



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 approved 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 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.

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) requires the committee to "consider and report on those legislative measures and proposals over which it takes jurisdiction and which affect, actuarially or otherwise, 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." The committee is required to make a thorough review of any measure or proposal it takes under its jurisdiction, including an actuarial review, 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:

1. 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 its retirement, insurance, or retiree health benefits fund, as appropriate, and without the need for a prior appropriation, the cost of any actuarial report required by the committee which relates to that program."
2. Call on personnel from state agencies or political subdivisions to furnish such information and render such assistance as the committee may from time to time request.
3. Establish rules for the committee's operation, including the submission and review of proposals and the establishing of standards for actuarial review.

Section 54-35-02.4(3) authorizes the committee to solicit draft measures and proposals from interested persons during the interim between legislative sessions and to study measures and proposals referred to it by the Legislative Assembly or the Legislative Management. Subsection 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. In previous interims, the committee reports identified the sponsor of a proposal, summarized the proposal, presented the actuarial analysis, and included the committee's recommendation. Subsections 5 and 6 prohibit the introduction or amendment of any legislative measure affecting a public employees retirement program, public employees health insurance program, or public employee retiree health insurance program unless the measure or the amendment is accompanied by a report from the committee. A majority of the committee members, acting through the Chairman, has sole authority to determine whether any legislative measure affects a public employees program.

Section 54-35-02.4(7) provides any legislation enacted in contravention of that section is invalid and of no force and effect, and any benefits provided under the legislation must be "reduced to the level current prior to enactment" of the legislation.

Procedures for Solicitation and Review of Retirement Proposals

Under Section 54-35-02.4, the committee shall consider and report on those legislative measures and proposals over which it takes jurisdiction and which affect, actuarially or otherwise, 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 measure or proposal, including an actuarial review. Under this law, the committee may solicit draft measures and proposals from interested persons during the interim.

The committee also has the authority to establish rules for its operation, including rules relating to the submission and review of proposals and the establishment of standards for actuarial review. 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 actuarial evaluation. The committee may waive its self-imposed deadline for proposals received after any deadline established by the committee.

Actuarial Services

The committee is empowered by Section 54-35-02.4 to retain actuarial assistance for the review of proposals submitted to the committee. The impacted program is required to pay for any actuarial reports required by the committee; 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 the committee takes jurisdiction 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 proposal submitted. The report has included the sponsor of the proposal, a summary of the proposal, the actuarial analysis of the effect the proposal may have on the retirement program, and a committee recommendation on the merits of the proposal. 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 is attached to the covered bill.

Additional Statutory Responsibilities

In addition to the committee's primary statutory duty of reviewing and making recommendations regarding statutory 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.

ASSIGNED STATUTORY COMMITTEE RESPONSIBILITIES

In addition to the committee's statutory responsibilities, the Legislative Management assigned the following statutory responsibilities to the committee for the 2021-22 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.

STUDY PLAN

To complete the statutory and assigned statutory charges, the Employee Benefits Programs Committee will need to hold periodic meetings during the interim and possibly beyond the interim, through completion of the 2023 legislative session.

Throughout Interim and Legislative Session

During the 2021-22 interim, the committee may consider whether to adopt rules for its operation during the interim, including rules relating to the submission and review of proposals and establishment of standards for actuarial review. Historically, the committee has limited the persons permitted to submit to the committee legislative proposals affecting retirement system programs 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 conduct actuarial studies, schedule time for the committee to receive the studies and make recommendations, and consider any of the sponsor's amendments before introduction. It is common for Legislative Management interim committees to submit bill drafts after the committee's established deadline, but before the end of the interim.

If during the 2023 legislative session a bill affecting the retirement system is introduced or an amendment is made which affects the retirement system, the committee Chairman may schedule a meeting of the committee to determine whether to take jurisdiction over the bill or amendment, have an actuarial report conducted and reviewed, and make a committee recommendation. The committee may consider whether to adopt rules for its operation during the legislative session, such as delegating to the Chairman or to the Chairman and the Vice Chairman the authority to take jurisdiction over a bill or an amendment to streamline the review process.

Annual Reports

The committee is charged with receiving annual reports from TFFR regarding the annual test of actuarial adequacy of the statutory contribution rate. This report typically is available by October of the odd-numbered year and again by October of the next even-numbered year of the interim. It has become common practice that at the meetings the committee receives the annual TFFR reports, the committee also receive actuarial reports on the

actuarial valuation of the PERS main system, judges' retirement fund, public safety retirement fund, Highway Patrolmen's retirement fund, Job Service retirement fund, and the retiree health benefits fund.

