

2023 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1321

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1321
1/18/2023

Relating to retirement board membership and public employees retirement system contracts for health benefits coverage.
--

Chairman Louser called to order 3:27 PM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner.
Members absent: Representative Warrey.

Discussion Topics:

- Include legislators on PERS Board
- PERS Board Membership

In favor:

Representative Jim Kasper, District 46, primary bill sponsor (no written testimony)
Representative Jason Dockter, District 7, former NDPERS board member (no written testimony)

Opposed:

Scott Miller, Executive Director of the North Dakota Public Employees Retirement System ("NDPERS") #14220

Chairman Louser adjourned the meeting 4:23 PM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Room JW327C, State Capitol

HB 1321
2/15/2023

Relating to retirement board membership and public employees retirement system contracts for health benefits coverage.
--

Chairman Louser called to order 10:49 AM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Warrey

Member absent: Representative Wagner

Discussion Topics:

- Contract review
- Bid process
- Oversight committee

Representative Kasper proposed amendment, #25716, LC #23.0045.01004 and will work on further amendments.

Chairman Louser adjourned the meeting 11:37 AM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1321
2/20/2023

Relating to retirement board membership and public employees retirement system contracts for health benefits coverage.

Chairman Louser called to order 10:02 AM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner, Warrey

Discussion Topics:

- Self-funded
- Insurance carrier
- Bid timing

Jennifer Clark, Legal Counsel, Legislative Council, #21169

Representative Kasper moved to adopt the amendment, LC #23.0045.01006
Representative Tveit seconded.

Roll call vote:

Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	N
Representative Josh Boschee	N
Representative Josh Christy	Y
Representative Hamida Dakane	Y
Representative Jorin Johnson	Y
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	Y
Representative Paul J. Thomas	N
Representative Bill Tveit	Y
Representative Scott Wagner	Y
Representative Jonathan Warrey	y

Motion passed 11-3-0

Representative Boschee moves to further amend LC #23.0045.01007
Representative Dakane seconded.

Roll call vote:

Representatives	Vote
Representative Scott Louser	N
Representative Mitch Ostlie	N
Representative Josh Boschee	Y
Representative Josh Christy	N
Representative Hamida Dakane	Y
Representative Jorin Johnson	N
Representative Jim Kasper	N
Representative Ben Koppelman	N
Representative Dan Ruby	N
Representative Austen Schauer	N
Representative Paul J. Thomas	N
Representative Bill Tveit	N
Representative Scott Wagner	N
Representative Jonathan Warrey	N

Motion failed 12-2-0

Representative Koppelman moved a do pass as amended.
Representative Kasper seconded.

Roll call vote:

Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	Y
Representative Josh Boschee	N
Representative Josh Christy	Y
Representative Hamida Dakane	N
Representative Jorin Johnson	Y
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	Y
Representative Paul J. Thomas	Y
Representative Bill Tveit	Y
Representative Scott Wagner	Y
Representative Jonathan Warrey	Y

Motion passed 12-2-0

Representative Kasper will carry the bill.

Chairman Louser adjourned the meeting 10: 55 AM

House Industry, Business and Labor Committee

HB 1321

02/20/2023

Page 3

Diane Lillis, Committee Clerk

2/20/23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1321

Page 1, line 2, remove "and"

Page 1, line 5, after "coverage" insert "; to provide an effective date; and to declare an emergency"

Page 2, line 4, remove "The majority leader of the house of representatives shall appoint three members of"

Page 2, remove lines 5 and 6

Page 2, line 7, remove "3."

Page 2, line 7, overstrike "One member" and insert immediately thereafter "The majority leader of the house of representatives shall appoint three members of the house of representatives and the majority leader of the senate shall appoint three members of the senate. The members appointed under this subsection shall serve a term of two years."

3. Three members"

Page 2, line 8, overstrike "The" and insert immediately thereafter "Each"

Page 2, line 8, after "appointee" insert "under this subsection"

Page 2, line 10, after "The" insert "governor shall appoint one"

Page 2, line 10, overstrike "is" and insert immediately thereafter "to serve as"

Page 2, line 11, remove "4."

Page 2, line 11, overstrike "One member of the board must be appointed by the attorney general from the"

Page 2, overstrike line 12

Page 2, line 15, overstrike "5. Three" and insert immediately thereafter:

4. Two"

Page 2, line 25, overstrike "6."

Page 2, line 30, after "7." insert "5."

Page 3, line 4, replace "7." with "6."

Page 3, line 4, overstrike "a five-year term and"

Page 3, line 10, after "**for**" insert "life"

Page 3, line 10, after "**insurance**" insert "**, Medicare part D, employee assistance program services, dental plans, vision plans, and long-term care plans**"

Page 3, line 11, overstrike "hospital benefits coverage, medical"

2-20-23

- Page 3, line 12, overstrike "benefits coverage," and insert immediately thereafter "any"
 - Page 3, line 12, after the second comma insert "Medicare part D prescription drug coverage, a dental plan, a vision plan, a long-term care plan,"
 - Page 3, line 13, overstrike "may receive bids separately for all or part of the"
 - Page 3, line 14, overstrike "prescription drug benefits coverage component of medical benefits coverage;"
 - Page 4, overstrike lines 6 through 8
 - Page 4, remove lines 9 and 10
 - Page 4, line 22, overstrike "initial"
 - Page 4, line 22, overstrike "or the renewal term"
 - Page 4, line 26, overstrike "a."
 - Page 4, line 26, after "may" insert "not"
 - Page 4, line 26, overstrike "without soliciting a bid"
 - Page 4, overstrike lines 27 through 31
 - Page 5, overstrike lines 1 through 15
 - Page 5, line 16, overstrike "solicit a bid under section 54-52.1-04"
 - Page 5, line 17, replace "d." with "This subsection does not apply to a contract for Medicare part D prescription drug coverage, vision plans, dental plans, or long-term care plans."
 - Page 5, line 21, after "1." insert "The board shall receive bids for the providing of hospital benefits coverage, medical benefits coverage, and prescription drug benefits coverage; may receive bids separately for all or part of the prescription drug benefits coverage component of medical benefits coverage; and subject to approval of the legislative assembly shall accept one or more bids with the carriers."
2. Solicitations must be made no later than ninety days before the expiration of an existing uniform group insurance contract. Bids must be solicited by advertisement in a manner selected by the board which will provide reasonable notice to prospective bidders. In preparing bid proposals and evaluating bids, the board may utilize the services of consultants on a contract basis in order that the bids received may be uniformly compared and properly evaluated. In reviewing bids, the board shall determine which bid or bids best serve the interests of the state and the state's eligible employees. In determining which bid, if any, will best serve the interests of eligible employees in the state, the board shall give adequate consideration to the following factors:
- a. The economy to be effected.
 - b. The ease of administration.
 - c. The adequacy of the coverages.
 - d. The financial position of the carrier, with special emphasis on the solvency of the carrier.

24
2-20-23

- e. The reputation of the carrier and any other information available tending to show past experience with the carrier in matters of claim settlement, underwriting, and services.
- 3. The board may reject any or all bids received under this section. If the board rejects all bids received, the board again shall solicit bids as provided under this section.
- 4. Under sections 54-52.1-04 and 54-52.1-04.2 the board may contract for health benefits coverage through a health maintenance organization or establish a self-insurance health plan.

5."

Page 5, line 21, replace "an initial or renewal" with "a"

Page 5, line 23, after "assembly" insert "by passage of a bill"

Page 5, line 23, after the underscored period insert:

"a."

Page 5, line 24, replace "legislation" with "a bill"

Page 5, line 25, after the underscored period insert "The bill introduced by the board must include an emergency clause.

- b. The standing committees to which the bill is referred may hold a joint hearing on the bill introduced by the board under this subsection. If the bill passes the house of introduction after the joint hearing, the members of the joint committee from the second house may report the bill to that house and another hearing is not necessary unless the bill was amended in the first house.
- c. If the legislative assembly authorizes the board's proposed action by passage of the bill by a majority vote of both houses of the legislative assembly and filing of the bill with the secretary of state, the board may enter the contract.
- d. If the legislative assembly does not authorize the board's proposed action, the board again shall solicit bids as provided under this section and may not enter a contract unless the board has received authorization of the legislative assembly by a bill that has passed both houses of the legislative assembly and has been filed with the secretary of state."

Page 5, line 26, replace "2." with "6."

Page 5, line 27, after "coverage" insert ", a vision plan, a dental plan, or a long-term care plan"

Page 5, after line 28, insert:

"SECTION 5. EFFECTIVE DATE. Section 1 of this Act becomes effective June 1, 2023, and sections 2, 3, and 4 of this Act become effective August 1, 2023.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1321: Industry, Business and Labor Committee (Rep. Louser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1321 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "and"

Page 1, line 5, after "coverage" insert "; to provide an effective date; and to declare an emergency"

Page 2, line 4, remove "The majority leader of the house of representatives shall appoint three members of"

Page 2, remove lines 5 and 6

Page 2, line 7, remove "3."

Page 2, line 7, overstrike "One member" and insert immediately thereafter "The majority leader of the house of representatives shall appoint three members of the house of representatives and the majority leader of the senate shall appoint three members of the senate. The members appointed under this subsection shall serve a term of two years."

3. Three members"

Page 2, line 8, overstrike "The" and insert immediately thereafter "Each"

Page 2, line 8, after "appointee" insert "under this subsection"

Page 2, line 10, after "The" insert "governor shall appoint one"

Page 2, line 10, overstrike "is" and insert immediately thereafter "to serve as"

Page 2, line 11, remove "4."

Page 2, line 11, overstrike "One member of the board must be appointed by the attorney general from the"

Page 2, overstrike line 12

Page 2, line 15, overstrike "5. Three" and insert immediately thereafter:

4. Two"

Page 2, line 25, overstrike "6."

Page 2, line 30, after "7." insert "5."

Page 3, line 4, replace "7." with "6."

