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## LEGISLATIVE MANAGEMENT

Tuesday, October 17, 2023  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Mike Lefor, Chairman, called the meeting to order at 10:02 a.m.

**Members present:** Representatives Mike Lefor, Glenn Bosch, Josh Boschee\*, Zachary Ista\*, Dennis Johnson\*, Ben Koppelman\*, Emily O'Brien\*, Paul J. Thomas\*, Robin Weisz\*; Senators Brad Bekkedahl\*, Kyle Davison\*, Kathy Hogan, David Hogue, Jerry Klein, Tim Mathern\*, Janne Myrdal\*, Donald Schaible

**Members absent:** None

**Others present:** Allen H. Knudson, Emily Thompson, Legislative Council, Bismarck

See appendix for additional persons present.

\*Attended remotely

**It was moved by Senator Schaible, seconded by Senator Klein, and carried on a voice vote that the minutes of the June 13, 2023, meeting be approved as distributed.**

### OPENING REMARKS

Chairman Lefor updated the committee on the status of the upcoming special session in response to the North Dakota Supreme Court's ruling in *Board of Trustees of The North Dakota Public Employees' Retirement System v. North Dakota Legislative Assembly*. He noted, on October 16, 2023, the Governor called a special session of the Legislative Assembly to convene on October 23, 2023, to reenact the nullified provisions contained in Senate Bill No. 2015 (2023). He noted the Legislative Council staff has split the nullified bill into seven appropriations bills and seven policy bills for consideration by the Legislative Management.

### SUMMARY OF THE SUPREME COURT'S RULING

Chairman Lefor called on Mr. John Bjornson, Director, Legislative Council, to review the decision of the North Dakota Supreme Court in *Board of Trustees of The North Dakota Public Employees' Retirement System v. North Dakota Legislative Assembly* and the subsequent denial of a stay. He noted:

- In its ruling, the North Dakota Supreme Court focused on the single subject requirement found in Section 13 of Article IV of the Constitution of North Dakota.
- The Court invalidated Senate Bill No. 2015 ~~as-a-whole~~ because the Court did not know which provisions were primary and which were secondary and whether the bill would have been enacted absent the presence of any of the several sections.
- Although a majority of the Court initially had indicated a stay would be appropriate, the Court later determined it did not have the authority to grant a stay.
- The Court's opinion failed to provide a bright-line rule to determine what is constitutionally permissible under the single subject requirement for legislation.

Committee members discussed the rationale of the governor's decision to call a special session under Section 7

of Article V of the Constitution of North Dakota rather than the Legislative Assembly reconvening the 2023 legislative session.

### **PRESENTATION OF PROPOSED BILL DRAFTS AND CORRESPONDING MEMORANDA**

Mr. Bjornson presented a bill draft [23.1144.01000] and a corresponding memorandum entitled *Summary of Reenactment of Provisions Relating to Legislative Branch Appropriations and Duties – LC# 23.1144.01000*.

Mr. Bjornson presented a bill draft [23.1142.01000] and a corresponding memorandum entitled *Summary of Reenactment Provisions Relating to the Office of Management and Budget – LC# 23.1142.01000*.

Mr. Bjornson presented a bill draft [23.1143.01000] and a corresponding memorandum entitled *Summary of Reenactment of Provisions Relating to 2021-23 Funding Needs – LC# 23.1143.01000*.

Mr. Bjornson presented a bill draft [23.1145.01000] and a corresponding memorandum entitled *Summary of Reenactment of Provisions Relating to Board and Committee Administration – LC# 23.1145.01000*.

Mr. Bjornson presented a bill draft [23.1146.01000] and a corresponding memorandum entitled *Summary of Reenactment of Provisions Relating to Facility-Related Grants – LC# 23.1146.01000*.

Mr. Bjornson presented a bill draft [23.1147.01000] and a corresponding memorandum entitled *Summary of Reenactment of Provisions Relating to The Department of Commerce – LC# 23.1147.01000*.

Mr. Bjornson presented a bill draft [23.1148.01000] and a corresponding memorandum entitled *Summary of Reenactment of Provisions Relating to an Appropriation for the Judicial Branch – LC# 23.1148.01000*.

Mr. Bjornson presented a bill draft [23.1141.01000] and a corresponding memorandum entitled *Summary of Reenactment of Provisions Relating to K-12 Education Funding – LC# 23.1141.01000*.

Mr. Bjornson presented a bill draft [23.1149.01000] and a corresponding memorandum entitled *Summary of Reenactment of Provisions Relating to Distribution of Controlled Substances – LC# 23.1149.01000*. In response to questions, he noted:

- The retroactive application clause in Senate Bill No. 2015 (2023) could not be used in the proposed bill draft because the affected provision expired.
- The proposed change would become effective only upon ~~the~~ filing of the enacted bill with the Secretary of State.
- Convictions under the expired law could be jeopardized due to the nullification of the provision in Senate Bill No. 2015 (2023).

