

FISCAL NOTE
Requested by Legislative Council
12/21/2018

Bill/Resolution No.: HB 1028

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill makes changes to sections of North Dakota Century Code that relate to NDPERS self-insurance health plans.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

There is no fiscal impact for the changes in this bill.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

There are no expenditures for the changes in this bill. NDPERS has an optional budget request of 2.0 FTE in case the fully insured health plan moved to a self insured health plan. Requested dollars needed for this is \$436,677 per biennium.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

There are no appropriations for the changes in this bill. NDPERS has an optional budget request of 2.0 FTE in case the fully insured health plan moved to a self insured health plan. Requested dollars needed for this is \$436,677 per biennium.

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Date Prepared: 12/27/2018

2019 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1028

2019 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB 1028
1/14/2019
30740

- Subcommittee
 Conference Committee

Committee Clerk: Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Public employee's retirement system self-insurance plans for health benefits coverage.

Minutes:

Attachment 1, 2

Vice Chairman Lefor: Opens the hearing on HB 1028.

Chairman Keiser: Presents HB 1028. The bill was developed from the healthcare form review committee. I'm here to present to the committee. There was a debate relative to allowing for the state of North Dakota PERS program to consider self-insurance for the public employee retirement system.

It was discovered in the interim that the language in statute prohibited for the state to consider implementing a self-insurance program. The interim took this up & created a bill.

Page 1~Clarifies the self-insurance plan. If we were to self-insure, we have two issues. Would we prefer to buy reinsurance as a backstop? Decision was that instead of buying reinsurance, we would go to the Bank of ND in statute place a provision that would allow us to access if needed up to 50 million dollars for a back stop.

Page 2~The Insurance Commission could adopt the rules.

Page 4~Clarification & we place a definition of self-insurance plan.

Page 5~Technical in nature. The board may, not shall. It would not be a mandate to go to self-insurance.

Page 6~Lines 20-22. It's a clarification for the board whether to move to a self-insurance plan.

Page 7~Lines 16-18. This where the 50 million dollars came of the letter of credit from the Bank of ND. The board must have a plan in place which is reasonable calculated to meet within 60-month changeover of the funding requirements of this chapter. The 5 year or 60-

month exposure, that would be considered normally under self-insurance would not exceed 50 million dollars based on the historical records of the PERS plan.

Page 7~Lines 22-23. This was a controversial item in the interim. A self-insurance health plan must provide the same benefits & criteria of the fully insured market plan. The bank shall extent a credit not exceed the 50 million.

Page 8~The board shall repay the line of credit from health insurance premium revenue or repay.

Page 9~The other credit from other funds appropriated from the legislature. This is a required coverage to be provided. The Bank of ND has the back stop in statute from the legislature to not exceed the 50 million. If the 50 million is never able to paid off, the state of ND through the legislative assembly would backstop any part of that 50 million which is not paid through the premium process.

The other changes are technical.

Page 10~The final change is the emergency clause, if it's passed.

Rep Laning: The bill just provides the option & it does not mandate anything?

Chairman Keiser: That's correct.

Rep Ruby: Page 5, some of the language talks about the board may establish a plan for self-insurance only under the administrative service, contract or third party administrator. Apparently, there is other restricting language?

Chairman Keiser: In statute was language that the state of ND could only move to a self-insurance plan if it were less expensive than a fully insured plan. It did go out in bid & it did come in slightly less. The PERS board determined not significantly less. Self-insurance plans, which are to be effect, upon implementation, choose to charge higher premium on the front end & it creates a reserve so that don't have to buy reinsurance. They can truly be self-funded & carry their own reserve. With that criteria, we would never choose self-insurance.

Rep Schauer: Why go with the Bank of North Dakota as a backstop instead of reinsurance?

Chairman Keiser: Reinsurance companies needs to make money. The Bank of ND doesn't need to make the money.

Rep Schauer: Is this something normally the Bank of North Dakota does or does it have its own board? Give us a history on how the Bank of ND works with insurance.

Chairman Keiser: Gives the history.

Vice Chairman Lefor: Further questions?

Jennifer Clark~Legal Counsel for Legislature: I'll be available to answer any questions.

Jeff Ubben~Deputy Commissioner/General Counsel: Attachment 1. Introduces the legislative counsel staff.