Page 3, line 4, overstrike "a five-year term and"

Page 3, line 10, after "**for**" insert "**life**"

Page 3, line 10, after "**insurance**" insert "**, Medicare part D, employee assistance program services, dental plans, vision plans, and long-term care plans**"

Page 3, line 11, overstrike "hospital benefits coverage, medical"

Page 3, line 12, overstrike "benefits coverage," and insert immediately thereafter "any"

Page 3, line 12, after the second comma insert "Medicare part D prescription drug coverage, a dental plan, a vision plan, a long-term care plan."

Page 3, line 13, overstrike "may receive bids separately for all or part of the"

Page 3, line 14, overstrike "prescription drug benefits coverage component of medical benefits coverage;"

Page 4, overstrike lines 6 through 8

Page 4, remove lines 9 and 10

Page 4, line 22, overstrike "initial"

Page 4, line 22, overstrike "or the renewal term"

Page 4, line 26, overstrike "a."

Page 4, line 26, after "may" insert "not"

Page 4, line 26, overstrike "without soliciting a bid"

Page 4, overstrike lines 27 through 31

Page 5, overstrike lines 1 through 15

Page 5, line 16, overstrike "solicit a bid under section 54-52.1-04"

Page 5, line 17, replace "d." with "This subsection does not apply to a contract for Medicare part D prescription drug coverage, vision plans, dental plans, or long-term care plans."

Page 5, line 21, after "1." insert "The board shall receive bids for the providing of hospital benefits coverage, medical benefits coverage, and prescription drug benefits coverage; may receive bids separately for all or part of the prescription drug benefits coverage component of medical benefits coverage; and subject to approval of the legislative assembly shall accept one or more bids with the carriers."

2. Solicitations must be made no later than ninety days before the expiration of an existing uniform group insurance contract. Bids must be solicited by advertisement in a manner selected by the board which will provide reasonable notice to prospective bidders. In preparing bid proposals and evaluating bids, the board may utilize the services of consultants on a contract basis in order that the bids received may be uniformly compared and properly evaluated. In reviewing bids, the board shall determine which bid or bids best serve the interests of the state and the state's eligible employees. In determining which bid, if any, will best serve the interests of eligible employees in the state, the board shall give adequate consideration to the following factors:

- a. The economy to be effected.
- b. The ease of administration.
- c. The adequacy of the coverages.
- d. The financial position of the carrier, with special emphasis on the solvency of the carrier.

- e. The reputation of the carrier and any other information available tending to show past experience with the carrier in matters of claim settlement, underwriting, and services.
3. The board may reject any or all bids received under this section. If the board rejects all bids received, the board again shall solicit bids as provided under this section.
4. Under sections 54-52.1-04 and 54-52.1-04.2 the board may contract for health benefits coverage through a health maintenance organization or establish a self-insurance health plan.
5. "

Page 5, line 21, replace "an initial or renewal" with "a"

Page 5, line 23, after "assembly" insert "by passage of a bill"

Page 5, line 23, after the underscored period insert:

"a."

Page 5, line 24, replace "legislation" with "a bill"

Page 5, line 25, after the underscored period insert "The bill introduced by the board must include an emergency clause."

- b. The standing committees to which the bill is referred may hold a joint hearing on the bill introduced by the board under this subsection. If the bill passes the house of introduction after the joint hearing, the members of the joint committee from the second house may report the bill to that house and another hearing is not necessary unless the bill was amended in the first house.
- c. If the legislative assembly authorizes the board's proposed action by passage of the bill by a majority vote of both houses of the legislative assembly and filing of the bill with the secretary of state, the board may enter the contract.
- d. If the legislative assembly does not authorize the board's proposed action, the board again shall solicit bids as provided under this section and may not enter a contract unless the board has received authorization of the legislative assembly by a bill that has passed both houses of the legislative assembly and has been filed with the secretary of state."

Page 5, line 26, replace "2." with "6."

Page 5, line 27, after "coverage" insert ", a vision plan, a dental plan, or a long-term care plan"

Page 5, after line 28, insert:

SECTION 5. EFFECTIVE DATE. Section 1 of this Act becomes effective June 1, 2023, and sections 2, 3, and 4 of this Act become effective August 1, 2023.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2023 SENATE INDUSTRY AND BUSINESS

HB 1321

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

HB 1321
3/13/2023

A bill relating to public employees retirement system contracts for health benefits coverage; and relating to retirement board membership and public employees retirement system contracts for health benefits coverage; to provide an effective date; and to declare an emergency.

9:00 AM Chairman D. Larsen opened the meeting. Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta. Members absent: Senator Klein, Senator Boehm.

Discussion Topics:

- PERS Board
- Employee benefits
- Health insurance
- Group plans
- Competitive bids

9:00 AM Representative Jim Kasper, District 46, Fargo, North Dakota, introduced HB 1321, proposed an Amendment, and testified in favor. #24384

9:29 AM Scott Miller, Executive Director, North Dakota PERS Board testified in opposition. #24155

9:53 AM Nick Archuleta, President of North Dakota United, testified in opposition. #24134

9:54 AM Chairman D. Larsen closed the hearing on HB 1321.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

HB 1321
3/21/2023

A bill relating to public employee's retirement system contracts for health benefits coverage; and relating to retirement board membership and public employees retirement system contracts health benefits coverage; to provide an effective date; and to declare an emergency.

2:31 PM Chairman D. Larsen called the meeting to order: Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

Discussion Topics:

- Board membership
- Majority definition
- Bids and renewals

2:35 PM Senator Klein provided information. No written testimony.

2:43 PM Scott Miller, Executive Director, North Dakota Public Employees Retirement System, answered questions from the committee. No written testimony.

2:50 PM Chairman D. Larsen closed the meeting on HB 1321.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

HB 1321
3/22/2023

A bill relating to public employee's retirement system contracts for health benefits coverage; and relating to retirement board membership and public employee's retirement system contracts health benefits coverage; to provide an effective date; and to declare an emergency.

10:13 AM Chairman D. Larsen called the meeting to order. Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

Discussion Topics:

- Committee action

10:13 AM Senator Kessel moved to Amend HB 1321 with amendment LC # 23.0045.02003. #26828.

10:13 AM Senator Barta seconded the motion.

Roll call vote:Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Vote 5-0-0 Motion Passed to amend HB 1321.

10:19 AM Senator Barta Moved to DO PASS AS AMENDED HB 1321.
Senator Kessel seconded the motion.

Roll call vote:

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Vote: 5-0-0- DO PASS AS AMENDED HB 1321.

Senator D. Larsen will carry the bill.

10:19 AM Chairman D. Larsen closed the hearing on HB 1321.

Brenda Cook, Committee Clerk

24
3-22-23

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1321

- Page 1, line 1, remove "create and enact section 54-52.1-05.2 of the North Dakota Century Code,"
- Page 1, line 2, remove "relating to public employees retirement system contracts for health benefits coverage; to"
- Page 1, line 3, replace "sections" with "section"
- Page 1, line 3, remove ", 54-52.1-04, and 54-52.1-05"
- Page 1, line 4, remove "and public employees retirement system contracts for"
- Page 1, line 5, remove "health benefits coverage"
- Page 1, line 17, replace "Six" with "Five"
- Page 2, line 4, remove "shall appoint three"
- Page 2, line 5, remove "members of the house of representatives"
- Page 2, line 6, replace "appoint three members of the senate" with "work together to select the members of the legislative assembly to be appointed under this subsection"
- Page 2, line 8, replace "Three" with "Four"
- Page 3, remove lines 12 through 31
- Page 4, remove lines 1 through 30
- Page 5, remove lines 1 through 30
- Page 6, remove lines 1 through 31
- Page 7, remove lines 1 through 15
- Page 7 line 16, replace "Section 1 of this" with "This"
- Page 7, line 16, remove ", and"
- Page 7, line 17, remove "sections 2, 3, and 4 of this Act become effective August 1, 2023"
- Re-number accordingly

REPORT OF STANDING COMMITTEE

HB 1321, as engrossed: Industry and Business Committee (Sen. Larsen, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1321 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 1, remove "create and enact section 54-52.1-05.2 of the North Dakota Century Code,"

Page 1, line 2, remove "relating to public employees retirement system contracts for health benefits coverage; to"

Page 1, line 3, replace "sections" with "section"

Page 1, line 3, remove ", 54-52.1-04, and 54-52.1-05"

Page 1, line 4, remove "and public employees retirement system contracts for"

Page 1, line 5, remove "health benefits coverage"

Page 1, line 17, replace "Six" with "Five"

Page 2, line 4, remove "shall appoint three"

Page 2, line 5, remove "members of the house of representatives"

Page 2, line 6, replace "appoint three members of the senate" with "work together to select the members of the legislative assembly to be appointed under this subsection"

Page 2, line 8, replace "Three" with "Four"

Page 3, remove lines 12 through 31

Page 4, remove lines 1 through 30

Page 5, remove lines 1 through 30

Page 6, remove lines 1 through 31

Page 7, remove lines 1 through 15

Page 7 line 16, replace "Section 1 of this" with "This"

Page 7, line 16, remove ", and"

Page 7, line 17, remove "sections 2, 3, and 4 of this Act become effective August 1, 2023"

Renumber accordingly

TESTIMONY

HB 1321

TESTIMONY OF SCOTT MILLER

House Bill 1321 – NDPERS Board Makeup and Health Insurance Plan Contract Decision-Making

Good Afternoon, my name is Scott Miller. I am the Executive Director of the North Dakota Public Employees Retirement System, or NDPERS. I am here to testify in opposition to House Bill 1321.

If passed, HB 1321 would make two changes to NDPERS statutes that are problematic under the Separation of Powers provisions of the North Dakota Constitution.

1. Removes two members of the NDPERS Board and replaces them with four additional legislators, bringing the number of legislators on the NDPERS Board to a total of six, on an eleven-person Board.
2. Inserts the Legislative Assembly into the decision-making process for the State's health plan.