Mr. Bjornson presented a bill draft [23.1152.01000] and a corresponding memorandum entitled *Summary of Reenactment of Provisions Relating to the Clean Sustainable Energy Authority – LC# 23.1152.01000*.

Mr. Bjornson presented a bill draft [23.1150.01000] and a corresponding memorandum entitled *Summary of Reenactment of Provisions Relating to Joint Water Resource Boards and the Water Infrastructure Revolving Loan Fund – LC# 23.1150.01000*.

Mr. Bjornson presented a bill draft [23.1151.01000] and a corresponding memorandum entitled *Summary of Reenactment of Provisions Relating to the Infrastructure Revolving Loan Fund – LC# 23.1151.01000*.

Mr. Bjornson presented a bill draft [23.1138.01000] and corresponding memorandum entitled *Summary of Reenactment of Provisions Relating to the Effective Date for the Public Employees Retirement System Defined Contribution Plan Transition – LC# 23.1138.010000*.

Mr. Bjornson presented a bill draft [23.1153.01000] and a corresponding memorandum entitled *Summary of Reenactment of Provisions Relating to the Public Employees Retirement System Board Membership and Duties – LC# 23.1153.01000*.

Mr. Bjornson noted:

- Three sections of Senate Bill No. 2015 (2023), which Governor Burgum vetoed, are not included in the proposed bill drafts.
- Grants from the disaster fund for emergency snow removal services were not included in the proposed bill drafts because the grant funds were no longer needed.

~~Committee members discussed whether additional dialogue has occurred between the legislative branch and the judicial branch to determine if the proposed bills satisfy the Court's holding in *Board of Trustees of The North Dakota Public Employees' Retirement System v. North Dakota Legislative Assembly* as it relates to the single subject requirement. Senator Hogue noted because a court speaks only through its rulings, the opportunity for additional dialogue to obtain clarification is not possible.~~

In response to questions from the committee, Mr. Bjornson noted:

- The cost of the special session was not included in the 2023 budget.
- The bills presented do not contain any provision that was not contained in Senate Bill No. 2015 (2023).

In response to ~~a~~ questions from committee members, Mr. Allen Knudson, Legislative Budget Analyst and Auditor, Legislative Council, said an appropriation to defray the expenses of the special session could be adopted during the special session or the 2025 legislative session.

### LEGISLATIVE SPECIAL SESSION

Chairman Lefor noted several concerns from ~~fellow~~ legislators relating to time efficiency. He proposed the Legislative Management serve as the Delayed Bills Committee and Joint Rules Committee during the ~~legislative~~ special session. ~~He also thanked the Governor for calling the Legislative Assembly into special session.~~

~~Chairman Lefor requested Legislative Management discuss the following:~~

- ~~• Legislative Management serving as Delayed Bills Committee and Joint Rules Committee.~~
- ~~• The 3 proposed bill ideas from the executive branch for the legislative special session.~~
- ~~• The 14 proposed bills relating to the separation of Senate Bill 2015 (2023).~~
- ~~• The introduction of additional bills from fellow legislators.~~

~~Vice Chairman~~ Senator Hogue ~~provided additional comments relating to proposed bills. He~~ noted the Legislative Management is the appropriate gatekeeper regarding proposed bills given the ~~current~~ time constraints for the special session.

~~Members of Legislative Management~~ Committee members noted ~~the following concerns:~~

- ~~• Proper~~ There should be appropriate representation ~~offrom~~ both chambers ~~in special session~~ on standing committees.
- ~~Whether the current~~ The committee structure ~~is~~ must be sufficient ~~into managing~~ manage any additional bills ~~accepted~~ approved for introduction by the Legislative Management.
- The ~~Legislative Management~~ special session should focus on fixing Senate Bill No. 2015.
- ~~Not affording other~~ If the Governor is allowed to introduce bills, legislators ~~the same conditions as the executive branch~~ also should be permitted allowed to introduce bills.

~~In response,~~ Chairman Lefor noted:

- The Legislative Assembly has until the end of October to fix Senate Bill No. 2015 or the employees of the Office of ~~Budgetary~~ Management ~~will~~ and Budget may not receive a paycheck.
- ~~Legislative Management is currently facing staffing and logistical challenges.~~
- ~~In a perfect world~~ Although not all the ~~current~~ standing committees ~~would~~ will be ~~utilized~~ needed, however, ~~no~~ each legislator ~~should feel as though their voice has not been heard~~ will have an opportunity to

participate in the legislative process.