23:40

Rep Ruby: Would you envision that the state contract with a company to do the administration & claims?

Jeff Ubben: We already do that now with the fully insured plan. We have contracts with 6 or 8.

Rep Ruby: The administrative end or would it be contracted out?

Jeff Ubben: That would be a 3rd party administrative service.

Rep Kasper: Do you have an actuary on staff?

Jeff Ubben: Yes, we have 2 of them.

Rep Kasper: Like fully insured?

Jeff Ubben: Yes.

Chairman Keiser: Anyone else here to testify in support of HB 1028, opposition, neutral position?

Scott Miller~Executive Director of ND Public Employees Retirement System (PERS): Attachment 2.

29:40

Rep Kasper: When the current contract runs out & when are you going to bid?

Scott Miller: There is nothing here regarding a contract period. We have a 2-year contract & we will have to bid before the next 2-year period.

Rep Kasper: There will be 2 year contracts implemented in the future?

Scott Miller: No, we can do the same thing we've been doing.

Rep Adams: Who decides the best interest of the state?

Scott Miller: Our PERS board will determine what is best for the state.

Chairman Keiser: What are the wishes of the committee?

Rep Ruby: Moves a Do Pass.

Vice Chairman Lefor: Second.

Chairman Keiser: This gives the state the option to have self-insurance.

Rep Kasper: Page 8, line 19, it's required to not go beyond the 2 years.

Chairman Keiser: It seems reasonable that the state should as an option the opportunity to self-insure. That is what this bill does, it simply provides an option.

Rep Kasper: Reads, page 8, starting on line 18. Line 22, they have the option to extend the 2-year contract but they are required that they cannot go beyond 2 years & after 2 years they can make a decision. I want this for the record because that has been the crux.

Chairman Keiser: I read this differently.

Roll call was taken for a Do Pass on HB 1028 with 13 yes, 0 no, 1 absent & Vice Chairman Lefor is the carrier.

Date: Jan 14, 2019

Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1028

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or
Description: _____

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions

- Reconsider

Motion Made by Rep Ruby Seconded By Rep Lefor

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep O'Brien	X	
Vice Chairman Lefor	X		Rep Richter	X	
Rep Bosch	X		Rep Ruby	X	
Rep C Johnson	X		Rep Schauer	X	
Rep Kasper	X		Rep Adams	X	
Rep Laning	X		Rep P Anderson	Ab	
Rep Louser	X		Rep M Nelson	X	

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep Lefor

REPORT OF STANDING COMMITTEE

HB 1028: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
HB 1028 was placed on the Eleventh order on the calendar.

2019 SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE

HB 1028

2019 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1028
2/6/2019
Job #32276

- Subcommittee
 Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

Relating to public employees' retirement system self-insurance plans for health benefits coverage; relating to public employee uniform group health benefits coverage; relating to public employees' retirement system self-insurance plans for health benefits coverage mandated health benefits; and to declare an emergency.

Minutes:

Att. #1- 3

Chairman Klein: Opened the hearing on SB. All members were present.

Jennifer Clark, Legislative Counsel: Offering neutral testimony from the interim Reform Review committee. She explained the bill to the committee. See attachment #1 for a summary for her points.

Senator Piepkorn: How's it been working out so far. Are we making money on the deal?

Jennifer: I believe that last biennium the carrier experienced a loss. So we did not share in any benefits but how much I would defer to pers to share that info with you.

Senator Piepkorn: For example, what might that mean 'in the best interest'?

Jennifer: My understanding from our discussions during committee, one of the barriers of moving to the self-funded is, it's unlikely that moving to that plan would be less expensive initially, because there are startup costs, there are reserve funds that need to be funded so that in and of itself is a break, is a barrier. If in the long term it would be better for state employees and the state.