The North Dakota Supreme Court most recently analyzed the separation of powers doctrine in N.D. Legislative Assembly, et al. v. Burgum, 2018 ND 189 ("Legislature v. Burgum"). Paragraph 40 of that decision provides the following succinct description of the separation of powers doctrine:

The North Dakota Constitution creates three branches of government and vests each branch with a distinct type of power. N.D. Const. art. III, § 1 ("[T]he legislative power of this state shall be vested in a legislative assembly"); N.D. Const. art. V, § 1 ("The executive power is vested in the governor"); N.D. Const. art. VI, § 1 ("The judicial power of the state is vested in a unified judicial system"). By vesting each branch with a distinct form of power, the Constitution keeps those powers separate. The three branches are "coequal," N.D. Const. art. XI, § 26, each "supreme in its own sphere." *State ex rel. Spaeth v. Meiers*, 403 N.W.2d 392, 394 (N.D. 1987). Long before the express formalization of separation of powers in Article XI, § 26, this Court recognized that the Constitution's apportionment of power among three branches implicitly excluded each branch from exercising the powers of the others. *State v. Hanson*, 558 N.W.2d 611, 614 (N.D. 1996) (citing *Glaspell v. City of Jamestown*, 11 N.D. 86, 88 N.W. 1023 (1902)); see also *Miller v. French*, 530 U.S. 327, 341 (2000) (explaining that separation of powers doctrine "prohibits one branch from encroaching on the central prerogatives of another").

The NDPERS Board is, of course, an executive branch entity. The NDPERS Board controls and oversees the operations of the NDPERS agency. Adding legislators to the Board, particularly adding a number of legislators that would constitute a majority of the Board members, appears to be a legislative attempt to control an executive branch entity and the exercise of that entity's explicit, legislatively-given powers. As such, HB 1321 is most likely a violation of the separation of powers doctrine.

During the 2011 Legislative Assembly, the Legislature considered SB 2302, which would have added legislators to the State Investment Board. Then Lt. Governor Drew Wrigley testified in front of the Senate Appropriations Committee. He stated, "I've spoken to Attorney General [Stenehjem] about this matter as well and we think it is a clean constitutional principle that you cannot place legislators on the state investment board. It is an Executive Board, an executive function." Similarly, adding four additional, voting legislative members to the NDPERS Board is likely a violation of established Constitutional principles.

The second part of HB 1321 would insert the Legislature into the decision-making process for the State's health plan, including both medical and pharmacy providers. Currently, the NDPERS Board – an Executive Branch entity – has the responsibility to execute the requirements in NDCC chapter 54-52.1, our group insurance plan statutes. That includes the responsibility to select the State's medical and pharmacy providers. The Legislative Assembly, of course, promulgated chapter 54-52.1. In doing so, the Legislative Assembly provided the NDPERS Board with a significant amount of policy guidance and requirements the Board must follow in making that selection.

For instance, the Legislature has set as the policy of state government that because it is important to "promote the economy and efficiency of employment in the state's service, reduce personnel turnover, and offer an incentive to high-grade individuals to enter and remain in the service of state employment, there is created a uniform group insurance program." NDCC section 54-52.1-02. Part of that uniform group insurance program is, of course, our health plan. The Legislature has provided a great deal of policy guidance to the NDPERS Board as the Board fulfills its administrative and executive function of awarding a bid to a carrier for the State's health plan. NDCC section 54-52.1-04 provides the following specific guidelines for awarding an initial contract, among others:

In determining which bid, if any, will best serve the interests of eligible employees and the state, the board shall give adequate consideration to the following factors:

- a. The economy to be effected.
- b. The ease of administration.
- c. The adequacy of the coverages.
- d. The financial position of the carrier, with special emphasis on the solvency of the carrier.

e. The reputation of the carrier and any other information available tending to show past experience with the carrier in matters of claim settlement, underwriting, and services.

Section 4 of House Bill 1321 creates a new section to NDCC chapter 54-52.1. That new section prohibits the Board from entering a new or renewal contract for hospital, medical, or prescription drug benefits coverage “unless this board action has been authorized by the legislative assembly.” The new section then requires the Board to “introduce legislation seeking legislative authorization for the board’s proposed action relating to the contract.” Thus, HB 1321 removes the decision-making from the NDPERS Board, an Executive Branch agency, and gives it to the Legislature. Transferring the executive function of executing those statutory provisions to the Legislative Assembly is also arguably a violation of the North Dakota Constitution’s Separation of Powers doctrine.

The Legislative Assembly, of course, has the power to make or create a law. However, after a law has been enacted, the execution of that law – including “further fact finding and discretionary decision-making” – is an executive function: “The power to make a law is legislative,’ but the power to administer or execute the law ‘under the provisions of the law itself, as enacted by the Legislature,’ is executive.” Legislature v. Burgum, at 22 (quoting Ralston Purina Co. v. Hagemeister, 188 N.W.2d 405, 410-411 (N.D. 1971)). The court went on to state, “[t]he Legislative Assembly violates separation of powers when it retains discretion after enactment for itself or its agent” Id. at 26.

The application of Legislature v. Burgum to HB 1321 is straightforward. NDCC chapter 54-52.1 already contains a clear grant of power to the NDPERS Board in regard to issuing RFPs for our health plan. That grant of power provides clear and specific guidelines that the Board must use in evaluating proposals and making a final decision that, in the Board’s view, “will best serve the interests of eligible employees and the state.” NDCC section 54-52.1-04.

House Bill 1321 removes that executive decision-making process from an executive entity, the NDPERS Board, and gives it to the Legislative Assembly. As the North Dakota Supreme Court stated in Legislature v. Burgum, “[t]he Legislative Assembly violates separation of powers when it retains discretion after enactment for itself or its agent” Id. at 26.

One argument that was made last session in opposition to this conclusion is that the current statutory scheme actually violates the separation of powers doctrine because the statutes give the Board the authority to appropriate monies for the payment of health insurance premiums, and appropriations are solely within the authority of the Legislative Assembly. We agree that it is the Legislative Assembly’s responsibility and authority to

appropriate money. However, we disagree that the statutory scheme in NDCC chapter 54-52.1 violates that principle.

A clear example of how this process works is from the health plan renewal process in 2016-17. For that renewal, as required by statute, the Board retained a consultant, Deloitte Consulting, to concurrently and independently prepare a renewal estimate. SHP proposed a 17.4% premium increase to purchase a plan with the same benefit structure as existed at that time. Deloitte determined that the proposed increase was reasonable. Based on the guidance provided in statute, Deloitte’s assessment, and its own review, the Board approved a renewal with SHP.

However, the Board also realized that the State would have difficulty with such a significant increase given the budget problems the State was facing. The Board worked with SHP to determine what benefit and cost-sharing changes could be made to reduce that premium increase but still maintain the Plan’s grandfathered status under the ACA. NDPERS gave the renewal information and the possible benefit change information to OMB and the Governor for their consideration as they created the Executive Budget. NDPERS also provided information on the health insurance reserves in the event the Governor and the Legislature decided to use reserves to buy-down the premium. You can see this information provided in the legislative fiscal staff’s Analysis of 2017-2019 Executive Budget below.

STATE EMPLOYEES - SUMMARY OF KEY RECOMMENDATIONS

SALARY INCREASES

The 2017-19 executive budget recommendation provides funding for state employee salary increases of 1 percent, effective July 1, 2018. The cost of the salary increase is \$11,858,530, of which \$5,447,422 is from the general fund. Specific language regarding the salary increases is included in Section 11 of 2017 House Bill No. 1075—the appropriation bill for the Office of Management and Budget (OMB).

SALARY UNDERFUNDING

The 2017-19 executive budget recommendation underfunds general fund salary budgets for 10 agencies totaling \$7.9 million. Agencies with underfunded salary budgets include:

Agency	Amount
State Auditor	\$117,118
Tax Commissioner	637,100
North Dakota University System office	578,097
Department of Human Services	5,278,396
Industrial Commission	900,000
Public Service Commission	60,170
Branch research centers	28,620
North Dakota State University Extension Service	37,206
Main Research Center	71,550
Parks and Recreation Department	239,959
Total	\$7,948,216

UNFUNDED POSITIONS

The 2017-19 executive budget recommendation provides for a total of nine positions to be unfunded in three agencies. The total amount of funding related to the unfunded positions is \$1.3 million, of which \$1.2 million is from the general fund. Agencies with positions unfunded include the Highway Patrol (five positions), State Auditor (two positions), and State Historical Society (two positions).

ACCRUED LEAVE PAYOUTS

The 2017-19 executive budget recommendation provides funding for accrued leave payouts totaling \$2.3 million, of which \$1 million is from the general fund and \$1.3 million is from other funds. This funding is available for accrued leave payouts to eligible employees upon retirement or termination of employment.

HIGHER EDUCATION

Prior to the 2017-19 biennium, higher education full-time equivalent (FTE) positions supported from special funds were not reflected in the budget, as the State Board of Higher Education and institutions under its control have continuing appropriation authority for special funds. The 2015 Legislative Assembly amended North Dakota Century Code Section 54-44.1-04 to require higher education entities to enter all budget data in the state’s budget system in the same manner as other agencies. This increased the total FTE position count by 4,336.41. The 2017-19 executive recommendation provides for a decrease of general fund supported FTE positions of 315.27. Higher education FTE positions supported from all funds is 6,766.76.

EXECUTIVE BRANCH ELECTED OFFICIALS

The executive budget recommendation provides funding for executive branch elected officials’ salary increases equal to 1 percent of salaries, effective July 1, 2018. Statutory changes necessary to adjust elected officials’ salaries are included in the respective elected officials’ appropriation bills recommended by the Governor.

JUDICIAL BRANCH

The judicial branch budget request includes funding to provide district court judges’ salary increases of 1 percent of salaries, effective July 1, 2018. Salary increases for Supreme Court justices are also 1 percent of salaries, effective July 1, 2018. Salary increases for other employees of the judicial branch are included at the same level as provided for other state employees, or 1 percent of salaries, effective July 1, 2018. Additional increases may be provided to other employees of the judicial branch pursuant to the judicial branch salary schedule as requested by the judicial branch.

HEALTH INSURANCE

The executive budget recommendation continues funding for the cost of health insurance premiums for state employees. The executive budget provides \$1,249.47 per month for employee health insurance, an increase of \$119.25, or 10.6 percent, compared to the 2015-17 biennium premium rate of \$1,130.22 per month. A recent history of monthly health insurance premiums provided for each employee is listed below.

