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## EMPLOYEE BENEFITS PROGRAMS COMMITTEE

Wednesday, September 9, 2020  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Mike Lefor, Chairman, called the meeting to order at 9:00 a.m.

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

**Member absent:** Representative Craig Johnson

**Others present:** Representative Marvin E. Nelson, Rolla, and Senator Tim Mathern, Fargo  
See [Appendix A](#) for additional persons present.

**It was moved by Representative Dockter, seconded by Representative Laning, and carried on a voice vote that the minutes of the April 15, 2020, meeting be approved as distributed.**

### 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](#)) on the status of state investments.

In response to a question from Senator Bekkedahl, Mr. Hunter said in looking at the preliminary net investment returns for the fiscal year ended June 30, 2020, for the State Investment Board's (SIB) five largest clients, Workforce Safety and Insurance performed well because it has an asset allocation heavy on fixed income. He said each SIB client, in consultation with the SIB, sets its own asset allocation policies.

### CHANGES IN FEDERAL RETIREMENT LAW

Chairman Lefor called on Ms. Janilyn Murtha, Deputy Executive Director and Chief Retirement Officer, Retirement and Investment Office, for a presentation ([Appendix C](#)) requesting approval of terminology adopted by the Board of Trustees of the Teachers' Fund for Retirement to comply with federal requirements pursuant to North Dakota Century Code Section 15-39.1-35.

In response to a question from Senator Dever, Ms. Murtha said the change in federal law affects defined benefit plans. She said she will provide the committee with information regarding the number of Teachers' Fund for Retirement (TFFR) members who will be affected by the change in federal law.

**It was moved by Representative Dockter, seconded by Representative Ruby, and carried on a roll call vote that the committee extend its April 1 bill submission deadline to allow TFFR to submit to the committee a bill draft to address the change in federal law.** Representatives Lefor, Dockter, Hager, Laning, and Ruby and Senators Anderson, Bekkedahl, Dever, Krebsbach, Marcellais, and Roers voted "aye." No negative votes were cast.

### PRESCRIPTION DRUG BENEFITS STUDY

Chairman Lefor called on Mr. Drew Rasmussen, Management Consultant, Deloitte Consulting, for a presentation ([Appendix D](#)) of the report ([Appendix E](#)) on the study of prescription drug benefits provided for under House Bill No. 1373 (2019).

In response to a question from Chairman Lefor, Mr. Josh Johnson, Senior Manager, Deloitte Consulting, stated Deloitte has experience with the prescription drug benefits in Minnesota, but does not have experience with those in Montana or Wyoming.

Mr. Johnson said employers the size of the Public Employees Retirement System (PERS) typically do not buy aggregate stop-loss insurance. He said it is uncommon to find pharmacy-only individual stop-loss insurance.

In response to a question from Senator Anderson, Mr. Rasmussen said the study did not include consideration of states that have state-administered pharmacy benefits for the state Medicaid program.

Chairman Lefor called on Mr. Mike Schwab, Executive Vice President, North Dakota Pharmacists Association, for comments ([Appendix F](#)) regarding the study.

Chairman Lefor called on Ms. Jennifer S. N. Clark, Counsel, Legislative Council, to review a bill draft [[21.0170.01000](#)] regarding PERS self-insurance plans.

### HEALTH BENEFITS REQUEST FOR PROPOSAL

Chairman Lefor called on Mr. Scott Miller, Executive Director, Public Employees Retirement System, for testimony regarding the status of the PERS uniform group insurance health benefits plan request for proposal. Mr. Miller said, in response to the request for proposal, PERS received five proposals--two from insurance companies and three from pharmacy benefit managers (PBMs). He said for the September 8, 2020, meeting of the PERS Board, the PERS staff performed a technical evaluation of the proposals which did not include a review of the cost proposals. He said PERS staff will continue its evaluation of the proposals and will complete vendor interviews by early October, at which time he anticipates the PERS Board will hold a special board meeting to make a decision.

In response to a question from Representative Schauer, Mr. Miller said based on the evaluations conducted so far, he is satisfied with the bids received. However, he said, he thought there would be more PBM bids received.

Senator Dever said the PERS Board is made up of knowledgeable members who are well qualified to make this decision regarding health benefits. He said there are more complaints on the pharmacy benefits than on the medical benefits. He said if PERS decides to move pharmacy benefits to self-insurance, the state will receive those complaints instead of the carrier and the PBM.

### EXPERIENCE STUDY

Chairman Lefor called on Ms. Bonnie Wurst, Senior Consultant, Gabriel, Roeder, Smith & Company, to present the PERS experience study ([Appendix G](#)) for the period July 1, 2014, to July 1, 2019.