10:37 Representative Keiser, District 47: We currently have a hybrid plan, fully insured with a hybrid feature, more expensive than the fully insured plan. This is the end of about three years, we've had discussion about whether or not the state should or would want to move to a self-insured plan. We discovered in the interim, we went through the statute for PERS, relative to insurance and it was discovered that there is language in current statute that we are trying to change with this bill, that says self-insurance must be less expensive so when you go out to bid, it must be less expensive. They did go out to bid for a self-insured plan

and a fully insured modified plan last round, and in fact self-insurance was 1% less, but given the fact that there was some risk and certain issues had not been addressed. The board decided not to go for it. So what we have done with this bill is addressed all of those risks, and as Jennifer indicated, no one moves to a self-insured plan without some front end loading. You do have to eventually create a reserve. The option to creating that reserve certainly is by reinsurance, either in the aggregate or in the individual claim basis, and that can be done. But what this bill did was created that reserve through a line of credit at the Bank of North Dakota for \$50 million which represents sixty months or risk. So it would never be drawn on unless it needs to be, and then it would be repaid by the premiums in the future. It's imperative that the committee understand that we are never going to go to a self-insured plan if we don't correct the language first. Number 2, we also worked hard to maintain the authority and flexibility of the PERS board, ultimately, they need to study this issue with their consultants and make a decision. During the interim, we talked to the actuaries of Medica, BlueCross BlueShield, and Sanford health insurance, on the panel. Towards the end of the presentation, we asked how many companies in their book, over 300 employees are not self-insured. The answer was zero. You can be self-insured if you're careful at 150 people, but a state as large as the state of North Dakota, it's almost unconscionable that we haven't at least looked at the opportunity for self-insurance. The second thing, is that you may or may not realize that political subdivisions can be a part of the PERS program, but several are not. They have pulled out and are now self-insured. The auditor testified, we asked if it has had a very positive outcome, and did you ever get in trouble she said absolutely because we didn't follow the actuaries' recommendation on what the premium should be. We thought we would save a lot of money, and then suddenly we realized we can't cover the claims that we have. This in no way requires the state do it, but without this legislation the state can't do it. We have worked very hard to create a solution to this option if we want it for example, the \$50 million guarantee from the Bank of North Dakota. \$50 million is really excessive but that's okay because the way its set up, we're not taking that money unless we need it. And we'll pay it back as need be.

Senator Roers: So you're looking at the upfront cost of the self-insured being the deal breaker, but how long of a plan do you have to look at where the economics start to work out? Is it five years, ten years?

Representative Keiser: It should be the first year technically, it's not reasonable. You have to understand, let's take the situation when Sanford took over the account from BlueCross BlueShield. They had to provide a complete history of claims. That has to be made available to all the people that want to make a claim. They come up and say we can do it for this. They don't take on 100% that risk, they determine how much of that we will assume and then they go out and buy reinsurance. Either on an individual claim basis or an aggregate basis. No insurance company that I am aware of is not purchasing reinsurance. So they underwrite it and theoretically they're gonna make money that first year. We had an interesting situation happen, BlueCross came in with their bid up here and Sanford came in with theirs down here, and I can't explain why their actuaries would've made that mistake, but if we're self-insured, we're gonna be at the BlueCross BlueShield rate. And it's hard if you're not a statistician to appreciate the law of large numbers. When you have 50,000 individuals in a policy, the law of large numbers is so relatively accurate, your degree of variance is so minimized. Auto companies cannot tell you if an 18-year-old will have an accident today but they can tell you with relative certainty that there will be twenty-one 18 year-olds that will have an accident

today and they can tell you what the projected cost of that accident will be and that allows them to underwrite it. Without the Bank of North Dakota, we would have to do out and buy reinsurance and whatever we do, and this is where the board has to have the flexibility with their consulting firms to make sound decisions. But they, I would assume, would be very conservative in their approach. Now, could you have an event that would be catastrophic to the plan? Of course. But that would've happened anyways and there would've been adjustments made to the premium the following year. And you would have to make the same adjustment regardless. Companies get very aggressive with bidding the administration on self-insured plans. You get very aggressive yourself because you're owning the risk. Of all the self-insured companies that are out there last year, none have come back to fully insured. And it intrigues me that we have so many relatively small subdivisions that are self-insured and very happy with it. But it's up to the board. It's not up to me or you. We have designed this legislation so the board should do due diligence with their consultants, make a determination that is best. Our plan as we propose it here has to be identical to the current plan in terms of benefits and those kinds of things and we felt that was critical. Some committee members thought we should be an ERISA plan but we are not, even today PERS is a MEWA. So we are regulated by the department of insurance and they maintain and require that MEWAs have the same benefits as required by our other plans.

(24:00)Jennifer: right now in existing law, the changes being made we take those codified numbers out and make a reserve

Chairman Klein: Does it have anything to do with the grandfather clause?