Biennium	Monthly Premium	Percentage Change from Previous Biennium
2001-03	\$409	16.9%
2003-05	\$489	19.6%
2005-07	\$554	13.3%
2007-09	\$658	18.8%
2009-11	\$826	25.5%
2011-13	\$887	7.4%
2013-15	\$982	10.7%
2015-17	\$1,130	15.1%
2017-19 executive recommendation	\$1,249	10.6%

The percentage increase to maintain the existing health insurance plan benefits is 17.4 percent for the 2017-19 biennium. To reduce this percentage increase, the Governor is recommending increasing member out-of-pocket expenses to reduce plan costs by \$49.61 per contract, per month, which would reduce the overall increase by 4.4 percent.

The Governor is also recommending using Public Employees Retirement System (PERS) health insurance reserves to pay an additional \$27.31 of premiums per contract, per month, which would reduce the overall increase by 2.45 percent. The Governor is using approximately \$18.0 million of the estimated \$35.0 million in health insurance reserve funds to reduce the premium rate increase. Of the \$18.0 million utilized, \$10.5 million relates to state employee health insurance plans, \$4.4 million relates to political subdivisions, and \$3.1 million relates to retiree health plans.

EMPLOYEE ASSISTANCE PROGRAM

The monthly rate for the employee assistance program remains at \$1.54 per month, or \$18.48 annually.

LIFE INSURANCE

The monthly rate for life insurance provided to state employees remains at \$0.28 per month, or \$3.36 annually.

UNEMPLOYMENT INSURANCE

Funding is included for unemployment insurance for state employees at a rate of 1 percent of the first \$6,000 of an employee's annual salary (\$60 per year or \$120 per biennium maximum). No unemployment insurance was collected on state employee salaries during the 2013-15 and 2015-17 bienniums.

TOTAL COMPENSATION CHANGES COST

The schedule below provides the total cost of major compensation changes recommended in the 2017-19 executive budget.

	General Fund	Special Funds	Total
Salary increase of 1 percent, effective July 1, 2018	\$5,447,422	\$6,411,108	\$11,858,530
Health insurance premium increases	20,924,659	24,626,376	45,551,035
Total	\$26,372,081	\$31,037,484	\$57,409,565

FULL-TIME EQUIVALENT POSITIONS

The 2017-19 executive budget includes a total of 15,937.69 FTE positions, an increase of 4,100.12 FTE positions from the 2015-17 authorized level of 11,837.57 FTE positions. The total number of FTE positions for the 2017-19 biennium now reflects certain higher education positions that were previously not reflected in the budget.

The 2017-19 executive budget recommended FTE level of 15,937.69 is an overall decrease of 551.56 FTE positions compared to the adjusted 2015-17 biennium total, including a decrease of 315.27 FTE positions in higher education and a decrease of 215.61 FTE positions in all other state agencies.

The reduction of 215.61 FTE positions resulted in a decrease of \$29.0 million, of which \$15.9 million is from the general fund.

Major changes in FTE positions, excluding higher education, are as follows:

Agency Increases	2015-17 Authorized FTE Positions	2017-19 Executive Budget	Increase
301 - State Department of Health	365.00	381.00	16.00
530 - Department of Corrections and Rehabilitation	836.29	846.29	10.00
475 - Mill and Elevator Association	147.00	153.00	6.00

Agency Decreases	2015-17 Authorized FTE Positions	2017-19 Executive Budget	(Decrease)
380 - Job Service North Dakota	237.76	181.61	(56.15)
180 - Judicial branch	391.00	354.50	(36.50)
640 - Main Research Center	361.12	336.12	(25.00)
405 - Industrial Commission	121.75	105.25	(16.50)
125 - Attorney General	250.00	234.00	(16.00)
630 - North Dakota State University Extension Service	265.98	252.98	(13.00)
627 - Upper Great Plains Transportation Institute	54.98	43.88	(11.10)
628 - Branch research centers	120.29	110.29	(10.00)

I-2

Over the course of the Legislative Assembly's review and analysis of the NDPERS Budget, the Legislative Assembly eventually approved the final premium amount, benefit structure, and use of reserves, as you can see in the below excerpts from Legislative Council's 65th Legislative Assembly State Budget Actions for the 2017-2019 Biennium.

HIGHER EDUCATION

Prior to the 2017-19 biennium, higher education FTE positions supported from special funds were not reflected in the budget, as the State Board of Higher Education and institutions under its control have continuing appropriation authority for special funds. The 2015 Legislative Assembly amended North Dakota Century Code Section 54-44.1-04 to require higher education entities to enter all budget data in the state's budget system in the same manner as other agencies. This increased the total FTE position count by 4,337.41. The 2017 Legislative Assembly approved a reduction of general fund supported FTE positions of 313.27 for the 2017-19 biennium, to provide a total of 2,117.08 higher education FTE positions supported by the general fund. Higher education FTE positions supported from all funds is 6,767.76 for the 2017-19 biennium.

EXECUTIVE BRANCH ELECTED OFFICIALS

The 2017 Legislative Assembly did not provide funding for state employee salary increases for the 2017-19 biennium. Salaries for executive branch elected officials will remain at the amounts approved by the 2015 Legislative Assembly.

JUDICIAL BRANCH

The 2017 Legislative Assembly did not provide funding for state employee salary increases for the 2017-19 biennium. Salaries for district court judges and Supreme Court justices will remain at the amounts approved by the 2015 Legislative Assembly.

HEALTH INSURANCE

The Legislative Assembly continued to provide funding for the cost of health insurance premiums for state employees. The appropriations provide \$1,240.83 per month for employee health insurance, an increase of \$110.61, or 9.8 percent, compared to the 2015-17 biennium premium rate of \$1,130.22 per month. A recent history of monthly health insurance premiums provided for each employee is listed below.

J-1

June 2017

Biennium	Monthly Premium	Percentage Change from Previous Biennium
2001-03	\$409	16.9%
2003-05	\$489	19.6%
2005-07	\$554	13.3%
2007-09	\$658	18.8%
2009-11	\$826	25.5%
2011-13	\$887	7.4%
2013-15	\$982	10.7%
2015-17	\$1,130	15.1%
2017-19	\$1,241	9.8%

The percentage increase to maintain the existing health insurance plan benefits is 17.4 percent for the 2017-19 biennium. To reduce this percentage increase, the Legislative Assembly approved the Governor's recommendation to increase member out-of-pocket expenses to reduce plan costs by \$58.25 per contract, per month, which would reduce the overall increase by 5.2 percent.

The Legislative Assembly also approved using Public Employees Retirement System (PERS) health insurance reserves to pay an additional \$27.31 of premiums per contract, per month, which would reduce the overall increase by 2.4 percent, resulting in a total increase of 9.8 percent for the 2017-19 biennium. The Legislative Assembly approved using approximately \$15.1 million of the estimated \$35.0 million in health insurance reserve funds to reduce the premium rate increase. Of the \$15.1 million utilized, \$10.5 million relates to state employee health insurance plans, \$3.7 million relates to political subdivisions, and \$700,000 relates to retiree health plans.

Clearly, the NDPERS Board did not set the final premium for the health plan. The NDPERS Board followed the statutory guidelines for the renewal process, and decided to renew. The Board provided significant information to the Governor, who made a budget recommendation to the Legislative Assembly. The Legislative Assembly considered that budget recommendation regarding the health plan structure, premiums,

and buy-down amount, and the Legislative Assembly determined what the State would pay, for what benefits, and how it would be paid. Once the Legislative Assembly approved those items, we finalized the renewal with SHP. That is the same process that has been used since NDPERS has been responsible for the group health plan.

Aside from the clear constitutional issues, we are also concerned with the timing if HB 1321 were to become law. The timeline for the last RFP we issued for the health plan is below.

Activity	Date/Time
NDPERS publishes Request for Proposal (RFP)*	June 1, 2020
Bidder Conference**	June 16, 2020 (9am – 11am CST)
Bidder questions (in writing) due	June 18, 2020 (5pm CST)
Proposals due	Wednesday, July 15, 2020 (5 pm CST)
Finalist presentations (if requested)	September 2020
NDPERS notifies finalist of intent to negotiate	November 2020
Bidder and NDPERS begin implementation	January 2021
Bidder begins providing services	July 1, 2021

The only possible legislative actions regarding the health plan contract that could be implemented after a bill goes through the legislative process and is signed by the Governor is a renewal with the current carrier or the re-award of the contract to the current carrier. If the Legislative Assembly refused to approve the NDPERS Board’s proposed action, there is clearly not enough time to go out to bid for the health plan and get a new bill with a different result before the same Legislative Assembly.

If the Board instead proposes to change carriers, there would not be enough time to transition to that new carrier absent legislative action within the first few weeks of the Assembly. There is just not enough time to involve the Legislative Assembly in the award of a new contract and insure that state and political subdivision participants continue to have health insurance coverage.

In summary, the constitutional and timing issues with HB 1321 weigh heavily against House Bill 1321. The Legislative Assembly already clearly has control of the purse strings on the health plan. This bill will introduce uncertainty, potential litigation, and almost certain delays where it is most harmful. We encourage a “do not pass” on House Bill 1321.

23.0045.01007

Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1321

Introduced by

Representatives Kasper, Dockter, Lefor, Louser, D. Ruby, M. Ruby, Steiner, Vigesaa, Weisz
Senator Hogue

1 A BILL for an Act to create and enact section 54-52.1-05.2 of the North Dakota Century Code,
2 relating to public employees retirement system contracts for health benefits coverage; ~~and to~~
3 amend and reenact sections 54-52-03, 54-52.1-04, and 54-52.1-05 of the North Dakota Century
4 Code, relating to retirement board membership and public employees retirement system
5 contracts for health benefits coverage; to provide an effective date; and to declare an
6 emergency.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Section 54-52-03 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **54-52-03. Governing authority.**

11 1. A state agency is hereby created to constitute the governing authority of the system to
12 consist of a board of ~~nine~~eleven individuals known as the retirement board. No more
13 than one elected member of the board may be in the employ of a single department,
14 institution, or agency of the state or in the employ of a political subdivision. An
15 employee of the public employees retirement system or the state retirement and
16 investment office may not serve on the board.