~~Any member of Legislative Management is welcome to make any motion.~~

It was moved by Representative O'Brien, and seconded by Senator Schaible, that any additional proposed bills would be limited to technical corrections to Senate Bill No. 2015 (2023) and must be approved by the Legislative Management

~~In response to the motion,~~ Chairman Lefor noted ~~that~~ Legislative Management leaders negotiated, in good faith, ~~had negotiated~~ with the ~~executive branch~~ Governor to review specific proposed items for the ~~legislative~~ special session. ~~The Legislative Management agreed to review the items in good faith.~~

~~Vice-Chairman Hogue provided additional comments relating to the decision by Legislative Management.~~

~~Members of Legislative Management~~ Committee members ~~voiced~~ expressed concerns with limiting ~~proposed~~ introduction of bills. ~~Other members agreed while agreeing~~ proposed bills should have a standard relating to urgency. ~~The Committee~~ members noted:

- The primary purpose of the ~~legislative~~ special session is to correct issues relating to Senate Bill No. 2015 ~~and not to support executive branch issues or other legislative branch issues.~~
- If additional bills are introduced, the ~~legislative~~ special session may not be finished within a week.

~~In response,~~ Chairman Lefroy Lefor ~~reminded the members the executive branch~~ noted:

- The Governor holds the power to call a special session. ~~He noted a regular~~
- A reconvened session would be ~~a nonstarter~~ problematic due to the requirement of a two-thirds majority vote for any laws passed to become effective immediately. ~~In good faith, Legislative Management negotiated with the executive branch to expand the scope of the special session to include the review of tax relief and infrastructure ideas from the executive branch.~~

~~Members disagreed with allowing new ideas from the executive branch while limiting new ideas from fellow legislators. In response, members suggested implementing a deadline for all new legislative bills. Legislative Management agreed to review any new bill ideas forwarded to Legislative Council prior to 5:00 p.m. Thursday, October 19<sup>th</sup>. Any proposed bills or idea approved but not reviewed at the Friday meeting would be reviewed by Legislative Management Monday, October 23<sup>rd</sup>.~~

- Representative O'Brien withdrew her motion and Senator Schaible withdrew his second.

It was moved by Senator Schaible, seconded by Senator Hogan, and carried on a roll call voted that ~~either~~ proposed bill drafts or concepts for bills for the legislative special session must be submitted to the Legislative Council by 5:00 p.m. on Thursday, October 19th. Senators Hogue, Davison, Hogan, Klein, Myrdal, and Schaible and Representatives Lefor, Bosch, Ista, O'Brien, Thomas, and Weisz voted "aye." Senator Mathern and Representatives Boschee and Koppelman voted "nay." ~~Senator Bekkedahl and Representative Johnson were absent.~~

## HOUSE AND JOINT RULES AMENDMENTS

Ms. Emily Thompson, Legal Division Director ~~Really Big Deal~~, Legislative Council, presented House and Joint Rules [23.9617.01000], Senate and Joint Rules [23.9618.01000], and a corresponding memorandum entitled *Explanation of Proposed Legislative Rule Changes*.

~~In response, the members of Legislative Management~~ A committee member noted the following concerns:

- ~~Committee~~ standing committee members should be appointed by the Legislative Management ~~opposed~~ rather than to the majority leadership.
- ~~Fellow legislators may take issue if the policy committee is not chosen by Legislative Management or a~~

~~larger group.~~

~~In response, Vice Chairman Hogue provided additional comments and rationale for allowing the elected leaders to appoint special session committee members.~~

- It was moved by Senator Klein, seconded by Senator Schaible, and carried on a roll call vote that the proposed rules amendments be recommended for adoption ~~as provided be accepted~~. Senators Hogue, Davison, Hogan, Klein, Myrdal, and Schaible and Representatives Lefor, Bosch, O'Brien, Thomas, and Weisz voted "aye." Senator Mathern and Representatives Boschee, Ista, and Koppleman voted "nay." ~~Senator Bekkedahl and Representative Johnson were absent.~~

### ARRANGEMENTS FOR SPECIAL SESSION

Mr. Bjornson provided an updated ~~d~~ regarding the arrangements for special session. He noted:

- Additional session employees including a desk force will be required. Arrangements have been made to fill the outstanding necessary positions ~~which include~~ including a journal reporter in the House of Representatives and 4 committee clerks.
- ~~Notice has been provided for e~~Committee rooms are being prepared, however and due to the heating and cooling system project, heating ~~and~~ cooling will not be available in the chambers ~~due to ongoing construction~~.
- ~~Once~~ The Legislative Management determines a time to convene special session, Legislative Council will begin scheduling committee hearings for the first day of session.

No further business appearing, Chairman Lefor adjourned the meeting at 2:03 p.m.

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John Bjornson  
Director

ATTACH: