

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

### SPECIAL COMMITTEE ON THE RESOLUTION OF SENATE BILL NO. 2022

Monday, June 8, 2015  
Harvest Room, State Capitol  
Bismarck, North Dakota

Senator Rich Wardner, Chairman, called the meeting to order at 10:00 a.m.

**Members present:** Senators Rich Wardner, Joan Heckaman, Gary A. Lee; Representatives Al Carlson, Kathy Hogan, Don Vigesaa

**Members absent:** None

**Others present:** John Bjornson, Jennifer S. N. Clark, Allen H. Knudson, Jim W. Smith, and John Walstad, Legislative Council, Bismarck.

Jeff Delzer, State Representative, Underwood; Dick Dever, State Senator, Bismarck; Todd Porter, State Representative, Mandan; Donald Schaible, State Senator, Mott; and Wayne Trottier, State Representative, Northwood.

Senator Ray Holmberg, member of the Legislative Management, was also in attendance.

See [Appendix A](#) for additional persons present.

### COMMENTS BY COMMITTEE MEMBERS

Chairman Wardner welcomed committee members and thanked them for serving on the committee. He called on Senator Holmberg and Representative Carlson for comments.

Senator Holmberg said North Dakota Century Code Section 54-35-02 authorizes the Legislative Management to create committees and delegate duties to those committees. He said the Special Committee on the Resolution of Senate Bill No. 2022 was created to reconcile differences between the House and Senate versions of Senate Bill No. 2022 and to recommend to the Legislative Management whether the 2015 Legislative Assembly should be reconvened. He said the special committee is an interim committee and the regular rules of the Legislative Management apply to the committee.

Representative Carlson said many sections of the House version of Senate Bill No. 2022 relate to the state uniform group insurance plan and a change in the health insurance carrier. He said the sections were added by the House to ensure health plan benefits remain the same under the new health insurance carrier. He said the Legislative Assembly has the constitutional duty to appropriate funds and develop policy for the state.

Chairman Wardner said it is important for the Legislative Assembly to develop a resolution on Senate Bill No. 2022. He said the committee will review the budget differences in the bill and will then review each section in the bill that relates to the state health insurance plan.

### SENATE BILL NO. 2022 - HOUSE AND SENATE DIFFERENCES

Chairman Wardner called on the Legislative Council staff and Ms. Jennifer S. N. Clark, Counsel, to review a memorandum entitled [Senate Bill No. 2022 - House and Senate Differences](#).

#### Budget Differences

The Legislative Council staff said the main fiscal differences relate to following three areas of the Public Employees Retirement System (PERS) budget:

- The addition of a Chief Financial Officer position;
- The addition of a benefits support position; and
- The addition of funding for temporary salaries.

The Legislative Council staff said the Senate Bill No. 2022 Conference Committee tentatively agreed to add 1 full-time equivalent (FTE) Chief Financial Officer position, a 0.50 FTE benefits support position, and funding for temporary salaries and costs associated with the portability provisions of the retiree health credit.

### **Health Insurance-Related Differences**

Ms. Clark said Senate Bill No. 2022, as amended by the House, included changes to the uniform group health insurance plan. She reviewed the various sections included in the House version of the bill [[15.8155.03000](#)] that affect the health insurance plan.

#### **Membership of the PERS Board**

Ms. Clark said Section 3 amends Section 54-52-01(17), which is the definition of "retirement board" as used in Chapter 54-52. She said the amendment reflected the change to the PERS Board in Section 4 of the bill.

Ms. Clark said Section 4 amends Section 54-52-03 to change the membership of the PERS Board and increase the number of board members from seven to nine. She said the amendment adds to the board:

- The Majority Leader of the House of Representatives or a designee;
- The Majority Leader of the Senate or a designee; and
- Two members of the Legislative Assembly appointed by the Chairman of the Legislative Management. The members appointed by the Chairman of the Legislative Management must consist of one member from the majority party and one member from the minority party.

She said the amendment removes from the board:

- The member appointed by the Attorney General from the Attorney General's legal staff; and
- The State Health Officer.

Representative Carlson said he supports removing the Attorney General's office appointee and the State Health Officer from the PERS Board. He said there is a conflict of interest for an employee of the Attorney General to serve on the board in the event of a lawsuit involving PERS and the Legislative Assembly. He said the State Health Officer regulates the health industry and it may be inappropriate for a health industry regulator to serve on the PERS Board.