17 ~~4. Two~~

18 2. Six members of the legislative assembly must be appointed ~~by the chairman of the~~
19 ~~legislative management~~ to serve on the board.

20 ~~a. If the same political party has the greatest number of members in both the house~~
21 ~~and senate, one member must be from that majority party and one member from~~
22 ~~the political party with the next greatest number of members in the house and~~
23 ~~senate.~~

Sixty-eighth
Legislative Assembly

1 b. ~~If the same political party does not have the greatest number of members in both~~
2 ~~the house and senate, one member must be from the majority party in the house~~
3 ~~and one member must be from the majority party in the senate.~~

4 2. ~~The majority leader of the house of representatives shall appoint three members of~~
5 ~~the house and the majority leader of the senate shall appoint three members of the~~
6 ~~senate.~~

7 ~~3.~~ ~~One member~~ The majority leader of the house of representatives shall appoint three
8 members of the house of representatives and the majority leader of the senate shall
9 appoint three members of the senate. The members appointed under this subsection
10 shall serve a term of two years.

11 3. Three members of the board must be appointed by the governor to serve a term of five
12 years. ~~The~~ Each appointee under this subsection must be a North Dakota citizen who
13 is not a state or political subdivision employee and who by experience is familiar with
14 money management. The governor shall appoint one citizen member ~~is to serve as~~
15 chairman of the board.

16 ~~3.4.~~ ~~One member of the board must be appointed by the attorney general from the~~
17 ~~attorney general's legal staff and shall serve a term of five years.~~

18 4. ~~The state health officer appointed under section 23-01-05 or the state health officer's~~
19 ~~designee is a member of the board.~~

20 ~~5.~~ ~~Three~~

21 4. Two board members must be elected by and from among the active participating
22 members, members of the retirement plan established under chapter 54-52.6,
23 members of the retirement plan established under chapter 39-03.1, and members of
24 the job service North Dakota retirement plan. Employees who have terminated their
25 employment for whatever reason are not eligible to serve as elected members of the
26 board under this subsection. Board members must be elected to a five-year term
27 pursuant to an election called by the board. Notice of board elections must be given to
28 all active participating members. The time spent in performing duties as a board
29 member may not be charged against any employee's accumulated annual or any
30 other type of leave.

1 | ~~6.~~ One board member must be elected by and from among those individuals who are
2 | receiving retirement benefits under this chapter. The board shall call the election and
3 | must give prior notice of the election to the individuals eligible to participate in the
4 | election pursuant to this subsection. The board member shall serve a term of five
5 | years.

6 | 7.5. The members of the board are entitled to receive one hundred forty-eight dollars per
7 | day compensation and necessary mileage and travel expenses as provided in
8 | sections 44-08-04 and 54-06-09. This is in addition to any other pay or allowance due
9 | the chairman or a member, plus an allowance for expenses they may incur through
10 | service on the board.

11 | ~~8.7.6.~~ A board member shall serve ~~a five-year term and~~ until the board member's successor
12 | qualifies. Each board member is entitled to one vote, and ~~five~~^{six} of the ~~nine~~^{eleven}
13 | board members constitute a quorum. ~~Five~~^{Six} votes are necessary for resolution or
14 | action by the board at any meeting.

15 | **SECTION 2. AMENDMENT.** Section 54-52.1-04 of the North Dakota Century Code is
16 | amended and reenacted as follows:

17 | **54-52.1-04. Board to contract for life insurance, Medicare part D, employee**
18 | **assistance program services, dental plans, vision plans, and long-term care plans.**

19 | 1. The board shall receive bids for the providing of ~~hospital benefits coverage, medical-~~
20 | ~~benefits coverage, any~~ life insurance benefits coverage for a specified term, Medicare
21 | part D prescription drug coverage, a dental plan, a vision plan, a long-term care plan,
22 | and employee assistance program services; ~~may receive bids separately for all or part~~
23 | ~~of the prescription drug benefits coverage component of medical benefits coverage;~~
24 | and shall accept one or more bids of and contract with the carriers the board
25 | determines best serve the interests of the state and the state's eligible employees.
26 | Solicitations must be made not later than ninety days before the expiration of an
27 | existing uniform group insurance contract. Bids must be solicited by advertisement in a
28 | manner selected by the board which will provide reasonable notice to prospective
29 | bidders. In preparing bid proposals and evaluating bids, the board may utilize the
30 | services of consultants on a contract basis in order that the bids received may be
31 | uniformly compared and properly evaluated. In determining which bid, if any, will best

- 1 serve the interests of eligible employees and the state, the board shall give adequate
2 consideration to the following factors:
- 3 a. The economy to be effected.
 - 4 b. The ease of administration.
 - 5 c. The adequacy of the coverages.
 - 6 d. The financial position of the carrier, with special emphasis on the solvency of the
7 carrier.
 - 8 e. The reputation of the carrier and any other information available tending to show
9 past experience with the carrier in matters of claim settlement, underwriting, and
10 services.

- 11 2. The board may reject any or all bids received under this section. If the board rejects all
12 bids received, the board shall again solicit bids as provided in this section.

13 ~~3. Under sections 54-52.1-04.1 and 54-52.1-04.2 the board may contract for health-~~
14 ~~benefits coverage through a health maintenance organization or establish a~~
15 ~~self-insurance health plan.~~

16 ~~4. A contract for hospital benefits coverage, medical benefits coverage, or prescription~~
17 ~~drug benefits coverage is subject to section 54-52.1-05.2.~~

18 **SECTION 3. AMENDMENT.** Section 54-52.1-05 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **54-52.1-05. Provisions of contract - Term of contract.**

- 21 1. Each uniform group insurance contract entered by the board must be consistent with
22 the provisions of this chapter, must be signed for the state of North Dakota by the
23 chairman of the board, and must include the following:
- 24 a. As many optional coverages as deemed feasible and advantageous by the
25 board.
 - 26 b. A detailed statement of benefits offered, including maximum limitations and
27 exclusions, and such other provisions as the board may deem necessary or
28 desirable.
- 29 2. The ~~initial term or the renewal term~~ of a uniform group insurance contract through a
30 contract for insurance, health maintenance organization, or self-insurance health plan

1 for hospital benefits coverage, medical benefits coverage, or prescription drug benefits
2 coverage may not exceed two years.

3 ~~a. The board may not renew a contract subject to this subsection ~~without soliciting a~~
4 ~~bid under section 54-52.1-04 if the board determines the carrier's performance~~
5 ~~under the existing contract meets the board's expectations, the proposed~~
6 ~~premium renewal amount does not exceed the board's expectations, and renewal~~
7 ~~best serves the interests of the state and the state's eligible employees.~~~~

8 ~~b. In making a determination under this subsection, the board shall:~~

9 ~~(1) Use the services of a consultant to concurrently and independently prepare~~
10 ~~a renewal estimate the board shall consider in determining the~~
11 ~~reasonableness of the proposed premium renewal amount.~~

12 ~~(2) Review the carrier's performance measures, including payment accuracy,~~
13 ~~claim processing time, member service center metrics, wellness or other~~
14 ~~special program participation levels, and any other measures the board~~
15 ~~determines relevant to making the determination and shall consider these~~
16 ~~measures in determining the board's satisfaction with the carrier's~~
17 ~~performance.~~

18 ~~(3) Consider any additional information the board determines relevant to~~
19 ~~making the determination.~~

20 ~~c. The board may determine the carrier's performance under the existing contract~~
21 ~~does not meet the board's expectations, the proposed premium renewal amount~~
22 ~~exceeds the board's expectations, or renewal does not best serve the interests of~~
23 ~~the state or the state's eligible employees and the board therefore may decide to~~
24 ~~solicit a bid under section 54-52.1-04.~~

25 d. This subsection does not apply to a contract for Medicare part D prescription
26 drug coverage, vision plans, dental plans, or long-term care plans. A contract for
27 coverage under this subsection is subject to section 54-52.1-05.2.

28 **SECTION 4.** Section 54-52.1-05.2 of the North Dakota Century Code is created and
29 enacted as follows:

1 **54-52.1-05.2. Health insurance benefits coverage - Legislative assembly - Exceptions.**

2 1. The board shall receive bids for the providing of hospital benefits coverage, medical
3 benefits coverage, and prescription drug benefits coverage; may receive bids
4 separately for all or part of the prescription drug benefits coverage component of
5 medical benefits coverage; and subject to approval of the legislative assembly shall
6 accept one or more bids with the carriers.

7 2. Solicitations must be made no later than ninety days before the expiration of an
8 existing uniform group insurance contract. Bids must be solicited by advertisement in a
9 manner selected by the board which will provide reasonable notice to prospective
10 bidders. In preparing bid proposals and evaluating bids, the board may utilize the
11 services of consultants on a contract basis in order that the bids received may be
12 uniformly compared and properly evaluated. In reviewing bids, the board shall
13 determine which bid or bids best serve the interests of the state and the state's eligible
14 employees. In determining which bid, if any, will best serve the interests of eligible
15 employees in the state, the board shall give adequate consideration to the following
16 factors:

17 a. The economy to be effected.

18 b. The ease of administration.

19 c. The adequacy of the coverages.

20 d. The financial position of the carrier, with special emphasis on the solvency of the
21 carrier.

22 e. The reputation of the carrier and any other information available tending to show
23 past experience with the carrier in matters of claim settlement, underwriting, and
24 services.

25 3. The board may reject any or all bids received under this section. If the board rejects all
26 bids received, the board again shall solicit bids as provided under this section.

27 4. Under sections 54-52.1-04 and 54-52.1-04.2 the board may contract for health
28 benefits coverage through a health maintenance organization or establish a self-
29 insurance health plan.