Jennifer: I would defer to the insurance department about that.

Chairman Klein: One of the big discussions is would we be ready for it and I think this interim session really dotted I's crossed t's made sure we had a program that was regulated and certainly funded and everything.

(32:17)Jeff Ubben, Deputy Commissioner/General Counsel, North Dakota Insurance Department: see attachment #2 for testimony in support of the bill.

Senator Burckhard: Would this regulation of a self-funded insurance plan call for more employees?

Jeff: Not for us but maybe for PERS, so I would defer to them on that.

Senator Piepkorn: What type of regulations would have been in place in the 80s that would have prevented that insolvency?

Jeff: I really didn't see anything that would apply to a self-insurance plan back in the 80s. just to give you a history, the insurance department had been struggling with who regulates these self-funded plans, the state or the federal government. It wasn't until a white paper came out in the early 2000s that it was determined that the states are the primary regulators of the financial health of the self-insured plans. From that point on and in the last five years, when these plans have become more popular, the insurance department has taken a more active

role in regulating these self-funded plans so people aren't waking up one day and finding out there's no money to pay for the claims as they're being submitted.

Senator Piepkorn: Do you know what happened? Why did it run out of money in the 80s? What would be different now?

Jeff: I'd be speculating but I can guess. The late 80s weren't a great financial time for the state, we had a farm crisis, depressed oil prices, the state's revenues were down, that certainly played a part in it.

Chairman Klein: There was no oversight, cause currently you oversee every insurance company and had no opportunity to regulate our own self insurance plan, and this is the idea as we dug into in the interim, was to make sure we had the oversight so we would know that, actuarially we're moving forward with a program that is actuarially sound.

(39:41) Scott Miller, Executive Director of the North Dakota Public Employees Retirement system (NDPERS): see attachment #3 for neutral testimony.

Senator Piepkorn: So after that five years or whatever, would they go down?

Scott: It would go down to just cover the premium and we would have the reserve in reserve of course. If at any time the reserve started going down, we would have to increase that premium back up again.

(43:50) Chairman Klein: That reserve currently has fluctuated a bit depending on how much we borrow from it to balance the increase.

Scott: That's correct. We're projected to have about \$24-25 million in reserves at the end of this biennium. Before this biennium we were at about \$45 million. We used about 20 million of that to buy down the premium in order to mitigate some of the reductions in coverages that we had to implement as a result of the funding level that was approved by the legislative assembly.

(45:36) Senator Piepkorn: You may have answered my question already, what's the worst thing that could happen?

Scott: The worst thing that could happen would be we'd incur a lot of unplanned losses, a pandemic, especially early on, if we're going to be aggregated the reserve in the \$50-75 million range, if we're looking at \$26-28 million a month in coverages, we can absorb a lot of that with the reserve once its built up, but right away some sort of pandemic like that could really affect us, but that's where the line of credit comes into play and the stop loss insurance, and removing that requirement will potentially save us some money. But that's what would cause it to self-destruct. Back in the 80s, the experience of the plan would've dictate an experience in premium, and the board requested those increases from the legislative assembly, those increases weren't approved and instead of reducing the coverages and decreasing the cost of the copays for the members, the board did not make changes in order to accommodate that and so the two bodies were at odds and as a result, the experience of

the plan resulted in the near bankruptcy of the plan. So that's why they went fully insured in 1989.

(48:11) Senator Roers: What is the reserve amount and how much do you want it to be how much is going to be enough to satisfy your needs?

Scott: Under the changes made by this bill that's up to the insurance commissioner's office. Right now statute requires between 1 ½ and 3 months of payments in reserve, so \$25 million is not quite in that, that's at about one month. But we're bringing in premium at the same time so we're using premium to pay those benefits of those health insurance claims. If we were to go self-insured, we would build the premium to include not only the amount that we would need just for the premium but also an amount that would help build that reserve over a five-year period. But that's part of why that \$50 million line of credit is in there. The board decided not to go self-insured for this biennium. We will be going out to bid next year for the next biennium, at that time, depending how much we have in reserves, if there was a pandemic where we burn through those reserves then we would have access to that \$50 million line of credit.

Senator Roers: You used the term less expensive and that term is being changed to in the best interest of the state, isn't that what you've already done? It would appear to me that you're already doing what's in the best interest of the state.

