

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

**EMPLOYEE BENEFITS PROGRAMS COMMITTEE**

Wednesday, January 15, 2020  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Mike Lefor, Chairman, called the meeting to order at 1:00 p.m.

**Members present:** Representatives Mike Lefor, Jason Dockter, LaurieBeth Hager, Craig Johnson, Vernon Laning, Matthew Ruby, Austen Schauer; Senators Howard C. Anderson, Jr., Brad Bekkedahl, Dick Dever, Kristin Roers

**Members absent:** Senators Karen K. Krebsbach and Richard Marcellais

**Others present:** See [Appendix A](#)

**It was moved by Senator Dever, seconded by Senator Bekkedahl, and carried by a voice vote to approve as distributed the minutes of the April 18, 2019, and October 23, 2019, meetings.**

**RETIREMENT AND INVESTMENT OFFICE**

Chairman Lefor called on Mr. David J. Hunter, Executive Director and Chief Investment Officer, Retirement and Investment Office, for a presentation ([Appendix B](#)) regarding the status of state investments.

In response to a question from Senator Bekkedahl, Mr. Hunter said legacy fund interest earnings for the biennium are approximately \$200 million.

In response to a question from Representative Schauer, Mr. Hunter said it is becoming more challenging to earn a long-term return of 7.9 percent. He said he is more confident relying on a long-term return in the range of 7 to 7.5 percent.

Senator Dever said the success of the Trump economy is attributable to free market capitalism. He said the upcoming election could reverse the Trump gains.

Mr. Hunter said it is not possible to time the market because there is too much uncertainty. He said the current federal administration is pro-business. He said ultimately it is the client boards that collaborate with the Retirement and Investment Office to set asset allocations.

**BILL DRAFT ACTUARIAL REVIEW**

The committee reviewed a bill draft [[21.0020.01000](#)] regarding a public employee retirement plan for public safety telecommunicators to determine whether the bill draft affects, 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 pursuant to North Dakota Century Code Section 54-35-02.4.

Chairman Lefor called on Representative Porter to discuss his bill draft. He said in 2019 the Legislative Assembly enacted legislation to allow political subdivision firefighters to join the Public Employees Retirement System (PERS) public safety retirement fund. He said if this bill draft passes, emergency medical services (EMS) will be the one area still not included in the public safety retirement fund. He said an EMS employee of a political subdivision currently is covered under the public safety retirement fund only if employed by a fire department but is not covered if employed by an ambulance district.

In response to a question from Senator Anderson, Representative Porter said allowing a political subdivision to participate in a PERS retirement plan does not cost the state; however, he said the exit strategy can be expensive for the political subdivision.

In response to a question from Senator Roers, Representative Porter said the bill draft is limited to participation by political subdivisions. He said Red River Dispatch is a political subdivision.

In response to a question from Senator Bekkedahl, Representative Porter said the bill draft applies to current employees of political subdivisions and allows for retirement at age 55.

**It was moved by Representative Laning, seconded by Representative Dockter, and carried on a roll call vote that the committee take jurisdiction over the bill draft relating to a public retirement plan for public safety telecommunicators and direct PERS to have an actuarial review prepared.** Representatives Lefor, Dockter, Hager, Johnson, Laning, Ruby, Schauer; Senators Anderson, Bekkedahl, Dever, and Roers voted "aye." No negative votes were cast.

## PUBLIC EMPLOYEES RETIREMENT SYSTEM

Chairman Lefor called on the Legislative Council staff to review a memorandum entitled [Public Employees Retirement System Main System Funding History and Options](#).

Chairman Lefor said it gives him pause that any transfer of money to the PERS main fund will benefit political subdivisions and it is not the role of state government to fund political subdivisions.

Senator Anderson said if the state makes a contribution that helps political subdivisions it is no different than other instances in which the state helps political subdivisions, such as property tax relief. He said improving the health of the main fund also will help political subdivisions through bonding rates and audits.

Representative Dockter said ideally a retirement fund seeks full funding within 20 to 30 years. He said it is the role of the Legislative Assembly to take care of state employees as well as state taxpayers.

Senator Bekkedahl said he supports a combined effort, including an increase in contribution from employers and employees.

Senator Anderson said he favors using legacy fund earnings to address funding of the PERS main fund. He said as the Legislative Assembly considers allocating a percentage of legacy fund earnings versus a set dollar amount of earnings, it is important to remember a percentage approach lessens the future availability of funds. He said he is open to a variety of approaches, including mixed options of increased contributions and an infusion of funds, a single infusion of funds, or a recurring infusion of funds.

Senator Bekkedahl said one way to address funding from legacy fund earnings is to set a percentage with a dollar cap.

Senator Dever said the effect the health of the PERS main fund has on bonding is minor because of the large amount of state funding going to local projects. He said the composition of the main fund is almost even, with approximately 52 percent state and 48 percent political subdivisions. He said the recent approach to improve the health of the PERS retirement funds has been to make significant reductions in employee benefits. He said we have gone as far as we can in reducing benefits and any further reductions will impact employee recruitment and retention negatively. He said he supports addressing the unfunded liability of the PERS main fund.

Representative Schauer said it is important to address the funding of the PERS retirement funds, but the goal should be 90 percent funding not 100 percent funding.