- 1 5. The board may not enter ~~an initial or renewal~~ a contract for hospital benefits coverage,
2 medical benefits coverage, or prescription drug benefits coverage unless this board
3 action has been authorized by the legislative assembly by passage of a bill.
- 4 a. Before the board enters a contract under this section, the board shall introduce
5 legislation a bill seeking legislative authorization for the board's proposed action
6 relating to the contract. The bill introduced by the board must include an
7 emergency clause.
- 8 b. The standing committees to which the bill is referred may hold a joint hearing on
9 the bill introduced by the board under this subsection. If the bill passes the house
10 of introduction after the joint hearing, the members of the joint committee from
11 the second house may report the bill to that house and another hearing is not
12 necessary unless the bill was amended in the first house.
- 13 c. If the legislative assembly authorizes the board's proposed action by passage of
14 the bill by a majority vote of both houses of the legislative assembly and filing of
15 the bill with the secretary of state, the board may enter the contract.
- 16 d. If the legislative assembly does not authorize the board's proposed action, the
17 board again shall solicit bids as provided under this section and may not enter a
18 contract unless the board has received authorization of the legislative assembly
19 by a bill that has passed both houses of the legislative assembly and has been
20 filed with the secretary of state.
- 21 2-6. This section does not apply to a contract for Medicare part D, prescription drug
22 coverage, a vision plan, a dental plan, or a long-term care plan. A bill introduced under
23 this section is not subject to jurisdiction of the employee benefits programs committee
24 under section 54-35-02.4.

25 **SECTION 5. EFFECTIVE DATE.** Section 1 of this Act becomes effective June 1, 2023, and
26 sections 2, 3, and 4 of this Act become effective August 1, 2023.

27 **SECTION 6. EMERGENCY.** This Act is declared to be an emergency measure.



Great Public Schools

Great Public Service

**Testimony Before the Senate I & B Committee
HB 1321
March 13, 2023**

Chairman Larsen and members of the Senate Industry and Business Committee, for the record, my name is Nick Archuleta, and I am the president of North Dakota United. North Dakota United is a union of 11,500 professionals, each dedicated to serving the public. On behalf of our members, particularly those who are PERS members, I urge a do not pass recommendation on HB 1321.

Our primary concern with HB 1321 is embodied in Section 1 of the bill which, if enacted, would remove two members of the ND PERS board, one of whom is an active public employee, and replace them with North Dakota Legislators. The result of this unnecessary change would be an eleven member PERS Board with a legislative member majority. We believe that this change will diminish the voice of the public employees whose benefits are managed by PERS. Additionally, we are concerned that having a majority of legislators on the PERS Board will cause this Board to make important decisions based on politics rather than on what is in the best interest of the plans administered by PERS. Furthermore, we see this this section of HB 1321 as an effort by the Legislative Branch to usurp the authority of the Executive Branch. The last thing PERS needs at this time is to become embroiled in yet another political scrum.

Mr. Chairman and members of the Committee, the current makeup of the board with three members elected from the employees ensures that those most affected by changes to ND PERS retirement and healthcare have a seat at the table and that their concerns and ideas receive equal consideration as decisions are made. In short, it gives public employees suitable buy-in to the plans, and that instills confidence in state and political subdivision employees who depend on PERS success. It also gives piece of mind to our fellow North Dakotans knowing that decisions affecting PERS are based on what is in the best interest of PERS and not on political expedience.



Great Public Schools

Great Public Service

Finally, Mr. Chairman, ND Legislators already have two seats at the table which assures that the legislative perspective is in the mix at each PERS Board meeting. We believe that the current composition of the Board serves the interests of all involved and a change in the structure of the Board is unnecessary and unhelpful.

For these reasons, Chairman Larsen and members of the Committee, I respectfully urge a do not pass recommendation on HB 1321. Thank you for the opportunity to testify before you today. I am happy to answer any questions you may have.

TESTIMONY OF SCOTT MILLER

House Bill 1321 – NDPERS Board Makeup and Health Insurance Plan Contract Decision-Making

Good Morning, my name is Scott Miller. I am the Executive Director of the North Dakota Public Employees Retirement System, or NDPERS. I am here to testify in opposition to House Bill 1321.

If passed, HB 1321 would make two changes to NDPERS statutes that are problematic under the Separation of Powers doctrine of the North Dakota Constitution.

1. Removes two members of the NDPERS Board and replaces them with four additional legislators, bringing the number of legislators on the NDPERS Board to a total of six, on an eleven-person Board.
2. Inserts the Legislative Assembly into the decision-making process for the State's health plan.

The North Dakota Supreme Court most recently analyzed the separation of powers doctrine in N.D. Legislative Assembly, et al. v. Burgum, 2018 ND 189 ("Legislature v. Burgum"). Paragraph 40 of that decision provides the following succinct description of the separation of powers doctrine:

The North Dakota Constitution creates three branches of government and vests each branch with a distinct type of power. N.D. Const. art. III, § 1 ("[T]he legislative power of this state shall be vested in a legislative assembly"); N.D. Const. art. V, § 1 ("The executive power is vested in the governor"); N.D. Const. art. VI, § 1 ("The judicial power of the state is vested in a unified judicial system"). By vesting each branch with a distinct form of power, the Constitution keeps those powers separate. The three branches are "coequal," N.D. Const. art. XI, § 26, each "supreme in its own sphere." *State ex rel. Spaeth v. Meiers*, 403 N.W.2d 392, 394 (N.D. 1987). Long before the express formalization of separation of powers in Article XI, § 26, this Court recognized that the Constitution's apportionment of power among three branches implicitly excluded each branch from exercising the powers of the others. *State v. Hanson*, 558 N.W.2d 611, 614 (N.D. 1996) (citing *Glaspell v. City of Jamestown*, 11 N.D. 86, 88 N.W. 1023 (1902)); see also *Miller v. French*, 530 U.S. 327, 341 (2000) (explaining that separation of powers doctrine "prohibits one branch from encroaching on the central prerogatives of another").

The NDPERS Board is, of course, an executive branch entity. The NDPERS Board controls and oversees the operations of the NDPERS agency. Adding legislators to the Board, particularly adding a number of legislators that would constitute a majority of the Board members, appears to be a legislative attempt to control an executive branch agency and the exercise of that agency's explicit, legislatively-given powers. As such, HB 1321 creates a violation of the separation of powers doctrine.

During the 2011 Legislative Assembly, the Legislature considered SB 2302, which would have added legislators to the State Investment Board. Then Lt. Governor Drew Wrigley testified in front of the Senate Appropriations Committee and stated, "I've spoken to Attorney General [Stenehjem] about this matter as well and we think it is a clean constitutional principle that you cannot place legislators on the state investment board. It is an Executive Board, an executive function." Similarly, adding four additional, voting legislative members to the NDPERS Board is likely a violation of established Constitutional principles.

The second part of HB 1321 would insert the Legislature into the decision-making process for the State's health plan, including both medical and pharmacy providers. Currently, the NDPERS Board – an Executive Branch entity – has the responsibility to execute the requirements in NDCC chapter 54-52.1, our group insurance plan statutes. That includes the responsibility to select the State's medical and pharmacy providers. The Legislative Assembly, of course, promulgated chapter 54-52.1. In doing so, the Legislative Assembly provided the NDPERS Board with a significant amount of policy guidance and requirements the Board must follow in making that selection.

For instance, the Legislature has set as the policy of state government that because it is important to "promote the economy and efficiency of employment in the state's service, reduce personnel turnover, and offer an incentive to high-grade individuals to enter and remain in the service of state employment, there is created a uniform group insurance program." NDCC section 54-52.1-02. Part of that uniform group insurance program is, of course, our health plan. The Legislature has provided a great deal of policy guidance to the NDPERS Board as the Board fulfills its administrative and executive function of awarding a bid to a carrier for the State's health plan. NDCC section 54-52.1-04 provides the following specific guidelines for awarding an initial contract, among others:

In determining which bid, if any, will best serve the interests of eligible employees and the state, the board shall give adequate consideration to the following factors:

- a. The economy to be effected.
- b. The ease of administration.
- c. The adequacy of the coverages.
- d. The financial position of the carrier, with special emphasis on the solvency of the carrier.

e. The reputation of the carrier and any other information available tending to show past experience with the carrier in matters of claim settlement, underwriting, and services.

Section 4 of House Bill 1321 creates a new section to NDCC chapter 54-52.1. That new section requires the Board to obtain the Legislature's approval before the Board can accept a bid to provide hospital, medical, or prescription drug benefits coverage. The new section goes on to state, "The board may not enter a contract for hospital benefits coverage, medical benefits coverage, or prescription drug benefits coverage unless this board action has been authorized by the legislative assembly by passage of a bill." Thus, HB 1321 removes the decision-making from the NDPERS Board, an Executive Branch agency, and gives it to the Legislature. Transferring the executive function of executing those statutory provisions to the Legislative Assembly is also a violation of the North Dakota Constitution's Separation of Powers doctrine.

The Legislative Assembly, of course, has the power to make or create a law. However, after a law has been enacted, the execution of that law – including "further fact finding and discretionary decision-making" – is an executive function: "The power to make a law is legislative,' but the power to administer or execute the law 'under the provisions of the law itself, as enacted by the Legislature,' is executive." Legislature v. Burgum, at 22 (quoting Ralston Purina Co. v. Hagemeister, 188 N.W.2d 405, 410-411 (N.D. 1971)). The court went on to state, "[t]he Legislative Assembly violates separation of powers when it retains discretion after enactment for itself or its agent" Id. at 26.

The application of Legislature v. Burgum to HB 1321 is straightforward. NDCC chapter 54-52.1 already contains a clear grant of power to the NDPERS Board in regard to issuing RFPs for our health plan. That grant of power provides clear and specific guidelines that the Board must use in evaluating proposals and making a final decision that, in the Board's view, "will best serve the interests of eligible employees and the state." NDCC section 54-52.1-04.

House Bill 1321 removes that executive decision-making process from an executive entity, the NDPERS Board, and gives it to the Legislative Assembly. As the North Dakota Supreme Court stated in Legislature v. Burgum, "[t]he Legislative Assembly violates separation of powers when it retains discretion after enactment for itself or its agent" Id. at 26.

One argument that was made in opposition to this conclusion is that the current statutory scheme actually violates the separation of powers doctrine because the statutes give the Board the authority to appropriate monies for the payment of health insurance premiums, and appropriations are solely within the authority of the Legislative Assembly. We agree that it is the Legislative Assembly's responsibility and authority to

appropriate money. However, we disagree that the statutory scheme in NDCC chapter 54-52.1 violates that principle.