Scott: Given that the requirement is currently that it has to be less expensive in order to go self instead, I don't know what the board's decision making process was but I would tend to agree that overall, they felt that our currently modified fully insured product was a better risk for the state. As has been mentioned there are some startup costs. We would need a couple extra FTEs, some internal infrastructure to help administer a self-insured plan, in addition to that the increase in the premiums in order to get that reserve level up to a necessary level.

Vice Chairman Vedaa: Worst case scenario, let's say people get carried away and it drives those costs up and you go out to bid this, will it come to a point where no one will want to bid our insurance and we'd be stuck in a self-insurance nightmare?

Scott: we're interested to see which bids we get, because we have that modified fully insured plan where we currently don't get any of the risk, so if there is a loss to the plan that's all on the insurance carrier. If there's a gain we split that gain 50/50 for the first \$3 million and then we get all the gain above that, that's a best case scenario to the state. It would be up to the insurance companies whether they are willing to bid on that going forward. We're a big chunk of business and people like our business.

Senator Kreun: We're talking about the line of credit from the Bank of North Dakota is \$50 million, we would need that to get started and have that letter of credit in case we have a more or less catastrophic issue over a period of time. You did indicate we could build that reserve over a five-year period within the premium. Would that letter of credit be rescinded when we get that self-insured amount that we can cover ourselves?

Scott: There's nothing in the bill that would rescind that provision, that would be up to the legislature in five years.

Senator Burckhard: If we become self-insured, would you suggest we contract the administration of that out or do that in house?

Scott: No, we would hire a third party administrator to do that. The additional staff that we would need to the things within the house that we would have to do as the plan sponsor but no we would contract with BlueCross BlueShield or Sanford to do that for us.

Chairman Klein: Can you give us any experience from other states that are currently self-insured. It can work?

Scott: It can and does work. The city of Phoenix from which I moved up to North Dakota is self-insured they don't have the 55-60,000 people that we do they are more in the 35-40,000 range. As you've heard, employers with 300+ employees generally are self-insured. To my knowledge none of them, have the modified fully insured product that we have and frankly the incredible limitation on the state risk from our current plan, I would not be surprised if our neighboring states if they were offered that plan if they wouldn't snatch that up in a heartbeat.

Chairman Klein: You don't see that plan many other places?

Scott: No, I was surprised when I got here to see what it is.

Chairman Klein: The best interest of the state, aren't we doing that now? We talk about ambiguities, what does that mean, how can we make that stick?

Scott: The North Dakota PERS board has a range of fiduciary responsibilities that require them to make decisions in the best interest of the members and beneficiaries of the retirement plan, the insurance plans. They are very practiced at that type of responsibility. Even as ephemeral as that may be, and as undefined as it may be, that's still what they do. They really look at every decision as far as what's this going to do to membership, frankly under the retirement plan, that's more important than what happens to the state because it has to be under federal law. but as far as their evaluation of whether to go self-insured for the health plan, I think they would take into account a number of things. The performance of the carriers, the proposals that have been made to the board the relative cost is going to be a consideration, but I also think the risk that the state would take on is going to be a big part of that decision making process. There's no firm definition to that.

Chairman Klein: Are we going to have to pay more? Are we losing our grandfather status?

Scott: We are not losing our grandfathered status.

Chairman Klein: But if we move to a self-insured, there wouldn't be any concern about losing our grandfathered status which would require us to pick up some additional costs?

Scott: If we were to go self-insured, that would be one of the determination that we would have to make is whether that would cause us to lose the self-insured status, that's not clear to us right now.

Chairman Klein: Because losing that would increase our premiums estimated at 3%?

Scott: Losing grandfathered status would require us to provide all the affordable care act mandated coverages some of which we do not provide right now because we are a grandfathered plan. We would have to add those coverages which would improve benefits but at an additional cost of about 3%.

Chairman Klein: Is our plan currently taxed by the affordable care act?

Scott: Yes

Chairman Klein: And self-insured we still would be?

Scott: I believe no.

Senator Piepkorn: How did the discussion go on paying three percent more while including those provision that are not covered now, in the interim discussions?

Scott: I wasn't here for the entire interim, so I'm not sure what if anything was said.

