

August 2009

## **EMPLOYEE BENEFITS PROGRAMS COMMITTEE - STATUTORY RESPONSIBILITIES AND ASSIGNED STUDIES - BACKGROUND MEMORANDUM**

### **STATUTORY RESPONSIBILITIES**

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 again substantially amended 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 again amended in 1999 to require the committee to take jurisdiction over any measure or proposal that authorizes 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 requires the Legislative Management during each biennium to appoint an Employee Benefits Programs Committee in the same manner as the Legislative Management appoints other interim committees. The membership of the committee consists of five members of the House of Representatives and four members of the Senate and is chaired by a legislator designated by the Legislative Management.

Section 54-35-02.4(1) requires the Employee Benefits Programs 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 that 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. As previously noted, the committee is required to take jurisdiction over any measure or proposal that authorizes an automatic increase or other change in benefits beyond the ensuing biennium which would not require legislative approval and include in the report of the committee a statement that the proposal would allow future changes without legislative involvement.

In carrying out its responsibilities, the Employee Benefits Programs 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 must "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 its operation, including the submission and review of proposals and the establishing of standards for actuarial review.

Section 54-35-02.4(3) authorizes the Employee Benefits Programs 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 that a copy of the Employee Benefits Programs 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 identify the sponsor of a proposal, summarize the proposal, present the actuarial analysis, and include the committee's recommendation. Subsections 5 and 6 prohibit the introduction or amendment of any legislative measure affecting a public employee retirement program, public employee health insurance program, or public employee retiree health insurance program unless it is accompanied by a report from the Employee Benefits

Programs Committee. A majority of the Employee Benefits Programs Committee members, acting through the chairman, has sole authority to determine whether any legislative measure affects a public employees program.

Finally, Section 54-35-02.4(7) provides that 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 Employee Benefits Programs Committee must consider and report on those legislative measures and proposals over which it takes jurisdiction and which affect, actuarially or otherwise, the retirement programs, public employee health insurance programs, or public employee retiree health insurance programs of state employees or employees of any political subdivision. The committee must make a thorough review of each measure or proposal, including an actuarial review. Under the 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. In prior years, including the 2007-08 interim, the Employee Benefits Programs Committee has limited the persons and entities permitted to submit to the committee legislative proposals affecting retirement programs to legislators and state agencies with the bill introduction privilege and required that the proposals be in bill draft form and submitted to the committee before April 1 of even-numbered years to allow enough time for actuarial evaluation. The committee has the authority to waive its self-imposed deadline for proposals received after any deadline established by the committee.

### **Actuarial Services**

The Employee Benefits Programs Committee is empowered by Section 54-35-02.4 to retain actuarial assistance for the review of proposals submitted to the committee. As a result of 1987 House Bill No. 1680, which required each program to pay for any actuarial reports required by the committee, much of the actuarial costs involved in the review of legislative measures and proposals have been paid by the retirement, insurance, or retiree health insurance program affected by each proposal. During the 2007-08 interim, the Employee Benefits Programs Committee submitted retirement proposals to the affected retirement programs requesting that each affected program obtain an actuarial report for each proposal from that program's consulting actuary. Each retirement program bore the costs incurred in obtaining the actuarial reports.

Prior interim Employee Benefits Programs Committees, after obtaining actuarial information on the retirement proposals and receiving relevant testimony, have 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 on the retirement program of the proposal, and a committee recommendation to the Legislative Management on the proposal's merits. A copy of the committee report must be attached to each proposal when it is introduced to the Legislative Assembly.

### **TUITION REIMBURSEMENT POOL PROGRAM STUDY**

Section 1 of 2009 House Bill No. 1341 directs the Legislative Management to study the feasibility and desirability of an appropriation to the Office of Management and Budget for a state employee tuition reimbursement pool program. This section provides that the study must address the amount to be allocated to the pool and the agencies that would be authorized to reimburse state employees for tuition costs of eligible and approved education programs. House Bill No. 1341, as introduced, would have appropriated \$200,000 from the general fund to the Office of Management and Budget for the purpose of providing a state employee tuition reimbursement program pool. Under the proposal, the Office of Management and Budget would have been required to transfer spending authority from the state employee tuition reimbursement program pool appropriation to each eligible agency for reimbursing state employees for tuition costs of eligible and approved education programs. Under the proposal, the Office of Management and Budget would have been authorized to transfer spending authority only to agencies with fewer than 30 authorized full-time equivalent positions and only for the tuition costs of education programs directly related to the duties and responsibilities of the agency.

