



North Dakota Legislative Council

Prepared for the Employee Benefits Programs Committee

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EMPLOYEE BENEFITS PROGRAMS COMMITTEE - STATUTORY RESPONSIBILITIES AND ASSIGNED STATUTORY RESPONSIBILITIES - BACKGROUND MEMORANDUM

HISTORY

The Legislative Management's Employee Benefits Programs Committee, formerly known as the Committee on Public Employees Retirement Programs or the Retirement Committee, resulted from a 1975-76 Legislative Council study undertaken by the interim Legislative Procedure and Arrangements Committee. The committee was established in response to difficulties experienced in past legislative sessions resulting from inadequate prior study of the actuarial impacts of proposed legislative changes on retirement programs for public employees.

In 1977, the Legislative Assembly enacted Senate Bill No. 2061, which created the original committee. The provisions were codified as North Dakota Century Code Sections 54-35-02.3 and 54-35-02.4. Those sections were substantially amended in 1981 to expand the scope of the committee's jurisdiction over retirement legislation during legislative sessions and to authorize the committee to establish rules for its operation. Sections 54-35-02.3 and 54-35-02.4 were amended substantially in 1991 to expand the jurisdiction of the committee to include review of health and retiree health plans of state employees or employees of any political subdivision as well as retirement programs. Section 54-35-02.4 was amended in 1999 to require the committee to take jurisdiction over any measure or proposal authorizing an automatic increase or other change in benefits beyond the ensuing biennium which would not require legislative approval. The committee is required to include in the report of the committee a statement that the proposal would allow future changes without legislative involvement. Section 54-35-02.3 was amended in 2011 to increase the membership of the committee from 9 to 13 members.

Section 54-35-02.4 was amended in 2023 to revise the committee's duties, distinguishing between the interim and the legislative session. The 2023 amendments provide during the interim the committee shall review and make recommendations on proposed legislative measures that affect retirement or health benefits programs; and during the legislative session the committee is not active. However, during the legislative session the Employee Benefits Programs Committee Chairman and Vice Chairman shall request actuarial reports on legislation introduced without a report and on amendments if the legislation or amendments affect retirement system or health benefits programs. An actuarial report requested by the Chairman or Vice Chairman must be provided to the standing committee to which the measure is referred.

STATUTORY RESPONSIBILITIES

Section 54-35-02.3 requires the Legislative Management to appoint an Employee Benefits Programs Committee during each biennium in the same manner as the Legislative Management appoints other interim committees. The membership of the committee consists of seven members of the House of Representatives and six members of the Senate, one of whom is designated by the Legislative Management to serve as Chairman.

Legislative Measures and Proposals

Section 54-35-02.4(1) provides that during the interim the committee shall "consider and report on the legislative proposals over which the committee takes jurisdiction and which fiscally impact the retirement programs of state employees or employees of any political subdivision, and health and retiree health plans of state employees or employees of any political subdivision." During the interim, a majority of the members of the committee have the sole responsibility to determine whether a legislative proposal affects a program. The committee is required to make a thorough review of any measure or proposal it takes under its jurisdiction, including an actuarial report, and is required to report its findings and recommendations, along with any necessary legislation, to the Legislative Management and to the Legislative Assembly.

In carrying out its responsibilities, the committee, or its designee, is authorized pursuant to Section 54-35-02.4(2) to:

- Enter contracts, including retainer agreements, with an actuary or actuarial firm for expert assistance and consultation. However, each retirement, insurance, or retiree insurance program shall "pay, from the

program's retirement, insurance, or retiree health benefits fund, as appropriate, and without the need for a prior appropriation, the cost of an actuarial report required under this section which relates to that program."

- Call on personnel from state agencies or political subdivisions to furnish such information and render such assistance as the committee from time to time may request.
- Establish rules for the committee's operation, including the submission and review of proposals and the establishing of standards for actuarial reports.

Section 54-35-02.4(3) authorizes the committee to solicit draft measures and proposals from interested persons during the interim and to study measures and proposals referred to the committee by the Legislative Assembly or the Legislative Management. Section 54-35-02.4(4) requires a copy of the committee's report concerning any legislative measure, if that measure is introduced for consideration by the Legislative Assembly, be attached to the copy of that measure, which is referred to a standing committee. Historically, the committee reports have identified the sponsor of a proposal, summarized the proposal, summarized the actuarial analysis, and included the committee's recommendation.

