

August 2001

EMPLOYEE BENEFITS PROGRAMS COMMITTEE - BACKGROUND MEMORANDUM

STATUTORY AUTHORITY

The Legislative Council's Employee Benefits Programs Committee, formerly known as the Committee on Public Employees Retirement Programs or the Retirement Committee, is the product of a 1975-76 Legislative Council study undertaken by the interim Legislative Procedure and Arrangements Committee. The establishment of a committee of this kind was recommended by the committee in response to difficulties experienced in past legislative sessions resulting from inadequate prior study of the actuarial impacts of proposed legislative changes in the retirement programs.

Senate Bill No. 2061, which created the original committee as recommended by the Legislative Procedure and Arrangements Committee, was enacted by the 1977 Legislative Assembly and is codified as North Dakota Century Code (NDCC) Sections 54-35-02.3 and 54-35-02.4. Those sections were substantially amended by the 1981 Legislative Assembly 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 by the 1991 Legislative Assembly 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 by the 1999 Legislative Assembly 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. House Bill No. 1102 (2001), the Teachers' Fund for Retirement benefit bill, as introduced, contained a provision authorizing an automatic increase in benefits beyond the current biennium which did not require legislative approval. This language provided:

An individual who on June 30, 2001, is receiving monthly benefits from the fund on an account paid under this chapter or under former chapter 15-39 is entitled to receive a monthly increase equal to an amount determined by taking two dollars per month multiplied by the member's number of years of

service credit plus one dollar per month multiplied by the number of years since the member's retirement. In addition, an individual who is receiving monthly benefits from the fund on an account paid under this chapter or under former chapter 15-39 is entitled to receive a seventy-five hundredths of one percent increase of the individual's current monthly benefit with the increased benefit payable each month thereafter beginning on July first of each year.

This language was amended by the 2001 Legislative Assembly to provide:

An individual who on June 30, 2001, is receiving monthly benefits from the fund on an account paid under this chapter or under former chapter 15-39 is entitled to receive a monthly increase equal to an amount determined by taking two dollars per month multiplied by the member's number of years of service credit plus one dollar per month multiplied by the number of years since the member's retirement. In addition, an individual who is receiving monthly benefits from the fund on an account paid under this chapter or under former chapter 15-39 is entitled to receive a seventy-five hundredths of one percent increase of the individual's current monthly benefit with the increased benefit payable each month thereafter beginning on July 1, 2001. An individual who on June 30, 2002, is receiving monthly benefits from the fund on an account paid under this chapter or under former chapter 15-39 is entitled to receive a seventy-five hundredths of one percent increase of the individual's current monthly benefit with the increased benefit payable each month thereafter beginning on July 1, 2002. This annual benefit adjustment is conditioned on an actuarial test performed annually by the board's actuarial consultant to determine the actuarial adequacy of the statutory contribution rate. The board shall report the results of the actuarial test annually to the employee benefits programs committee. If the actuarial valuation indicates a shortfall between the actuarially determined benchmark contribution rate and the statutory rate, the board may reduce or suspend the conditional annual

benefit adjustment. The actuarial adequacy test fails if one or more of the following are true:

1. The shortfall is greater than six-tenths of one percent in any year; or
2. The shortfall is greater than three-tenths of one percent in any two consecutive years.

North Dakota Century Code Section 54-35-02.3 requires the Legislative Council during each biennium to appoint an Employee Benefits Programs Committee in the same manner as the Council 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 Council.

North Dakota Century Code 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 Council and to the Legislative Assembly. However, as noted above, 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 NDCC Section 54-35-02.4(2) to:

1. Enter into 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.

North Dakota Century Code 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 Council. 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. Subsections 5 and 6 prohibit the introduction or amendment of any legislative measure affecting a public employees retirement program, public employees health insurance program, or public employee retiree health insurance program unless 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, have sole authority to determine whether any legislative measure affects a public employees program.

Finally, NDCC 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 NDCC 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 the submission and review of proposals and the establishment of standards for actuarial review. During the 1999-2000 interim, the Employee Benefits Programs Committee 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 before April 1, 2000, 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.

ADDITIONAL COMMITTEE RESPONSIBILITIES

In addition to the committee's other statutory duties, the 1995 Legislative Assembly enacted Senate Bill No. 2175 (1995 S.L., ch. 534) codified as NDCC Section 54-52.1-08.2 which requires the Employee Benefits Programs Committee to approve terminology adopted by the Public Employees Retirement System Board to comply with federal requirements. The 1997 Legislative Assembly enacted Senate Bill No. 2144 (1997 S.L., ch. 204) codified as Section 18-11-15(5) which requires the Employee Benefits Programs Committee to be notified by a firefighters relief association if it implements the alternate schedule of monthly service pension benefits to members of the association as provided in this subsection. The 2001 Legislative Assembly enacted House Bill No. 1102 (2001 S.L., ch. 171) codified as Section 15-39.1-10.11 which requires the Teachers' Fund for Retirement Board of Trustees to have its actuarial consultant perform an annual actuarial test to determine the actuarial adequacy of the statutory contribution rate and, thus, whether an annual benefit adjustment may be implemented and to report the results of the actuarial test annually to the Employee Benefits Programs Committee. The 2001 Legislative Assembly enacted Senate Bill No. 2084 (2001 S.L., ch. 330) codified as Section 39-03.1-08.1(6) which requires the Employee Benefits Programs Committee to be notified by the Public Employees Retirement System Board of the date the board receives a letter ruling from the Internal Revenue Service that the section allowing a member to purchase service credit with pretax or aftertax moneys does not jeopardize the qualified status of the Highway Patrolmen's retirement system. Also, the 2001 Legislative Assembly enacted Senate Bill No. 2082 (2001 S. L., ch. 494) codified as Section 54-52-17.4(6) which

requires the Employee Benefits Programs Committee to be notified by the Public Employees Retirement System Board of the date the board receives a letter ruling from the Internal Revenue Service that the section allowing a member to purchase service credit with pretax or aftertax moneys does not jeopardize the qualified status of the Public Employees Retirement System.

ACTUARIAL SERVICES

The Employee Benefits Programs Committee is empowered by NDCC Section 54-35-02.4 to retain actuarial assistance for the review of proposals submitted to the committee. Expenditures by those past interim Employee Benefits Programs Committees ranged from \$5,000 to \$15,000 per biennium for actuarial services. As a result of 1987 House Bill No. 1680 that requires 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 must be borne by the retirement, insurance, or retiree health insurance program affected by the proposal. During the 1999-2000 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 Council on the proposal's merits. A copy of the committee report must be attached to each proposal when it is introduced.