve to make the plan even more attractive than it already is;

NOW THEREFORE BE IT RESOLVED THAT the NWTAC urges the GNWT to proceed to develop legislation, in consultation with the NEBS Pension Committee and Board of Directors, that entrenches in law the fact that the NEBS pension plan is a certified public-sector pension plan for employees in the public and not-for-profit sectors of the NWT workforce; and

BE IT ALSO RESOLVED THAT the establishment of this legislation be a priority of the 17th Legislative Assembly.

CATEGORY A CONCURRENCE