Proponents of the legislation noted that Office of Management and Budget rules authorize agencies to pay for approved educational opportunities for their employees if the agency is able to find the funds within its existing budget. Since most agencies that provide tuition reimbursement do so through a rollup of vacant positions, larger agencies have more ability to find additional funds from vacancies, operational savings, or other budget savings than smaller agencies. Proponents of the legislation noted that the proposal would increase the ability of smaller agencies to implement tuition reimbursement programs.

### **ADMINISTRATIVE LEAVE PROGRAM STUDY**

Section 1 of 2009 House Bill No. 1562 directs the Legislative Management to study the feasibility and desirability of establishing an administrative leave

program for use by executive branch agencies to allow employees to attend legislative hearings or meetings, grievance meetings, disciplinary hearings, labor and management meetings, negotiating sessions, or other meetings or activities jointly agreed upon by the chief administrative officer of the employing agency. House Bill No. 1562, as introduced, would have required the Office of Management and Budget to provide up to 800 hours per year of administrative leave for use by executive branch agencies to allow employees who are members of a public employees' organization to attend legislative hearings or meetings, grievance meetings, disciplinary hearings, labor and management meetings, negotiating sessions, or other meetings or activities jointly agreed upon by the chief administrative officer of the employing agency. Under the proposed legislation, the chief administrative officer of an agency could not have denied a request for administrative leave if the leave was not inconsistent with the operational needs of the agency and if hours remained available for the allotment during a calendar year. Under the proposal, administrative leave granted would have been in addition to any administrative leave granted by the chief administrative officer of an agency for attendance at an annual statewide meeting of a public employee organization.

Proponents of the legislation noted that representatives of public employee organizations must take annual leave and volunteer their time to represent their fellow employees throughout the state. Proponents noted that the proposal would allow for more employees to have their voice heard and to participate in programs offered by state employee organizations. The proposal was opposed by individuals who noted that the proposal would provide a benefit to public employees that is not available to private sector employees. Also, representatives of the Office of Management and Budget noted that several administrative changes would need to be made in order to implement the program.

### **ADDITIONAL COMMITTEE RESPONSIBILITIES**

In addition to the committee's statutory responsibilities and assigned studies:

- Section 18-11-15(5) requires that the Employee Benefits Programs Committee be notified by a firefighters relief association if it implements the alternate schedule of monthly service pension benefits to members of the association provided in this subsection.
- Section 54-06-31 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 has assigned this responsibility to the Employee Benefits Programs Committee.
- Section 54-06-32 requires the Office of Management and Budget 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 has assigned this responsibility to the Employee Benefits Programs Committee.
- Section 54-06-33 requires the Office of Management and Budget 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 has assigned this responsibility to the Employee Benefits Programs Committee.
- Section 54-06-34 requires the Office of Management and Budget to submit to the Legislative Management a report summarizing reports of executive branch state agencies paying employee membership dues for professional organizations and membership dues for service clubs when required to do business or if the membership is primarily for the benefit of the state. The Legislative Management has assigned this responsibility to the Employee Benefits Programs Committee.
- Section 54-52.1-08.2 requires that the Employee Benefits Programs Committee approve terminology adopted by the Public Employees Retirement System Board to comply with federal requirements.
- 2009 S.L., ch. 509, § 1 requires the Legislative Management to receive a report from Human Resource Management Services before July 1, 2010, on the outcome of its study and evaluation of steps the state could take to recruit and retain state employees in state government employment as those state employees reach retirement. The Legislative Management has assigned this responsibility to the Employee Benefits Programs Committee.