In response to a question from Chairman Wardner, Senator Dick Dever, Chairman, Employee Benefits Programs Committee, said PERS provided updates to the Employee Benefits Programs Committee regarding the bidding process for the state health insurance plan. However, he said the bidding process involves confidential negotiations that cannot be reported to the Employee Benefits Programs Committee. He said one proposal discussed during the 2015 legislative session was to allow the Employee Benefits Programs Committee to convene in an executive session to receive updates on confidential negotiations.

Chairman Wardner expressed concern regarding legislators being added to the PERS Board. He said it is important to keep politics separate from the activities of the PERS Board. He said the Employee Benefits Programs Committee should receive more updates and be more informed regarding employee benefits issues.

In response to a question from Representative Hogan, Chairman Wardner suggested a study of the membership of the PERS Board could be conducted to determine if it is appropriate for legislators to serve on the board.

Representative Carlson said public employees benefit programs are paid from tax collections. He said the Legislative Assembly should be more involved with the programs to ensure the \$250 million of tax dollars are being spent appropriately.

#### **Regulation of Prescription Drug Coverage**

Ms. Clark said Section 5 creates a new section of law specific to PERS uniform group health insurance for prescription drug coverage, addressing transparency and accessibility of pharmacy benefits, as follows:

- Subsection 1 requires the PERS Board, once every two years, to direct the State Auditor to select a firm to complete a financial and health care analysis of the prescription drug coverage under the health benefits coverage. Subdivisions a through e set out specific elements that must be included in the analysis, including brand drug and generic drug cost information, specialty drug pharmacy drug costs, third-party financial benefits, evaluation of program effectiveness, and evaluation and recommendations regarding refill practices.

- Subsection 2 provides that upon request of the PERS Board, the health benefits coverage carrier or pharmacy benefits manager must provide the items specified in subdivisions a and b, including a copy of the prescription drug coverage contract and information regarding drug programs.
- Subsection 3 directs the PERS Board to present this analysis report to the Legislative Audit and Fiscal Review Committee.

In response to a question from Senator Heckaman, Mr. Sparb Collins, Executive Director, Public Employees Retirement System, said the board has directed one audit of prescription drug coverage in the past and no issues were identified. He said PERS does not have any direct contracts with a pharmacy benefits manager.

In response to a question from Senator Lee, Mr. Collins said PERS contracts with a health insurance carrier and the health insurance carrier contracts with a pharmacy benefits manager. He said PERS would have a direct contract with a pharmacy benefits manager if the state health plan was self-insured.

Representative Vigesaa said the Legislative Assembly has considered several bills in the past regarding pharmacy benefits managers. He said there can be substantial rebates from pharmacy coverage and the section added by the House would ensure those rebates are passed along to the state.

In response to a question from Senator Lee, Mr. Collins said PERS health insurance contracts require any pharmacy rebates to be credited to the state. He said the PERS plan is currently being credited approximately \$250,000 every three months for pharmacy rebates.

Representative Hogan said there was extensive discussion about pharmacy benefits managers during Conference Committee meetings on Senate Bill No. 2022. She said one concern regarding the section is that any data regarding prescription drug coverage will not be available for a year or longer. She suggested the issue be studied instead.

#### **PERS Uniform Group Health Insurance Policies and Contracts**

Ms. Clark said Section 6 amends Section 54-52.1-05, which sets out the requirements of a uniform group insurance contract. She said under subsection 2, limitations on the terms of a contract for hospital benefits coverage, medical benefits coverage, or prescription drug coverage are established, providing:

- The term of the contract may not exceed two years; and
- The contract may not be renewed without solicitation of a bid.

In response to a question from Representative Carlson, Mr. Collins said the health plan contract is awarded for a two-year period with an option to renew the contract for up to six years. He said the section would require PERS to bid the contract every two years without the option to renew.

In response to a question from Chairman Wardner, Mr. Collins said after the first year of the two-year contract period, the PERS Board determines whether to renew a contract or seek bids for a new contract.

In response to a question from Representative Carlson, Mr. Collins said the PERS Board awarded the 2015-17 biennium health insurance contract to Sanford Health due to a lower bid amount and other technical components.

Representative Carlson asked Mr. Collins to provide a copy of the request for proposal for the health insurance contract for the 2015-17 biennium.

In response to a question from Representative Hogan, Mr. Collins said PERS provides updates to the Employee Benefits Programs Committee on the status of the renewal or bidding of health insurance contracts. However, he said confidentiality requirements prevent PERS from providing updates on certain contract negotiations.