In response to a question from Senator Anderson, Ms. Wurst said for investment return predictions, the primary focus is on forward-looking expectations. However, she said, looking at past performance helps in the confidence of meeting the expected investment return. She said in evaluating the expected pay increase projected, the 3.5 percent takes into account multiple factors so it is not reflective of a single person but of the group as a whole.

In response to a question from Representative Schauer, Ms. Wurst said the experience study sets assumptions for the long term and does not factor in specific events, such as elections. However, she said, the experience study does consider constant volatility, such as the Coronavirus (COVID-19) and elections.

In response to a question from Senator Bekkedahl, Ms. Wurst said although legislative actions affect the retirement plans, the actions do not have a direct impact on the experience study analysis.

In response to a question from Chairman Lefor regarding slide 19, Ms. Wurst said Gabriel, Roeder, Smith & Company has conducted some studies at the request of PERS on the effect of a cash infusion option to improve the health of the main retirement plan.

In response to a question from Representative Dockter, Ms. Wurst said without a cash infusion, an increase in contributions, or a decrease in benefits, it is unlikely the PERS main plan will ever reach full funding.

In response to a question from Senator Dever, Ms. Wurst said the goal is to reach full funding of a plan within 20 years.

In response to a question from Chairman Lefor, Ms. Wurst said Gabriel, Roeder, Smith & Company conducts experience studies for other states and retirement systems. She said there are commonalities among systems, but systems are unique based on asset allocation. She said states' levels of funding vary from system to system and not all systems are fixed contribution rate systems such as North Dakota's system.

## JURISDICTION OF BILL DRAFTS

The committee reviewed, received comments regarding, and determined whether to take jurisdiction over five bill drafts--four sponsored by legislators and one sponsored by the committee.

### Legislator-Sponsored Bill Drafts

#### Bill Draft No. 49

The committee reviewed Bill Draft No. 49 [[21.0049.01000](#)], which provides requirements for health insurance policies if the federal Affordable Care Act is repealed.

Chairman Lefor called on Senator Mathern for comments regarding the bill draft. Senator Mathern said he requests the committee take jurisdiction over the bill draft.

In response to a question from Representative Ruby, Ms. Clark said the bill draft likely would apply to PERS, with some possible limitations if PERS moved to self-insurance.

#### Bill Draft No. 135

The committee reviewed Bill Draft No. 135 [[21.0135.01000](#)], which provides for continued eligibility for health benefits following separation from employment in certain circumstances.

#### Bill Draft No. 148

The committee reviewed Bill Draft No. 148 [[21.0148.02000](#)], which provides the Employee Benefits Programs Committee makes contract determinations for PERS uniform group insurance plans.

In response to a question from Senator Krebsbach, Ms. Clark said under this bill draft, the Employee Benefits Programs Committee would make the ultimate determination on carriers for uniform group insurance plans.

#### Bill Draft No. 183

The committee reviewed Bill Draft No. 183 [[21.0183.01000](#)], which provides maximum out-of-pocket costs for diabetes drugs and supplies for health insurance policies.

Chairman Lefor called on Senator Mathern for comments regarding the bill draft. Senator Mathern said he requests the committee take jurisdiction over the bill draft. He said as diabetes medication and supply costs have increased, he is seeking price stability.

### Committee-Sponsored Bill Draft

The committee reviewed Bill Draft No. 170 [[21.0170.01000](#)], which provides for broader discretion for stop-loss insurance coverage for a PERS self-insurance health plan.

### Committee Directive

Chairman Lefor asked whether the committee would like to consider the bill drafts separately or as a whole.

**It was moved by Representative Ruby, seconded by Senator Marcellais, and carried on a roll call vote that the committee take jurisdiction of the five bill drafts that affect PERS.** Representatives Lefor, Docker, Hager, Laning, Ruby, and Schauer and Senators Anderson, Bekkedahl, Krebsbach, Marcellais, and Roers voted "aye." Senator Dever voted "nay."

## ACTUARIAL REVIEW OF BILL DRAFTS

The committee received actuarial reports and technical comments from PERS ([Appendix H](#)) on 10 bill drafts over which the committee took jurisdiction at a prior meeting--2 legislator-sponsored bill drafts and 8 PERS-sponsored bill drafts.