Chairman Klein: I believe the discussion on losing the grandfathered status, not only the 3% increase to the premium but the discussion that we have to maintain, if we raise the cost to the individual participant that could also through us out of the grandfathered status?

Scott: From a premium perspective we can't require the employee to pay more than 5% more than they were when the ACA was originally adopted. But again, if we lose our grandfathered status then that restriction isn't present.

Chairman Klein: Closed the hearing on HB 1028.

2019 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1028
2/13/2019
Job #32653

- Subcommittee
 Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

Relating to public employees' retirement system self-insurance plans for health benefits coverage; relating to public employee uniform group health benefits coverage; relating to public employees' retirement system self-insurance plans for health benefits coverage mandated health benefits; and to declare an emergency.

Minutes:

Chairman Klein: Opened the committee work session on HB 1028. All members were present.

Chairman Klein: This was the bill that did Representative Keiser and Jennifer Clark came and spoke. What it does is give us an opportunity to see how we can streamline the process. Should we as a state self-insure.

Senator Kreun: This is basically the framework so if we decide to go self-insured this framework is in place for us to use that option if we so desire.

Chairman Klein: Correct. We've been kicking this can back and forth from the House to the Senate for three sessions now. And this would allow us to hold onto the can because now we know what the rules would be. Because there were a lot of what ifs with the insurance department, if they would be able to regulate this, now we know that they would. And with the concerns addressed.

Senator Piepkorn: Yesterday when we were warned about IVF going to PERS, that there's never been a program where we've done this and it's been rescinded. So my question is if we go ahead and approve this, would we be endorsing self-insurance or what is the relationship to that process?

Chairman Klein: The way I understand it is the only thing we're really allowing here is should the PERS board put this out to bid, if they should choose self-insurance, then they would know what the rules are; what sort of reserves they would have to have. But are we endorsing it? I don't know that I'd go so far as to say that. In the last few sessions there has been quite a few questions about who would regulate it, where would the reserves come from? Would

it make it easier? Probably for the PERS board. Because now we have a framework of how the rules would apply.

Senator Roers: Moved Do Pass.

Senator Kreun: Seconded

Vice Chairman Vedaa: This basically is putting that self-insurance language in here. You notice on page 8, it says health maintenance organization and through a contract of insurance it also says on 2A, that a renewal best serves the interest of the state and the state's eligible employees. So if you remember the testimony, they said we could go into a state insurance plan, two years later, they could go back out of it if somebody brought something better to the PERS board because they have the ultimate say on that.

Senator Kreun: Basically the way I understand this we are going to be bidding our insurance in the next few years, so these are going to be the bid specs that we're putting out for this self-insured. We have the bid specs set out for the system we have already have, but this sets the new specs out so that the insurance companies know what they are going to be bidding in self-insurance, hybrid insurance, or a complete different program. They're all laid out there so they are going to be bidding whichever way they want.

Chairman Klein: And this puts the insurance commissioner as the regulator, I believe there was some ambiguities about that.

Senator Roers: You're right in that this just creates another option when they go to bid the insurance out for the next six years. We've got this hybrid plan that is getting ready to complete its six-year term so now they're getting ready for the next six-year term and now they'll have self-insured for one of those options.

Senator Burckhard: This is trivial but according to BlueCross BlueShield, Medica, and Sanford insurance, any company in North Dakota with over 300 employees is basically self-insured, did you hear that same thing?

Chairman Klein: Representative Keiser brought that in his testimony, but yes and we have like 65,000.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Roers will carry the bill.

REPORT OF STANDING COMMITTEE

HB 1028: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1028 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

HB 1028

HOUSE BILL NO. 1028

Presented by: Jeff Ubben
Deputy Commissioner/General Counsel
North Dakota Insurance Department

Before: House Industry, Business, and Labor Committee
Representative George Keiser, Chairman

Date: January 14, 2019

TESTIMONY

Good Morning Chairman Keiser and members of the committee. My name is Jeff Ubben and I am the Deputy Insurance Commissioner and General Counsel for the North Dakota Insurance Department.

The Insurance Department supports a Do Pass recommendation on House Bill 1028. We had substantial input in drafting this bill and worked closely throughout the interim with the Health Care Reform Review committee to construct this legislation into what it is today.