In response to a question from Senator Lee, Mr. Collins said during the summer of 2016, the PERS Board will review options to extend the health contract with Sanford Health or to seek bids for a new health contract. He said Sanford Health will provide the board with estimates for future premium increases during discussions on extending the health plan contract.

Chairman Wardner said the PERS Board has the option to rebid the contract after two years if the board has concerns with the performance of Sanford Health. He said Section 6 may have a negative impact on the contract with Sanford Health.

Ms. Clark said Section 7 creates a new section of law, specific to PERS Board contracts for health insurance benefits coverage. She said subsection 1 addresses insured and provider privacy, requiring a contract for health insurance benefits coverage to provide that except as necessary for treatment, payment, and operations, the health insurance carrier may not disclose identifiable or unidentifiable insured or provider data or information with a related or an unrelated health care delivery entity.

Representative Carlson said there is a difference between personal and aggregated data and the section addresses the sharing of aggregated data.

Chairman Wardner called on Ms. Lisa Carlson, Director of Planning and Regulation, Sanford Health, Sioux Falls, South Dakota, for comments regarding data privacy. Ms. Carlson said Sanford Health has established a firewall within its organization to separate data for patient delivery from other organization areas such as research and development, the Sanford Foundation, and the health insurance plan. She said federal health care privacy laws allow health claims information to be used only for treatment and payment purposes.

In response to a question from Representative Carlson, Ms. Carlson said Sanford Health is not concerned with subsection 1 of Section 7.

In response to a question from Representative Hogan, Ms. Rebecca Ternes, Deputy Commissioner, Insurance Department, said the department is unaware of any concerns that would result if the subsection was enacted.

Representative Vigesaa said he supports the subsection. He said it is important to keep the health plan data separate from other areas of the Sanford Health organization.

Ms. Clark said subsection 2 of Section 7 addresses the situation if the PERS Board enters a contract for health insurance benefits coverage with a carrier that has common ownership with a health care delivery entity. She said if this occurs, this provision would set requirements for the carrier's negotiated provider discount rates.

- For in-state providers that are critical access hospitals that do not have common ownership with the carrier, the rates may not be less than the rates the carrier has with a related health care delivery entity that is a critical access hospital.
- For in-state providers, other than critical access hospitals, the rates for providers that do not have common ownership with the carrier may not be less than the rates the carrier has with a related health care delivery entity that is not a critical access hospital.

Senator Lee said the subsection may allow for the health insurance market to be manipulated.

Representative Carlson said it is important to maintain rural critical access hospitals.

In response to a question from Representative Vigesaa, Ms. Carlson said Sanford Health is negotiating with health providers for discount rates. She said all major health systems in the state are now a part of the Sanford Health plan network. She said Sanford Health is still in negotiations with some smaller health care providers.

In response to a question from Representative Carlson, Ms. Carlson said reimbursement rates may vary for providers offering the same service. She said reimbursement rates are affected by factors such as the provider accepting Medicare and Medicaid, provider accreditation, and other services offered by the provider organization.

In response to a question from Representative Carlson, Ms. Carlson said the new health insurance contract requires all benefit coverages to remain the same as current coverages. She said the contracts between Sanford Health and providers do not affect member coverages such as copayments and benefits received.

Ms. Clark said Section 8 would not be codified in Century Code, and would apply through the end of the 2013-15 biennium. She said if the PERS Board determines it is necessary to rebid the health insurance benefits contract, the carrier providing coverage at the time of that determination may continue under the existing contract until a new contract is finalized, but not to exceed nine months beyond the date the PERS Board makes that determination.

Ms. Clark said Section 9 would not be codified in Century Code, and would apply through the end of the 2015-17 biennium. She said the section precludes the PERS Board from spending any money in the health insurance reserve fund created under Section 54-52.1-06 or any other accumulated reserves under the uniform group insurance program for the purpose of reducing any increase in uniform group insurance premium amounts beyond the rates used by the 64<sup>th</sup> Legislative Assembly for developing 2015-17 state agency budgets.

At the request of Chairman Wardner, the Legislative Council staff reviewed a memorandum entitled [Public Employees Retirement System - Health Insurance Reserve Fund](#). The Legislative Council staff said Section 54-52.1-06 requires the PERS Board to establish a separate fund for any refund, rebate, dividend, experience rating allowance, discount, or any other reduction of a premium amount, which relates to the uniform group insurance program. The funds may be used by the PERS Board to reimburse the administrative expenses relating to the uniform group insurance plan. Money in this fund is available to the PERS Board to:

- Allow the option for the PERS Board or the Legislative Assembly to change the health insurance plan to a self-insured plan (a reserve balance is required);
- Reduce the premium rates charged to agencies; and
- Cover increased premiums during the interim in the event a federal or state health insurance mandate would require a premium increase beyond the amounts anticipated by the Legislative Assembly when approving state agency budgets.