### Legislator-Sponsored Bill Drafts

#### Bill Draft No. 55

The committee reviewed the actuarial report ([Appendix I](#)) for Bill Draft No. 55 [[21.0055.01000](#)], which provides a health insurance policy that covers an annual physical examination must allow for a physical examination that meets the requirements for a federal Department of Transportation physical examination.

Senator Roers said this bill draft may create a slippery slope by opening the door for other professions to request the same treatment.

**Bill Draft No. 68**

The committee reviewed the actuarial report ([Appendix J](#)) for Bill Draft No. 68 [[21.0068.01000](#)], which provides PERS prescription drug benefits coverage must include certain drugs imported from Canada.

Chairman Lefor called on Representative Nelson for comments ([Appendix K](#)) regarding the bill draft.

In response to a question from Senator Anderson, Representative Nelson said he is open to wordsmithing to improve the bill draft.

In response to a question from Senator Roers, Representative Nelson said absent legislation, he does not think PERS can cover drugs imported from Canada.

In response to a question from Senator Dever, Mr. Miller said he will research whether PERS can implement coverage of drugs from Canada absent legislation.

Ms. Clark said importation may require drug wholesaler licensure.

**PERS-Sponsored Bill Drafts****Bill Draft No. 87**

The committee reviewed the actuarial report ([Appendix L](#)) for Bill Draft No. 87 [[21.0087.01000](#)], which provides for a 1.95 percent increase in the employer contribution for the PERS retirement plans.

In response to a question from Senator Bekkedahl, Mr. Miller said the 1.95 percent increase in employer contribution makes up for the reduction in benefits resulting from 2019 legislation. He said although the employer does pay a higher contribution than the employee, it is complicated to compare due to factors such as the retiree health insurance credit. He said this bill draft is the only bill draft intended to equalize employer and employee contributions based on 2019 legislation.

**Bill Draft No. 88**

The committee reviewed the actuarial report ([Appendix M](#)) for Bill Draft No. 88 [[21.0088.01000](#)], which provides for a 2 percent increase in the employer and employee contribution for the PERS retirement plans.

In response to a question from Chairman Lefor, Mr. Miller said the PERS Board has not finalized its legislative package for 2021.

Senator Dever said because we do not know what the budget estimates will look like, the committee should give a favorable recommendation to the PERS bill drafts to give the PERS Board the flexibility needed to establish a legislative package.

**Bill Draft No. 89**

The committee reviewed the actuarial report ([Appendix N](#)) for Bill Draft No. 89 [[21.0089.01000](#)], which provides for a 5.12 percent increase in the employer and employee contribution for the PERS retirement plans.

Senator Bekkedahl requested PERS provide the committee with a graphic representation of the employer and employee contribution for each of the PERS contribution bill drafts.

**Bill Draft No. 90**

The committee reviewed the actuarial report ([Appendix O](#)) for Bill Draft No. 90 [[21.0090.01000](#)], which provides for an increase in the employer contribution for the Highway Patrolmen's retirement system.

**Bill Draft No. 91**

The committee reviewed the actuarial reports ([Appendix P](#)) for Bill Draft No. 91 [[21.0091.01000](#)], which provides for a penalty for late payments or failures to follow required PERS processes.

**Bill Draft No. 92**

The committee reviewed the actuarial reports ([Appendix Q](#)) for Bill Draft No. 92 [[21.0092.01000](#)], which provides for technical corrections and updates to PERS laws.

**Bill Draft No. 94**

The committee reviewed the actuarial report ([Appendix R](#)) for Bill Draft No. 94 [[21.0094.01000](#)], which provides for the assessment of administrative expenses for the PERS deferred compensation plan.

**Bill Draft No. 95**

The committee reviewed the actuarial report ([Appendix S](#)) for Bill Draft No. 95 [[21.0095.01000](#)], which provides for a 1 percent increase in the employer and employee contribution for the PERS retirement plans.

**Committee Directives**

**It was moved by Representative Dockter and seconded by Senator Roers that the committee give a report of no recommendation on Bill Draft Nos. 87, 88, 89, and 95.**

Senator Dever said the committee should make a recommendation on the bill drafts.

Representative Dockter said a recommendation of "no recommendation" does not equate to "no opinion."

Senator Anderson supports selecting a single bill draft for the committee to support.

**The motion failed on a roll call vote.** Representatives Lefor, Dockter, Hager, Laning, and Schauer and Senator Roers voted "aye." Representative Ruby and Senators Anderson, Bekkedahl, Dever, Krebsbach, and Marcellais voted "nay."