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 the month of September of the odd-numbered year of the interim. The following three required 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 Teachers' Fund for Retirement 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 committees:

Government Finance Committee

The Legislative Management's interim Government Finance Committee is studying:

- The classified state employee compensation system, including a review of the development and determination of pay grades and classifications. (House Bill No. 1015 § 44)
- The recruitment, retention, turnover, and training of law enforcement and correctional officers employed by state agencies and political subdivisions. The study may include a review of current and historical rates of retention and turnover, the training and professional development offered and required of law enforcement and correctional officers, and an analysis of the compensation and benefits of law enforcement and correctional officers employed by state agencies, political subdivisions, and comparable positions in other states within the region. (House Bill No. 1494 §1)

Additionally, the Government Finance Committee is charged with receiving from OMB a quarterly report of each executive branch agency that gives any full-time state employee salary increases between April 1, 2021, and June 30, 2023, which cumulatively are 15 percent or more over the employee's base salary as of March 31, 2021. The report must include the name of each employee receiving the increase and any relevant salary information. (House Bill No. 1015 § 30; NDCC § 54-44-04)

Health Care Committee

The Legislative Management's interim Health Care Committee is studying:

- Prescription drug pricing, importation, reference pricing, and the role pharmacy benefit managers play in drug pricing. The study must include input from PERS, Workforce Safety and Insurance, the Insurance Commissioner, the State Board of Pharmacy, prescription drug wholesalers in Canada, and the public. (Senate Bill No. 2212 § 1)
- Medication optimization. The study must include a review of the implementation of clinical pharmacist-led medication optimization programs in individual, large group, and small group plans, including provider credentialing, billing standards and procedures, providing standards of care, patient monitoring, consistent documentation of outcomes and efforts related to de-prescribing, and structuring an outcome reporting system for medication optimization programs. The study also must include a review of changes necessary to state laws and administrative rules to implement effective medication optimization. The Insurance Commissioner shall assist the Legislative Management with the study and identify and request the participation of stakeholders needed to complete this study. The Insurance Commissioner shall collect and provide to the Legislative Management the data needed to complete the study. The data provided by stakeholders, not otherwise publicly disclosed, must be considered confidential pursuant to Section 44-04-18.4. (House Bill No. 1010 § 8)
- Health insurance networks, including narrow networks. The study must include consideration of the use and regulation of broad and narrow networks in the state by individuals and employers, the sales and marketing of broad and narrow networks, opportunities for consumer choice of provider, and premium differentials among states with choice-of-provider laws; a review of legislative and court history regarding the impact of choice-of-provider laws on exclusive provider organizations and preferred provider organizations and how choice-of-provider laws apply to risk-pooled health plans regulated by the federal Employee Retirement Income Security Act of 1974; the impact of the consolidation of the health care market on consumer cash prices, insurance plan deductibles and premiums prices, and consumer options; a comparison of health maintenance organizations (HMO) provider network designs and other health insurer provider network designs; a review of how vertical integrated networks utilize HMO plans; and a comparison of premiums of health benefit plans offered in the individual and small group markets in relation to the provider network design associated with those plans along with the growth of value-based purchasing. (House Bill No. 1465 § 3)
- Solutions to provider and end-user barriers to access to and utilization of telehealth services in this state. (House Concurrent Resolution No. 3014)
- The feasibility and desirability of implementing a community health worker program, including recommendations regarding a definition of a community health worker, the scope of work of a community health worker, the infrastructure for training of community health workers, the development of a community health worker certification process and related training curriculum and continuing education requirements, a strategy for community health worker services being Medicaid-reimbursed services, and private insurers' use of community health workers. (House Concurrent Resolution No. 3015)

Human Services Committee

The Legislative Management's interim Human Services Committee is studying issues related to the Department of Human Services and human service zones employee compensation. The study must include consideration of total state employee and human service zone team members compensation, including wages and salaries, annual leave, pay grades, classification, disaster or emergency services volunteers' leave, employee assistance program benefits, family and medical leave, funeral leave, holidays, hours of work, administrative leave, jury and witness leave, leave without pay, the merit system, military leave, overtime compensation, retirement benefits, health insurance benefits, severance pay, sick leave, benefits for temporary employees, and time off to vote; health insurance benefits, including the availability of health savings accounts, self-insurance, healthy lifestyle incentives, and the appropriateness of the human service zones' current health insurance benefits; compensation equity between the Department of Human Services, other state agencies, human service zones, and the market within human service zones, Department of Human Services, and between human service zones; and the feasibility and desirability of implementing compensation equity. (Senate Bill No. 2086 § 25)

Legislative Audit and Fiscal Review Committee

In lieu of the requirement under Section 54-52.1-04.16 that the PERS contract to conduct a prescription drug coverage performance audit of the main PERS health benefit plan for calendar year 2021, the State Auditor shall contract in accordance with Chapter 54-10 to conduct a prescription drug coverage performance audit of the main PERS health benefit plan during the 2021-22 interim, in the same manner as provided for under Section

54-52.1-04.16, for calendar years 2019, 2020, and 2021. Audit fees, not to exceed \$375,000, for audits performed under this section must be on a flat fee or hourly basis and be paid by the PERS Board. The Legislative Audit and Fiscal Review Committee has been charged with receiving reports from the State Auditor regarding contracts to conduct prescription drug coverage performance audits, performance audit results, and audit reports issued under this section. (House Bill No. 1004 § 6)

Retirement Committee

The Legislative Management's interim Retirement Committee is developing a plan for new hires under the PERS main system to participate in the defined contribution plan and to close the defined benefit plan to new entries effective January 1, 2024. Upon approval of the Chairman of the Legislative Management, the study may use the services of a third-party contractor to assist in the study. (House Bill No. 1209 § 1)