This legislation is important for several reasons. Under the current law, there is a lack of regulatory framework in place for how a self-funded PERS health insurance plan would be regulated. The current law has ambiguities as to what agency, if any, would regulate the financial condition, the claims settlement practices, and the appeals process of a self-funded plan. Since the current PERS plan is a fully insured plan, the Insurance Department currently regulates all of these areas of the plan. This bill would also give regulatory authority for a self-funded PERS plan to the Insurance Commissioner.

The State had a self-funded health insurance plan for a few years back in the 1980s. Unfortunately, this plan ran out of money within a few years in part because no one was regulating it. Therefore, it is important that the highly trained financial analysts employed by the Insurance Department are able to regulate the financials of the plan and monitor its solvency. In the event the solvency of the plan was moving in the wrong direction, this bill gives the Insurance Department the authority to take necessary remedial action

to rehabilitate the plan and hopefully prevent it from going insolvent. Such oversight did not exist in the 1980s.

This legislation also provides for many important consumer protections. Since a self-funded plan is generally not subject to the provisions of the insurance code and all of its consumer protections, many of these important consumer protections contained in the insurance code were placed into this bill. Some examples of these protections are the authority to regulate the claims settlement practices of the plan and the ability for an insured person to request an external review or an appeal of a claim that was denied by the plan's administrator.

Based on my experiences in dealing with insurance complaints, often times evaluating the merits of a complaint involves relying upon a diverse team of individuals who have highly specialized insurance knowledge. We are fortunate to have an excellent team of insurance experts at the Insurance Department that not only evaluate the merits of complaints but also take the lead in implementing corrective actions when necessary.

In addition, the ability of an insured person to be able to file for an external review of a claim denial is an important check on the power the plan's administrator has to approve and deny claims. An external review is conducted by a third party team of experts and is essentially the only method an aggrieved member has for an independent party to review the denial of a claim. Without the ability to file for an external review or appeal, the plan's administrator would essentially have the final say on whether a claim would be approved or denied.

This legislation is also important because it includes important health benefits that our health insurance code has required for decades. Some of these important benefits include coverage for substance abuse treatment, coverage for mental health treatments, mammogram examination coverage, prostate examination coverage, post-delivery coverage for mothers and newborns, and coverage for cancer treatment medications.

To be clear, this bill does not require the PERS health insurance plan to become a self-funded plan. The Insurance Department believes this is a policy decision for the Legislative Assembly to make and therefore takes no position on whether the State should self-fund its health insurance plan.

In conclusion, passing the bill in its current form would remove ambiguities in current law and allow the Insurance Department to regulate a self-funded plan in the same way it regulates a fully-insured plan. Therefore, I respectfully request a "do pass" recommendation from this committee on House Bill No. 1028 and am happy to take any questions.

TESTIMONY OF SCOTT MILLER

House Bill 1028 – Self-Funded Health Insurance Regulation

Good Morning, my name is Scott Miller. I am the Executive Director of the North Dakota Public Employees Retirement System, or NDPERS. Because the changes created by this Bill are policy choices of the state as the plan sponsor, I appear before you today in a neutral position regarding House Bill 1028.

House Bill 1028 makes several changes to the statutes administered by both NDPERS and the Insurance Department. NDPERS has the statutory responsibility to create and administer a health insurance plan for state employees and employees of participating political subdivisions. Statute allows that health insurance plan to be either a fully-insured plan or a self-insured plan. House Bill 1028 makes changes to how NDPERS would choose to create a self-insured plan over a fully-insured plan, and how to administer that plan.

The most significant changes in this bill are in Section 1. Historically, PERS has been guided by NDCC chapter 54-52.1 in its administration of the group health plan, which is directed by the legislature in the statutory provisions enacted in that chapter. House Bill 1028 adds to that a new oversight requirement that places the Insurance Commissioner in a regulatory role over any self-insured health plan that NDPERS might create. The bill imposes a number of requirements on such a plan, including mandatory coverages.

The Bill goes on to modify several provisions within the NDPERS-administered statutes. One alteration is to change the criteria the NDPERS Board must use to decide whether to create a self-insured plan. Currently, that criteria requires a self-insured plan to be less expensive than a fully-insured plan before the Board could choose a self-insured plan. This Bill removes that criteria, and in its place puts a “best interest of state” requirement. If passed, the Board could only choose to go self-insured if it determines that doing so is in the best interest of the state.