A clear example of how this process works is from the health plan renewal process in 2016-17. For that renewal, as required by statute, the Board retained a consultant, Deloitte Consulting, to concurrently and independently prepare a renewal estimate. SHP proposed a 17.4% premium increase to purchase a plan with the same benefit structure as existed at that time. Deloitte determined that the proposed increase was reasonable. Based on the guidance provided in statute, Deloitte’s assessment, and its own review, the Board approved a renewal with SHP.

However, the Board also realized that the State would have difficulty with such a significant increase given the budget problems the State was facing. The Board worked with SHP to determine what benefit and cost-sharing changes could be made to reduce that premium increase but still maintain the Plan’s grandfathered status under the ACA. NDPERS gave the renewal information and the possible benefit change information to OMB and the Governor for their consideration as they created the Executive Budget. NDPERS also provided information on the health insurance reserves in the event the Governor and the Legislature decided to use reserves to buy-down the premium. You can see this information provided in the legislative fiscal staff’s Analysis of 2017-2019 Executive Budget below.

STATE EMPLOYEES - SUMMARY OF KEY RECOMMENDATIONS

SALARY INCREASES

The 2017-19 executive budget recommendation provides funding for state employee salary increases of 1 percent, effective July 1, 2018. The cost of the salary increase is \$11,858,530, of which \$5,447,422 is from the general fund. Specific language regarding the salary increases is included in Section 11 of 2017 House Bill No. 1075—the appropriation bill for the Office of Management and Budget (OMB).

SALARY UNDERFUNDING

The 2017-19 executive budget recommendation underfunds general fund salary budgets for 10 agencies totaling \$7.9 million. Agencies with underfunded salary budgets include:

Agency	Amount
State Auditor	\$117,118
Tax Commissioner	637,100
North Dakota University System office	578,097
Department of Human Services	5,278,396
Industrial Commission	900,000
Public Service Commission	60,170
Branch research centers	28,620
North Dakota State University Extension Service	37,206
Main Research Center	71,550
Parks and Recreation Department	239,959
Total	\$7,948,216

UNFUNDED POSITIONS

The 2017-19 executive budget recommendation provides for a total of nine positions to be unfunded in three agencies. The total amount of funding related to the unfunded positions is \$1.3 million, of which \$1.2 million is from the general fund. Agencies with positions unfunded include the Highway Patrol (five positions), State Auditor (two positions), and State Historical Society (two positions).

ACCRUED LEAVE PAYOUTS

The 2017-19 executive budget recommendation provides funding for accrued leave payouts totaling \$2.3 million, of which \$1 million is from the general fund and \$1.3 million is from other funds. This funding is available for accrued leave payouts to eligible employees upon retirement or termination of employment.

HIGHER EDUCATION

Prior to the 2017-19 biennium, higher education full-time equivalent (FTE) positions supported from special funds were not reflected in the budget, as the State Board of Higher Education and institutions under its control have continuing appropriation authority for special funds. The 2015 Legislative Assembly amended North Dakota Century Code Section 54-44.1-04 to require higher education entities to enter all budget data in the state’s budget system in the same manner as other agencies. This increased the total FTE position count by 4,336.41. The 2017-19 executive recommendation provides for a decrease of general fund supported FTE positions of 315.27. Higher education FTE positions supported from all funds is 6,766.76.

EXECUTIVE BRANCH ELECTED OFFICIALS

The executive budget recommendation provides funding for executive branch elected officials’ salary increases equal to 1 percent of salaries, effective July 1, 2018. Statutory changes necessary to adjust elected officials’ salaries are included in the respective elected officials’ appropriation bills recommended by the Governor.

JUDICIAL BRANCH

The judicial branch budget request includes funding to provide district court judges’ salary increases of 1 percent of salaries, effective July 1, 2018. Salary increases for Supreme Court justices are also 1 percent of salaries, effective July 1, 2018. Salary increases for other employees of the judicial branch are included at the same level as provided for other state employees, or 1 percent of salaries, effective July 1, 2018. Additional increases may be provided to other employees of the judicial branch pursuant to the judicial branch salary schedule as requested by the judicial branch.

HEALTH INSURANCE

The executive budget recommendation continues funding for the cost of health insurance premiums for state employees. The executive budget provides \$1,249.47 per month for employee health insurance, an increase of \$119.25, or 10.6 percent, compared to the 2015-17 biennium premium rate of \$1,130.22 per month. A recent history of monthly health insurance premiums provided for each employee is listed below.

Biennium	Monthly Premium	Percentage Change from Previous Biennium
2001-03	\$409	16.9%
2003-05	\$489	19.6%
2005-07	\$554	13.3%
2007-09	\$658	18.8%
2009-11	\$826	25.5%
2011-13	\$887	7.4%
2013-15	\$982	10.7%
2015-17	\$1,130	15.1%
2017-19 executive recommendation	\$1,249	10.6%

The percentage increase to maintain the existing health insurance plan benefits is 17.4 percent for the 2017-19 biennium. To reduce this percentage increase, the Governor is recommending increasing member out-of-pocket expenses to reduce plan costs by \$49.61 per contract, per month, which would reduce the overall increase by 4.4 percent.

The Governor is also recommending using Public Employees Retirement System (PERS) health insurance reserves to pay an additional \$27.31 of premiums per contract, per month, which would reduce the overall increase by 2.45 percent. The Governor is using approximately \$18.0 million of the estimated \$35.0 million in health insurance reserve funds to reduce the premium rate increase. Of the \$18.0 million utilized, \$10.5 million relates to state employee health insurance plans, \$4.4 million relates to political subdivisions, and \$3.1 million relates to retiree health plans.

EMPLOYEE ASSISTANCE PROGRAM

The monthly rate for the employee assistance program remains at \$1.54 per month, or \$18.48 annually.

LIFE INSURANCE

The monthly rate for life insurance provided to state employees remains at \$0.28 per month, or \$3.36 annually.

UNEMPLOYMENT INSURANCE

Funding is included for unemployment insurance for state employees at a rate of 1 percent of the first \$6,000 of an employee's annual salary (\$60 per year or \$120 per biennium maximum). No unemployment insurance was collected on state employee salaries during the 2013-15 and 2015-17 bienniums.

TOTAL COMPENSATION CHANGES COST

The schedule below provides the total cost of major compensation changes recommended in the 2017-19 executive budget.

	General Fund	Special Funds	Total
Salary increase of 1 percent, effective July 1, 2018	\$5,447,422	\$6,411,108	\$11,858,530
Health insurance premium increases	20,924,659	24,626,376	45,551,035
Total	\$26,372,081	\$31,037,484	\$57,409,565

FULL-TIME EQUIVALENT POSITIONS

The 2017-19 executive budget includes a total of 15,937.69 FTE positions, an increase of 4,100.12 FTE positions from the 2015-17 authorized level of 11,837.57 FTE positions. The total number of FTE positions for the 2017-19 biennium now reflects certain higher education positions that were previously not reflected in the budget.

The 2017-19 executive budget recommended FTE level of 15,937.69 is an overall decrease of 551.56 FTE positions compared to the adjusted 2015-17 biennium total, including a decrease of 315.27 FTE positions in higher education and a decrease of 215.61 FTE positions in all other state agencies.

The reduction of 215.61 FTE positions resulted in a decrease of \$29.0 million, of which \$15.9 million is from the general fund.

Major changes in FTE positions, excluding higher education, are as follows:

Agency Increases	2015-17 Authorized FTE Positions	2017-19 Executive Budget	Increase
301 - State Department of Health	365.00	381.00	16.00
530 - Department of Corrections and Rehabilitation	836.29	846.29	10.00
475 - Mill and Elevator Association	147.00	153.00	6.00

Agency Decreases	2015-17 Authorized FTE Positions	2017-19 Executive Budget	(Decrease)
380 - Job Service North Dakota	237.76	181.61	(56.15)
180 - Judicial branch	391.00	354.50	(36.50)
640 - Main Research Center	361.12	336.12	(25.00)
405 - Industrial Commission	121.75	105.25	(16.50)
125 - Attorney General	250.00	234.00	(16.00)
630 - North Dakota State University Extension Service	265.98	252.98	(13.00)
627 - Upper Great Plains Transportation Institute	54.98	43.88	(11.10)
628 - Branch research centers	120.29	110.29	(10.00)

I-2

Over the course of the Legislative Assembly's review and analysis of the NDPERS Budget, the Legislative Assembly eventually approved the final premium amount, benefit structure, and use of reserves, as you can see in the below excerpts from Legislative Council's 65th Legislative Assembly State Budget Actions for the 2017-2019 Biennium.

HIGHER EDUCATION

Prior to the 2017-19 biennium, higher education FTE positions supported from special funds were not reflected in the budget, as the State Board of Higher Education and institutions under its control have continuing appropriation authority for special funds. The 2015 Legislative Assembly amended North Dakota Century Code Section 54-44.1-04 to require higher education entities to enter all budget data in the state's budget system in the same manner as other agencies. This increased the total FTE position count by 4,337.41. The 2017 Legislative Assembly approved a reduction of general fund supported FTE positions of 313.27 for the 2017-19 biennium, to provide a total of 2,117.08 higher education FTE positions supported by the general fund. Higher education FTE positions supported from all funds is 6,767.76 for the 2017-19 biennium.

EXECUTIVE BRANCH ELECTED OFFICIALS

The 2017 Legislative Assembly did not provide funding for state employee salary increases for the 2017-19 biennium. Salaries for executive branch elected officials will remain at the amounts approved by the 2015 Legislative Assembly.

JUDICIAL BRANCH

The 2017 Legislative Assembly did not provide funding for state employee salary increases for the 2017-19 biennium. Salaries for district court judges and Supreme Court justices will remain at the amounts approved by the 2015 Legislative Assembly.

HEALTH INSURANCE

The Legislative Assembly continued to provide funding for the cost of health insurance premiums for state employees. The appropriations provide \$1,240.83 per month for employee health insurance, an increase of \$110.61, or 9.8 percent, compared to the 2015-17 biennium premium rate of \$1,130.22 per month. A recent history of monthly health insurance premiums provided for each employee is listed below.