**It was moved by Representative Laning, seconded by Senator Bekkedahl, and carried on a roll call vote that the committee give a favorable recommendation on Bill Draft No. 55.** Representatives Lefor, Dockter, Hager, Laning, and Schauer and Senators Anderson, Bekkedahl, Dever, Krebsbach, and Marcellais voted "aye." Representative Ruby and Senator Roers voted "nay."

**It was moved by Senator Krebsbach, seconded by Senator Bekkedahl, and carried on a roll call vote that the committee give a report of no recommendation on Bill Draft No. 68.** Representatives Lefor, Dockter, Laning, and Ruby and Senators Anderson, Bekkedahl, Dever, and Krebsbach voted "aye." Representatives Hager and Schauer and Senator Marcellais voted "nay."

**It was moved by Senator Dever, seconded by Representative Ruby, and carried on a roll call vote that the committee give a report of no recommendation on Bill Draft No. 87.** Representatives Lefor, Dockter, Hager, Laning, Ruby, and Schauer and Senators Anderson, Bekkedahl, Dever, Krebsbach, Marcellais, and Roers voted "aye." No negative votes were cast.

**It was moved by Senator Dever, seconded by Representative Ruby, and carried on a roll call vote that the committee give a report of no recommendation on Bill Draft No. 88.** Representatives Lefor, Dockter, Hager, Laning, Ruby, and Schauer and Senators Anderson, Bekkedahl, Dever, Krebsbach, Marcellais, and Roers voted "aye." No negative votes were cast.

**It was moved by Senator Dever and seconded by Senator Anderson that the committee give a favorable recommendation on Bill Draft No. 89.**

Representative Laning said a contribution increase of 5.12 percent increase is out of line and he does not support this bill draft.

Senator Dever said 5.12 percent may be high, but it is a good place to start. He said when the Legislative Assembly receives an updated budget, changes can be made to the bill draft to reflect the budget.

Senator Bekkedahl said any of the contribution bill drafts can be changed by the Legislative Assembly once the bill draft is introduced.

Senator Anderson said he seeks a fully funded retirement plan.

Senator Krebsbach said the Legislative Assembly has been kicking this issue down the road for years and it is time to address the issue now.

Chairman Lefor said he seeks a combination of increasing contribution and a cash infusion.

Senator Krebsbach said she supports a cash infusion.

Representative Schauer said he does not support a 5.12 percent increase in contribution.

**The motion carried on a roll call vote.** Representative Ruby and Senators Anderson, Bekkedahl, Dever, Krebsbach, and Marcellais voted "aye." Representatives Lefor, Dockter, Hager, Laning, and Schauer voted "nay."

**It was moved by Senator Dever, seconded by Senator Marcellais, and carried on a roll call vote that the committee give a favorable recommendation to Bill Draft No. 90.** Representatives Lefor, Dockter, Hager, and Ruby and Senators Anderson, Bekkedahl, Dever, Krebsbach, and Marcellais voted "aye." Representatives Laning and Schauer voted "nay."

**It was moved by Representative Laning, seconded by Representative Ruby, and carried on a roll call vote that the committee give a favorable recommendation to Bill Draft No. 91.** Representatives Lefor, Dockter, Hager, Laning, Ruby, and Schauer and Senators Anderson, Bekkedahl, Dever, Krebsbach, and Marcellais voted "aye." No negative votes were cast.

**It was moved by Senator Krebsbach, seconded by Representative Ruby, and carried by a roll call vote that the committee give a favorable recommendation to Bill Draft No. 92.** Representatives Lefor, Dockter, Hager, Laning, Ruby, and Schauer and Senators Anderson, Bekkedahl, Dever, Krebsbach, and Marcellais voted "aye." No negative votes were cast.

**It was moved by Representative Laning, seconded by Senator Dever, and carried on a roll call vote that the committee give a favorable recommendation to Bill Draft No. 94.** Representatives Lefor, Dockter, Hager, Laning, Ruby, and Schauer and Senators Anderson, Bekkedahl, Dever, Krebsbach, Marcellais, and Roers voted "aye." No negative votes were cast.

**It was moved by Representative Laning, seconded by Senator Dever, and carried on a roll call vote that the committee give Bill Draft No. 95 a favorable recommendation.** Representatives Lefor, Dockter, Hager, Laning, and Schauer and Senators Anderson, Bekkedahl, Dever, Krebsbach, Marcellais, and Roers voted "aye." No negative votes were cast.

Chairman Lefor said the tentative date for the next committee meeting is Wednesday, October 28, 2020.

No further business appearing, Chairman Lefor adjourned the meeting at 2:25 p.m.

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Jennifer S. N. Clark  
Counsel

ATTACH:19