House Bill 1028 also makes the following changes:

- 1) Removes the requirement for individual stop-loss coverage and makes the purchase of stop loss coverage optional for a state self-insurance plan, which our actuary advised us was acceptable and may result in administrative savings;
- 2) Changes NDCC 54-52.1-04.3 and eliminates the legislatively set statutory reserve requirements and provides that the Insurance Commissioner set our reserve requirements in the future (depending on the level set by the Insurance

HB 1028

Attachment 2
Jan 14, 2019

Commissioner, this will directly affect the calculation relating to fully insured vs self-insured cost differential);

- 3) Requires the Bank of North Dakota to provide NDPERS with a line of credit up to \$50 million for the Board to access if necessary; and
- 4) Instills a "best interest of the state and its employees" requirement for renewing an insurance contract.

House Bill 1028 was vetted by the Interim Health Care Reform Review Committee. We presented a number of issues to that Committee, all of which were resolved, and that resolution is present in this bill. As such, the NDPERS Board has taken a neutral position on this bill. Note that there is no fiscal note for this bill and no actuarial impact. Part of the reason there is no actuarial impact is because the coverages this bill requires are already covered by our health insurance plan. The Employee Benefits Programs Committee gave this bill a favorable recommendation.

NDLA, S IBL - Crane, Amy

From: NDLA, Intern 05 - Grossman, Jayla
Sent: Wednesday, February 06, 2019 11:29
To: NDLA, S IBL - Crane, Amy; Klein, Jerry J.; Vedaa, Shawn A.; Roers, Jim; Piepkorn, Merrill; Burckhard, Randall A.; Kreun, Curt E.
Subject: FW: HB 1028 - Jenn's Comments

Here are Jenn's comments on HB 1028.

Jayla

From: Clark, Jennifer S.
Sent: Wednesday, February 06, 2019 11:26 AM
To: NDLA, Intern 05 - Grossman, Jayla <intern5@nd.gov>
Subject: HB 1028 - Jenn's Comments

Jayla-

Per the committee's request, here is a summary of my comments regarding HB 1028:

1. Clarifies the Insurance Department regulates PERS self-funded health plans. See Sections 1, 2, 3, and 9.
2. Clarifies PERS may decide not to renew a PERS uniform group health plan contract if it determines renewal is not in the best interests of the state or state employees and makes the term of a self-funded plan contract 2 years, just like the other health plans. See section 8.
3. Revises the PERS self-funded plan requirements. See Sections 5, 6, and 10.
4. Gives PERS access to a Bank of North Dakota line of credit if PERS moves to a self-funded plan. See Section 7.
5. Clarified drug coverage is a component of medical coverage and that PERS can carve out drug coverage. See Section 4.
6. Provides an emergency clause, which is most relevant if PERS moves to a self-funded plan for 2019-21, as it would allow the Insurance Department to adopt rules ASAP. See Section 11.

Hope that helps. Let me know if the committee seeks any additional info on this-

Jenn

Jennifer Clark
Counsel
ND Legislative Council
(701) 328-2916
jclark@nd.gov

HOUSE BILL NO. 1028

Presented by: Jeff Ubben
Deputy Commissioner/General Counsel
North Dakota Insurance Department

Before: Senate Industry, Business, and Labor Committee
Senator Jerry Klein, Chairman

Date: February 6, 2019

TESTIMONY

Good Morning Chairman Klein and members of the committee. My name is Jeff Ubben and I am the Deputy Insurance Commissioner and General Counsel for the North Dakota Insurance Department.

The Insurance Department supports a Do Pass recommendation on House Bill 1028. We had substantial input in drafting this bill and worked closely throughout the interim with the Health Care Reform Review committee to construct this legislation into what it is today.

This legislation is important for several reasons. Under the current law, there is a lack of regulatory framework in place for how a self-funded PERS health insurance plan would be regulated. The current law has ambiguities as to what agency, if any, would regulate the financial condition, the claims settlement practices, and the appeals process of a self-funded plan. Since the current PERS plan is a fully insured plan, the Insurance Department regulates all of these areas of the plan. This bill would also give regulatory authority for a self-funded PERS plan to the Insurance Commissioner.

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Commissioner, this will directly affect the calculation relating to fully insured vs self-insured cost differential);

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