In response to a question from Senator Heckaman, Mr. Collins said the PERS Board used funding from the health insurance reserve fund to reduce premium increases during the 2013-15 biennium.

In response to a question from Chairman Wardner, Mr. Collins said the health insurance reserve fund could be used to pay additional premium amounts if there was an unexpected increase in premium rates due to a federal mandate or court action. He said if funding was not available from the reserve fund to pay increased premium rates, there would be a reduction of benefits. However, he believes it is unlikely that there will be any changes to the estimated premium rates for the 2015-17 biennium.

Ms. Clark said Section 10 provides an emergency clause for various sections of the bill.

## COMMITTEE DISCUSSION

Chairman Wardner said it is important for the Legislative Assembly to provide appropriations to PERS and the Retirement and Investment Office. However, he said the Senate has strong concerns regarding the sections added by the House relating to the health insurance plan. He said he prefers to wait to make any changes to statutory provisions relating to the health insurance plan until Sanford Health has had an opportunity to provide services.

The committee recessed for lunch at 11:45 a.m. and reconvened at 12:45 p.m.

Representative Carlson suggested the following amendments to the House version of Senate Bill No. 2022:

- Adopt the tentative Conference Committee amendments to the PERS and Retirement and Investment Office budgets.
- Revise Section 4 to add two legislators to the PERS Board instead of four and to remove the Attorney General's appointee and the State Health Officer from the board.
- Remove Section 5 relating to the requirement of a financial and health care analysis of the prescription drug coverage provided under the health insurance plan.
- Revise Section 6, relating to the uniform group insurance contract, with language to identify the process used to rebid health insurance contracts.
- Remove subsection 2 of Section 7 relating to requirements for health carrier negotiated provider discount rates.
- Remove Section 8 relating to requirements if PERS rebids the health insurance contract prior to the end of the 2013-15 biennium.

In response to a question from Chairman Wardner, Representative Carlson said the process used to rebid a health insurance contract should be in law so it is clearly understood what triggers a rebid.

In response to a question from Chairman Wardner, Mr. Collins said a health contract may be rebid instead of renewed if the estimated premium amounts for the subsequent biennium are more than reasonable or the performance of the health plan carrier is an issue. He suggested any potential language regarding the rebid of the contract also include a provision to allow a rebid for issues the PERS Board deems appropriate.

In response to a question from Chairman Wardner regarding the sharing of health plan information, Mr. Collins said federal health privacy laws provide specific exemptions for the sharing of health data. He suggested the language in subsection 1 of Section 7 be revised to allow the disclosure of health information for certain identifiable purposes.

In response to a question from Chairman Wardner, Ms. Ternes said the Insurance Department does not have any concerns with the health data sharing language if it does not affect provisions currently in statute.

In response to a question from Chairman Wardner, Ms. Carlson said Sanford Health does not have any concerns with the health data sharing language if it is adjusted to coordinate with federal health data privacy laws.

In response to a question from Chairman Wardner, Mr. Allen H. Knudson, Legislative Budget Analyst and Auditor, Legislative Council, said Section 9, relating to the use of funding in the health insurance reserve fund, limits the use of money in the fund to pay premium rate increases. He said the section does not restrict the use of money in the fund for other purposes, such as paying administrative costs.

In response to a question from Chairman Wardner, Representative Carlson said his suggestion is to add two legislators to the PERS Board. He said the two legislators could be the House and Senate majority leaders or their designees.

The committee recessed at 1:10 p.m. and reconvened at 1:30 p.m.

In response to a comment from Chairman Wardner regarding the health insurance reserve fund, Representative Carlson suggested Section 9 be revised to limit the payment of additional health insurance premium funds from any other funding source rather than limiting it to accumulated reserves under the uniform group insurance program.

Chairman Wardner said based on the suggested amendments, the emergency clause in Section 10 is no longer needed.

Chairman Wardner expressed concern regarding the proposal to change the membership of the PERS Board. He said he prefers to wait until the 65<sup>th</sup> Legislative Assembly meets before making any potential changes to board membership. He said the house majority members make some good points regarding legislative oversight.

In response to a question from Representative Vigesaa, Chairman Wardner said his primary concern with the proposed changes to the board members is removing the Attorney General's appointee and the State Health Officer.