J-1

June 2017

Biennium	Monthly Premium	Percentage Change from Previous Biennium
2001-03	\$409	16.9%
2003-05	\$489	19.6%
2005-07	\$554	13.3%
2007-09	\$658	18.8%
2009-11	\$826	25.5%
2011-13	\$887	7.4%
2013-15	\$982	10.7%
2015-17	\$1,130	15.1%
2017-19	\$1,241	9.8%

The percentage increase to maintain the existing health insurance plan benefits is 17.4 percent for the 2017-19 biennium. To reduce this percentage increase, the Legislative Assembly approved the Governor's recommendation to increase member out-of-pocket expenses to reduce plan costs by \$58.25 per contract, per month, which would reduce the overall increase by 5.2 percent.

The Legislative Assembly also approved using Public Employees Retirement System (PERS) health insurance reserves to pay an additional \$27.31 of premiums per contract, per month, which would reduce the overall increase by 2.4 percent, resulting in a total increase of 9.8 percent for the 2017-19 biennium. The Legislative Assembly approved using approximately \$15.1 million of the estimated \$35.0 million in health insurance reserve funds to reduce the premium rate increase. Of the \$15.1 million utilized, \$10.5 million relates to state employee health insurance plans, \$3.7 million relates to political subdivisions, and \$700,000 relates to retiree health plans.

Clearly, the NDPERS Board did not set the final premium for the health plan. The NDPERS Board followed the statutory guidelines for the renewal process, and decided to renew. The Board provided significant information to the Governor, who made a budget recommendation to the Legislative Assembly. The Legislative Assembly considered that budget recommendation regarding the health plan structure, premiums,

and buy-down amount, and the Legislative Assembly determined what the State would pay, for what benefits, and how it would be paid. Once the Legislative Assembly approved those items, we finalized the renewal with SHP. That is the same process that has been used since NDPERS has been responsible for the group health plan.

Aside from the clear constitutional issues, we are also concerned with the timing if HB 1321 were to become law. The timeline for the last RFP we issued for the health plan is below.

Activity	Date/Time
NDPERS publishes Request for Proposal (RFP)*	June 1, 2020
Bidder Conference**	June 16, 2020 (9am – 11am CST)
Bidder questions (in writing) due	June 18, 2020 (5pm CST)
Proposals due	Wednesday, July 15, 2020 (5 pm CST)
Finalist presentations (if requested)	September 2020
NDPERS notifies finalist of intent to negotiate	November 2020
Bidder and NDPERS begin implementation	January 2021
Bidder begins providing services	July 1, 2021

The only possible legislative actions regarding the health plan contract that could be implemented after a bill goes through the legislative process and is signed by the Governor is the re-award of the contract to the current carrier. If the Legislative Assembly refused to approve the NDPERS Board’s proposed action, there is clearly not enough time to go out to bid for the health plan and get a new bill with a different result before the same Legislative Assembly.

If the Board instead proposes to change carriers, there would not be enough time to transition to that new carrier absent legislative action within the first few weeks of the Assembly. There is just not enough time to involve the Legislative Assembly in the award of a new contract and insure that state and political subdivision participants continue to have health insurance coverage.

In summary, the constitutional and timing issues with HB 1321 weigh heavily against House Bill 1321. The Legislative Assembly already clearly has control of the purse strings on the health plan. This bill will introduce uncertainty, potential litigation, and almost certain delays where it is most harmful. We encourage a “do not pass” on House Bill 1321.

23.0045.02002
Title.

Prepared by the Legislative Council staff for
Representative Kasper
March 7, 2023

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1321

Page 1, line 17, replace "Six" with "Five"

Page 2, line 4, remove "shall appoint three"

Page 2, line 5, remove "members of the house of representatives"

Page 2, line 6, replace "appoint three members of the senate" with "work together to select the members of the legislative assembly to be appointed under this subsection"

Page 2, line 8, replace "Three" with "Four"

Renumber accordingly

23.0045.01004
Title.

Prepared by the Legislative Council staff for
Representative Kasper
February 14, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1321

Page 1, line 2, remove "and"

Page 1, line 5, after "coverage" insert "; to provide an effective date; and to declare an emergency"

Page 2, line 4, remove "The majority leader of the house of representatives shall appoint three members of"

Page 2, remove lines 5 and 6

Page 2, line 7, remove "3."

Page 2, line 7, overstrike "One member" and insert immediately thereafter "The majority leader of the house of representatives shall appoint three members of the house of representatives and the majority leader of the senate shall appoint three members of the senate. The members appointed under this subsection shall serve a term of two years."

3. Three members"

Page 2, line 8, overstrike "The" and insert immediately thereafter "Each"

Page 2, line 8, after "appointee" insert "under this subsection"

Page 2, line 10, after "The" insert "governor shall appoint one"

Page 2, line 10, overstrike "is" and insert immediately thereafter "to serve as"

Page 2, line 11, remove "4."

Page 2, line 11, overstrike "One member of the board must be appointed by the attorney general from the"

Page 2, overstrike line 12

Page 2, line 15, overstrike "5. Three" and insert immediately thereafter:

4. Two"

Page 2, line 25, overstrike "6."

Page 2, line 30, after "7." insert "5."

Page 3, line 4, replace "7." with "6."

Page 3, line 4, overstrike "a five-year term and"

Page 3, line 10, after "**for**" insert "**life**"

Page 3, line 10, after "**insurance**" insert "**, Medicare part D, employee assistance program services, dental plans, vision plans, and long-term care plans**"

Page 3, line 11, overstrike "hospital benefits coverage, medical"

- Page 3, line 12, overstrike "benefits coverage," and insert immediately thereafter "any"
- Page 3, line 12, after the second comma insert "Medicare part D prescription drug coverage, a dental plan, a vision plan, a long-term care plan,"
- Page 3, line 13, overstrike "may receive bids separately for all or part of the"
- Page 3, line 14, overstrike "prescription drug benefits coverage component of medical benefits coverage;"
- Page 4, overstrike lines 6 through 8
- Page 4, remove lines 9 and 10
- Page 4, line 22, overstrike "initial"
- Page 4, line 22, overstrike "or the renewal term"
- Page 4, line 26, overstrike "a."
- Page 4, line 26, after "may" insert "not"
- Page 4, line 26, overstrike "without soliciting a bid"
- Page 4, overstrike lines 27 through 31
- Page 5, overstrike lines 1 through 15
- Page 5, line 16, overstrike "solicit a bid under section 54-52.1-04"
- Page 5, line 17, replace "d." with "This subsection does not apply to a contract for Medicare part D prescription drug coverage, vision plans, dental plans, or long-term care plans."
- Page 5, line 21, after "1." insert "The board shall receive bids for the providing of hospital benefits coverage, medical benefits coverage, and prescription drug benefits coverage; may receive bids separately for all or part of the prescription drug benefits coverage component of medical benefits coverage; and subject to approval of the legislative assembly shall accept one or more bids with the carriers."
2. Solicitations must be made no later than ninety days before the expiration of an existing uniform group insurance contract. Bids must be solicited by advertisement in a manner selected by the board which will provide reasonable notice to prospective bidders. In preparing bid proposals and evaluating bids, the board may utilize the services of consultants on a contract basis in order that the bids received may be uniformly compared and properly evaluated. In reviewing bids, the board shall determine which bid or bids best serve the interests of the state and the state's eligible employees. In determining which bid, if any, will best serve the interests of eligible employees in the state, the board shall give adequate consideration to the following factors:
- a. The economy to be effected.
 - b. The ease of administration.
 - c. The adequacy of the coverages.
 - d. The financial position of the carrier, with special emphasis on the solvency of the carrier.

e. The reputation of the carrier and any other information available tending to show past experience with the carrier in matters of claim settlement, underwriting, and services.

3. The board may reject any or all bids received under this section. If the board rejects all bids received, the board again shall solicit bids as provided under this section.

4. Under sections 54-52.1-04 and 54-52.1-04.2 the board may contract for health benefits coverage through a health maintenance organization or establish a self-insurance health plan.

5."

Page 5, line 21, replace "an initial or renewal" with "a"

Page 5, line 23, after the underscored period insert:

"a."

Page 5, line 25, after the underscored period insert "If the legislative assembly does not authorize the board's proposed action, the board again shall solicit bids as provided under this section.

b. The majority leaders of the house of representatives and the senate each shall appoint a special oversight committee to hold a joint hearing on the legislation introduced by the board under this subsection."

Page 5, line 26, replace "2." with "6."

Page 5, line 27, after "coverage" insert ", a vision plan, a dental plan, or a long-term care plan"

Page 5, after line 28, insert:

"SECTION 5. EFFECTIVE DATE. Section 1 of this Act becomes effective June 1, 2023.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

23.0045.02003
Title.03000

Prepared by the Legislative Council staff for
the Senate Industry and Business Committee
March 21, 2023

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1321

Page 1, line 1, remove "create and enact section 54-52.1-05.2 of the North Dakota Century Code,"

Page 1, line 2, remove "relating to public employees retirement system contracts for health benefits coverage; to"

Page 1, line 3, replace "sections" with "section"

Page 1, line 3, remove ", 54-52.1-04, and 54-52.1-05"

Page 1, line 4, remove "and public employees retirement system contracts for"

Page 1, line 5, remove "health benefits coverage"

Page 1, line 17, replace "Six" with "Five"

Page 2, line 4, remove "shall appoint three"

Page 2, line 5, remove "members of the house of representatives"

Page 2, line 6, replace "appoint three members of the senate" with "work together to select the members of the legislative assembly to be appointed under this subsection"

Page 2, line 8, replace "Three" with "Four"

Page 3, remove lines 12 through 31

Page 4, remove lines 1 through 30

Page 5, remove lines 1 through 30

Page 6, remove lines 1 through 31

Page 7, remove lines 1 through 15

Page 7 line 16, replace "Section 1 of this" with "This"

Page 7, line 16, remove ", and"

Page 7, line 17, remove "sections 2, 3, and 4 of this Act become effective August 1, 2023"

Renumber accordingly