Section 54-35-02.4(5) provides the introduction or amendment of a legislative measure affecting a public employees retirement program, public employees health insurance program, or public employee retiree health insurance program without a report from the committee requires the Employee Benefits Programs Committee Chairman and Vice Chairman to request an actuarial report from the program affected and to provide the report to the standing committee to which the bill is referred.

Section 54-35-02.4(6) provides if during a legislative session an amendment is made to a measure which the Employee Benefits Programs Committee Chairman and Vice Chairman have determined has a fiscal impact on a retirement system or health benefits program, the Chairman and Vice Chairman shall request an actuarial report from the program affected and shall provide that report to the standing committee to which the bill is referred. During a legislative session the Chairman and Vice Chairman, working together, have sole authority to determine whether a legislative measure or amendment affects a retirement system or health benefits program.

Section 54-35-02.4(7) provides any legislation enacted in contravention of Section 54-35-02.4 is invalid and any benefits provided under the legislation must be "reduced to the level current before enactment of the legislation."

Procedures for Solicitation and Review of Retirement Proposals

Under Section 54-35-02.4, during the interim the committee shall consider and report on those legislative measures and proposals over which it takes jurisdiction and which fiscally impact the retirement programs, public employees health insurance programs, or public employee retiree health insurance programs of state employees or employees of any political subdivision. The committee shall make a thorough review of each draft measure or proposal, including an actuarial report. Under this law, the committee may solicit draft measures and proposals from interested persons during the interim.

The committee also may establish rules for its operation, including rules relating to the submission and review of proposals and the establishment of standards for actuarial reports. During previous interims, the committee has limited the persons permitted to submit to the committee legislative proposals affecting retirement programs to legislators, Legislative Management interim committees, and state agencies with bill introduction privilege. The committee has required the proposals be in bill draft form and be submitted to the committee before April 1 of the even-numbered year of the interim to allow enough time for an actuarial report to be prepared for the committee and to evaluate the proposal before bill introduction deadlines. The committee may waive its self-imposed deadline for proposals received after any deadline established by the committee but before the legislative session begins.

Actuarial Services

Under Section 54-35-02.4, the committee may retain actuarial assistance to prepare an actuarial report on a legislative measure or proposal. The impacted program is required to pay for any actuarial reports required by the committee or the committee Chairman and Vice Chairman; therefore, much or all of the actuarial costs involved in the review of legislative measures and proposals are paid by the retirement, insurance, or retiree health insurance program affected by each proposal. In practice, if jurisdiction is taken over a legislative proposal or measure, the affected program obtains an actuarial report for each proposal from that program's consulting actuary.

In the past, the Employee Benefits Programs Committee, after obtaining actuarial information on the retirement proposals and receiving relevant testimony, has developed a report with respect to each legislative proposal or measure over which the committee takes jurisdiction. The report has included identification of the sponsor of the proposal or measure, a summary of the proposal or measure, a summary of the actuarial analysis of the effect the

proposal or measure may have on the retirement system or health benefits program, and a committee recommendation on the merits of the proposal or measure. A copy of the committee's report must be attached to each proposal if the proposal is introduced to the Legislative Assembly or in the case of a report prepared during a legislative session the report has been attached to the covered bill. In accordance with the 2023 amendments to Section 54-35-02.4, if a legislative measure affecting a retirement system or health benefits program is introduced without a committee report, the Employee Benefits Programs Committee Chairman and Vice Chairman shall request an actuarial report from the program affected and provide the actuarial report to the standing committee to which the measure is referred.