Representative Carlson said the Legislative Assembly needs involvement on the PERS Board due to major financial implications to the state resulting from board decisions. He said there is a conflict of interest with the Attorney General's appointee and the State Health Officer serving on the board. He said the Attorney General recently issued a legal opinion that affects the PERS Board. He said the State Health Officer has not been serving on the board and instead designated an employee from the State Department of Health to serve on the board. He said even if the Attorney General's appointee and the State Health Officer remain on the board there should be two legislators added to the board.

Chairman Wardner said the PERS Board has helped save the state money through the recent bid process for the health insurance contract. He said there may need to be a study of the membership of the board.

Representative Hogan said adding two legislators to the PERS Board may improve communications and the relationship between the PERS Board and the Legislative Assembly.

The committee recessed at 1:45 p.m. and reconvened at 1:50 p.m.

Chairman Wardner suggested the two legislators added to the PERS Board be appointed by the Legislative Management Chairman.

Representative Carlson suggested the language regarding the State Health Officer serving on the PERS Board be amended to clarify that the State Health Officer may designate an individual to serve on behalf of the State Health Officer on the board.

### **PROPOSED AMENDMENT**

Chairman Wardner said the committee has reached a consensus on the following amendments to the House version of Senate Bill No. 2022:

- Incorporate the amendments to the budget items in Sections 1 and 2, as previously approved in the tentative Conference Committee amendments, to provide 2015-17 biennium appropriations and FTE position authorization to PERS and the Retirement and Investment Office as follows:

|                           | Public Employees Retirement System | Retirement and Investment Office |
|---------------------------|------------------------------------|----------------------------------|
| Other funds appropriation | \$9,343,423                        | \$5,413,425                      |
| FTE positions             | 34.50                              | 19.00                            |

- Revise Sections 3 and 4 to change the membership of the PERS Board as follows:

Add two members of the Legislative Assembly, one from each political faction, appointed by the Chairman of Legislative Management, to the board.

Continue the membership of the Attorney General's designee and State Health Officer on the board; however, clarify that the State Health Officer may designate an individual to serve on behalf of the State Health Officer.

- Remove Section 5 relating to the requirement of a financial and health care analysis of the prescription drug coverage provided under the health insurance plan.
- Revise Section 6, relating to the uniform group insurance contract, with language regarding the process used to rebid health insurance contracts.
- Revise subsection 1 of Section 7 relating to insurance and provider privacy to allow the disclosure of health information for certain identifiable reasons.
- Remove subsection 2 of Section 7 relating to requirements for health carrier negotiated provider discount rates.
- Remove Section 8 relating to requirements if PERS rebids the health insurance contract prior to the end of the 2013-15 biennium.
- Revise Section 9 to provide that the PERS Board may not use money in the health insurance reserve fund, or any other source, to reduce increases in uniform group health insurance premium amounts beyond the rates used by the 64<sup>th</sup> Legislative Assembly in developing agency budgets.
- Remove Section 10 which provides an emergency clause for certain sections of the bill.

A copy of the proposed amendment is attached as [Appendix B](#).

### COMMITTEE RECOMMENDATION

**It was moved by Representative Carlson, seconded by Senator Lee, and carried on a roll call vote that the committee recommend to the Legislative Management that the 64<sup>th</sup> Legislative Assembly be reconvened for the purposes of completing its work on Senate Bill No. 2022.** Senators Wardner, Heckaman, and Lee and Representatives Carlson, Hogan, and Vigesaa voted "aye." No negative votes were cast.

### OTHER BUSINESS

Chairman Wardner thanked the committee for its work and the productive and professional negotiations. He said the Legislative Assembly has the duty to pass the budget for the state and the right thing to do is to reconvene the Legislative Assembly to finish the budgeting process.

Representative Carlson said there was a difference of opinion between the House and Senate. He said the issues were not about insurance providers but were about ensuring the citizens of the state have access to quality health care services.

Senator Holmberg said the Legislative Management is tentatively scheduled to meet at 9:00 a.m. on Wednesday, June 10, 2015, to consider whether to reconvene the Legislative Assembly on Tuesday, June 16, 2015.

**It was moved by Representative Carlson, seconded by Senator Lee, and carried on a voice vote to adjourn the meeting.**

No further business appearing, Chairman Wardner adjourned the meeting at 2:00 p.m.

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Brady A. Larson  
Assistant Legislative Budget Analyst and Auditor

ATTACH:2