Representative Laning said once the PERS main fund reaches full funding, it will be appropriate to look at moving from a defined benefit plan to a defined contribution plan.

Chairman Lefor called on Mr. Scott Miller, Executive Director, Public Employees Retirement System, for a presentation ([Appendix C](#)) regarding--the liability of the PERS funds and options for reaching full funding, the status of the PERS legislative package for 2021, an overview of the PERS audit, an overview and status report on the PERS health insurance reserve fund, an overview of the PERS change in pharmacy benefits managers, and limitations to health savings accounts for seniors.

Mr. Miller said the Government Accounting Standards Board (GASB) statements that are impacted by the PERS main fund being on an infinite funding schedule become a nonissue if the fund is expected to reach 100 percent funding. He said with the 2019 legislative changes, the PERS main fund is expected to reach 100 percent funding in the future so it is no longer necessary to discount the expected rate of return. He said PERS is undergoing an experience study that may result in changes in assumptions. He said with the 2019 legislative changes and the current assumptions, GASB and bonding are not an issue; however, the future health of the fund and possible changes in assumptions that may occur as a result of the experience study may impact the health of the fund negatively.

In response to a question from Senator Bekkedahl, Mr. Miller said the PERS main plan funding ratio is 71.32 percent, the judges plan is 123.86 percent, the public safety with prior service is 84.04 percent, and the public safety without prior service is 109.81 percent. He said the main plan funding ratio does not include the other plans; however, main, judges, and public safety plans are under the same trust fund. He said the only time the single trust fund would have an impact on the individual funds is if one of the individual funds ran out of money.

In response to a question from Representative Hager, Mr. Miller said the Legislative Assembly reduced employee benefits in 2015 and 2019 and increased employer and employee contributions in 2011 and 2013.

Senator Dever said reductions in benefits have been applicable to new hires only. He said the reductions have not affected existing employees.

In response to a question from Representative Laning, Mr. Miller said the 83-day prescription drug refill does not require an additional doctor appointment.

### PHARMACY BENEFITS STUDY

Chairman Lefor called on the Legislative Council staff to review [House Bill No. 1374](#) (2019), a memorandum entitled [Uniform Group Insurance Prescription Drug Benefits - Employee Benefits Programs Committee - Background Memorandum](#), a graph ([Appendix D](#)) summarizing the pharmacy benefits study, and a graph ([Appendix E](#)) depicting the assumption of risk for health insurance plans which was distributed to the 2017-18 interim Health Care Reform Review Committee November 30, 2017. The review included a summary of Appendix B of the memorandum, a presentation made to the 2017-18 interim Health Care Reform Review Committee by Ms. Linda Cahn, Pharmacy Benefit Consultants.

In response to a question from Senator Roers, the Legislative Council staff said the presentation attached to the memorandum was presented to the 2017-18 interim Health Care Reform Review Committee at its May 9, 2018, meeting by Ms. Cahn. She said Ms. Cahn is a consultant who works with group plans. She said Ms. Cahn presented to the committee at the request of one of the committee members. She said the 2019-20 interim Health Care Committee has a study charge that is broad in scope as it relates to the health care delivery system, and the Employee Benefits Programs Committee's study charge is more narrow in scope as it is limited to the PERS health plan being bundled or unbundled.

Chairman Lefor called on Mr. Miller to comment regarding the status of implementation of House Bill No. 1374.

In response to a question from Senator Bekkedahl, Mr. Miller said although the PERS modified fully insured health plan has less risk than a self-insured plan, no plan is risk free. He said with the modified fully insured health plan, the risk lies in the premium amount. He said for the 2021-23 biennium, regardless of whether PERS is fully insured or self-insured, the plan will have the transparency provisions required under House Bill No. 1374.

In response to a question from Senator Dever, Mr. Miller reviewed the health plan bidding timeline. He said PERS is finalizing the request for proposal (RFP) and expects to put out the RFP for bid in July 2020. He said the bid likely will be awarded late 2020. He said if the carrier changes, it will be necessary to go through a transition to the new carrier.

Chairman Lefor called on Mr. Danny Weiss, Senior Executive Director of Pharmacy, Sanford Health Plan, for comments ([Appendix F](#)) regarding the committee's study.

Mr. Weiss said when it comes to a fully insured line of business, it is possible and permissible to have a transparent pharmacy benefits manager (PBM) transaction. He said for the last 5.5 years, Sanford Health Plan managed such a plan with Medicaid Expansion. He said he recently spent a significant amount of time discussing this issue with Ms. Cahn.

In response to a question from Senator Roers, Mr. Weiss said Sanford Health Plan, through a transparent arrangement can set any reimbursement level that is appropriate and reasonable. He said reasonable and sustainable reimbursement is his goal. He said reimbursement rates can be set through a transparent bid, including setting a uniform rate if that is desirable. He said a benefit of a transparent uniform bid is that it is fully auditable; however, under such a plan, the PBM retracts guarantees.

Chairman Lefor said the next meeting tentatively is scheduled for Wednesday, April 15, 2020. He said the agenda at that meeting likely will include the pharmacy benefit services study. He said he will seek authorization to contract with a consultant to assist with the study. He said he also will seek input from pharmacy benefit managers, insurance carriers, and the Insurance Department.

No further business appearing, Chairman Lefor adjourned the meeting at 3:45 p.m.

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Jennifer S. N. Clark  
Counsel

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