Additional Statutory Responsibilities

In addition to the committee's primary statutory duty of reviewing and making recommendations regarding legislative measures and proposals, the committee has the following statutory responsibilities:

- Section 15-39.1-05.2 requires the Teachers' Fund for Retirement (TFFR) Board of Trustees to provide notice to the committee of necessary or desirable changes in statute relating to the administration of the TFFR fund.
- Section 15-39.1-10.11 requires the TFFR Board of Trustees to provide annual reports to the committee regarding an annual test of the actuarial adequacy of the statutory contribution rate.
- Section 15-39.1-35 provides if the TFFR Board of Trustees adopts provisions to modify the law relating to TFFR to comply with applicable federal statutes or rules, the committee shall consider whether to approve such modifications.
- Section 18-11-15(5) requires the committee to be notified by a firefighters relief association if the association implements the alternate schedule of monthly service pension benefits to members of the association provided in that subsection.
- Sections 39-03.1-29, 54-52-23, and 54-52.1-08.2 provide if the Public Employees Retirement System (PERS) Board adopts provisions to comply with applicable federal statutes or rules, the committee shall consider whether to approve such modifications.
- Section 54-52-06 requires the PERS Board to report to the committee the contributions necessary, as determined by the actuarial study, to maintain the PERS Main Plan fund's actuarial soundness.
- Section 54-52.6-22 requires the PERS Board to provide annual reports to the committee regarding the status of the defined contribution retirement plan under Chapter 54-52.6.

STATUTORY RESPONSIBILITIES ASSIGNED BY THE LEGISLATIVE MANAGEMENT

In addition to the committee's statutory responsibilities, the Legislative Management assigned the following statutory responsibilities to the committee for the 2023-24 interim:

- Section 54-03-28(4) requires the Legislative Management to adopt a procedure for identifying measures and proposed measures mandating health insurance coverage of services or payment for specified providers of services.
- Section 54-06-31(3) requires Human Resource Management Services to report periodically to a legislative committee designated by the Legislative Management on the implementation, progress, and bonuses provided under agency recruitment and retention bonus programs. The Legislative Management assigned this responsibility to this committee.
- Section 54-06-32 requires the Office of Management and Budget (OMB) to submit to the Legislative Management a report summarizing reports of state agencies providing service awards to employees in the classified service. The Legislative Management assigned this responsibility to this committee.
- Section 54-06-33 requires OMB to submit to the Legislative Management a report summarizing reports of state agencies providing employer-paid costs of training or educational courses to employees in the classified service. The Legislative Management assigned this responsibility to this committee.
- Section 54-06-34 requires OMB to submit to the Legislative Management a report summarizing reports of executive branch state agencies paying employee membership dues for professional organizations and membership and service club dues. The Legislative Management assigned this responsibility to this committee.

COMMITTEE PLAN

The Employee Benefits Programs Committee will need to hold periodic meetings during the 2023-24 interim to complete the committee's statutory and assigned statutory duties. During the 2025 legislative session, the Chairman and Vice Chairman will need to keep apprised of bill introductions and amendments to determine whether to request actuarial reports on legislative measures that affect retirement system or health benefits programs.

2023-24 Interim

During the 2023-24 interim, the committee may consider whether to adopt rules for its operation during the interim, including rules relating to the submission and review of legislative proposals and establishment of standards for preparation of actuarial reports. Persons allowed to submit to the committee legislative proposals that impact retirement system and health benefits programs historically has been limited to Legislative Management interim committees, legislators, and state agencies with bill introduction privileges. The committee required proposals be in bill draft form and submitted to the Legislative Council before April 1 of the even-numbered year. If the committee adopts this approach, there will be adequate time to prepare actuarial reports, schedule time for the committee to receive the actuarial reports and make recommendations, and for the committee to consider any of the sponsor's proposal revisions before bill introduction deadlines. It is common for Legislative Management interim committees to submit bill drafts after the committee's established April 1 deadline, but before the end of the interim.

2025 Legislative Session

If during the 2025 legislative session a bill is introduced without an Employee Benefits Programs Committee recommendation or an amendment is made which the committee Chairman and Vice Chairman determine affects the retirement system or health benefits program, an actuarial report must be conducted and the actuarial report must be provided to the standing committee to which the bill was referred.

Annual Reports

The committee is charged with receiving annual reports from TFFR and PERS on the actuarial valuation reports for the TFFR fund and PERS main system fund. These reports typically are available by October of each year of the interim. It has become a common practice for the committee to receive actuarial valuation reports on the judges' retirement fund, public safety retirement fund, Highway Patrol Troopers' retirement fund, Job Service retirement fund, and the retiree health benefits fund at the same meeting at which the committee receives the annual TFFR and PERS actuarial valuation reports. Additionally, the committee is charged with receiving an annual report from PERS on the status of the defined contribution retirement plan under Chapter 54-52.6.

Biennial Reports

The committee is charged with receiving from OMB three biennial reports, which OMB is directed to have prepared for presentation to the committee by the end of September of the odd-numbered year of the interim. The following three reports typically are provided to the committee by Human Resource Management Services:

- A report summarizing reports of state agencies providing service awards to employees in the classified service;
- A report summarizing reports of state agencies providing employer-paid costs of training or educational courses to employees in the classified service; and
- A report summarizing reports of executive branch state agencies paying employee membership dues for professional organizations and membership and service club dues.

Periodic Reports

Human Resource Management Services is required to provide the committee with periodic reports on the implementation, progress, and bonuses provided under agency recruitment and retention bonus programs.

As Necessary

The following four committee charges are necessary only if the relevant events occur:

- The TFFR shall provide notice to the committee if the TFFR Board of Trustees determines there are necessary or desirable changes in statute relating to the administration of the TFFR fund.
- The committee shall meet to determine whether to approve TFFR terminology adopted by the TFFR Board of Trustees to modify the law relating to TFFR to comply with applicable federal statutes or rules.
- A firefighters relief association shall notify the committee if the association implements the alternate schedule of monthly service pension benefits to members of the association.

- The committee shall meet to determine whether to approve modifications if the PERS Board adopts provisions to comply with applicable federal statutes or rules.

Other Studies

Through the course of the interim, the Employee Benefits Programs Committee may wish to receive periodic updates regarding the activities of the following Legislative Management interim committees to stay apprised of possible recommended measures that may affect retirement or health benefits programs:

Health Care Committee

Pursuant to Section 1 of Senate Bill No. 2389 (2023), the interim Health Care Committee is studying prior authorization in health benefit plans. The study must include consideration of the extent to which prior authorization is used by health insurance companies in this state, including the types of services and procedures for which prior authorization is required; the impact of prior authorization on patient care, including the effects on patient health outcomes, patient satisfaction, health care costs, and patient access to care; the impact of prior authorization on health care providers and insurers, including the administrative burden, time, and cost associated with obtaining prior authorization, and the appropriate utilization of health care services; state and federal laws and regulations that may impact prior authorization; and input from stakeholders, including patients, providers, and commercial insurance plans. The study may include consideration of issues related to response times, retroactive denial, data reporting, clinical criteria and medical necessity, transparency, fraud and abuse, reviewer qualifications, exceptions, and an appeal process.

The Health Care Committee also is charged with receiving a report from the Department of Health and Human Services, Indian Affairs Commission, and PERS before June 1 of each even-numbered year, pursuant to Section 23-01-40, on the collaboration between those entities to identify goals and benchmarks while also developing individual agency plans to reduce the incidence of diabetes in the state, improve diabetes care, and control complications associated with diabetes.

Health Services Committee

Pursuant to Section 1 of Senate Bill No. 2158 (2023), the interim Health Services Committee is studying, in consultation with the Insurance Commissioner, Department of Health and Human Services, Board of the Comprehensive Health Association of North Dakota, and PERS, the steps necessary for the dissolution of the Comprehensive Health Association of North Dakota under Chapter 26.1-08. The study must include analysis of the enrollees, transitioning of the current enrollees' plans to potential Affordable Care Act plans, Medicaid programs, and PERS plans, and any other options determined by the study. The study also must include a process to discontinue any new enrollment into the Comprehensive Health Association of North Dakota immediately and transition all major medical plans in effect as soon as plan year 2024.

Retirement Committee

Pursuant to Section 33 of House Bill No. 1040 (2023), the interim Retirement Committee is studying the PERS main system plan, including funding options and contributions by political subdivisions. The committee also is studying, pursuant to Section 34 of the bill, best practices for public employee retirement plans, including defined benefit plans, defined contribution plans, and hybrid plans such as side-by-side hybrid plans, cash benefit plans, and stacked hybrid plans. The study must include development of legislation to implement the retirement plan best suited to meet the needs of the state, political subdivisions, and public employees.