

Sixty-eighth  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1539

Introduced by

Representatives Weisz, Lefor, M. Ruby, Vigesaa

(Approved by the Delayed Bills Committee)

1 A BILL for an Act to amend and reenact sections 54-35-02.4 and 54-52.1-04.16 of the North  
2 Dakota Century Code, relating to duties of the employee benefits programs committee and the  
3 public employees prescription drug coverage performance audit; to provide for a prescription  
4 drug coverage performance audit; and to provide for a legislative management report.

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

6 **SECTION 1. AMENDMENT.** Section 54-35-02.4 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **54-35-02.4. Employee benefits programs committee - Powers and duties.**

9 1. ~~The~~During each interim, the employee benefits programs committee shall consider  
10 and report on ~~thesethe~~ legislative measures and proposals over which ~~itthe committee~~  
11 takes jurisdiction and which affect, actuarially or otherwise, the retirement programs of  
12 state employees or employees of any political subdivision, and health and retiree  
13 health plans of state employees or employees of any political subdivision. A majority of  
14 the members of the committee, acting through the chairman, has sole authority to  
15 determine whether a legislative proposal affects a program. The committee shall make  
16 a thorough review of ~~any measure or each~~ proposal which ~~itthe committee~~ takes under  
17 its jurisdiction, including an actuarial ~~review~~report. The committee shall take  
18 jurisdiction over ~~any measure or a~~ proposal that authorizes an automatic increase or  
19 other change in benefits beyond the ensuing biennium which would not require  
20 legislative approval. The committee ~~must~~shall include in the report of the committee a  
21 statement that the proposal would allow future changes without legislative  
22 involvement. The committee shall report ~~itsthe~~ findings and recommendations of the  
23 committee, along with any necessary legislation, to the legislative management and to  
24 the legislative assembly.

- 1           2.    To carry out ~~its~~the responsibilities of the committee, the committee, or ~~its~~the designee  
2           of the committee, may:
- 3           a.    Enter contracts, including retainer agreements, with an actuary or actuarial firm  
4           for expert assistance and consultation. Each retirement, insurance, or retiree  
5           insurance program shall pay, from ~~its~~the program's retirement, insurance, or  
6           retiree health benefits fund, as appropriate, and without the need for a prior  
7           appropriation, the cost of ~~any~~an actuarial report required ~~by the committee~~under  
8           this section which relates to that program.
- 9           b.    Call on personnel from state agencies or political subdivisions to furnish such  
10           information and render such assistance as the committee may from time to time  
11           may request.
- 12           c.    Establish rules for ~~its~~the operation of the committee, including the submission  
13           and review of proposals and the establishing of standards for actuarial  
14           review~~reports~~.
- 15           3.    The committee may solicit draft measures and proposals from interested persons  
16           during the interim between legislative sessions, and ~~may~~ also may study measures  
17           and proposals referred to ~~it~~the committee by the legislative assembly or the legislative  
18           management.
- 19           4.    A copy of the committee's report concerning ~~any~~a legislative measure shall, if that  
20           measure is introduced for consideration by a legislative assembly, must be appended  
21           to the copy of that measure ~~which is referred to a standing committee~~.
- 22           5.    ~~A~~If a legislative measure affecting a public employees retirement program, public  
23           employees health insurance program, or public employee retiree health insurance  
24           program ~~may not be~~is introduced in either house ~~unless it is accompanied by~~without a  
25           report from the committee, the chairman and vice chairman of the employee benefits  
26           programs committee shall request an actuarial report from the program affected and  
27           shall provide the report to the standing committee to which the measure is referred. A  
28           majority of the members of the committee, acting through theDuring the legislative  
29           session, the employee benefits programs committee chairman, has and vice  
30           chairman, working together, have sole authority to determine whether ~~any~~a legislative  
31           measure or amendment affects a program under this subsection and subsection 6.

- 1           6. ~~Any~~During a legislative session, if an amendment is made during a legislative session-  
2           to a legislative measure ~~affecting~~which affects a public employees retirement program,  
3           public employees health insurance program, or public employee retiree health  
4           insurance program ~~may not be considered by a standing committee unless it is~~  
5           ~~accompanied by a report from,~~ the employee benefits programs committee chairman  
6           and vice chairman may request from the affected program an actuarial report on the  
7           amendment and shall provide the report to the standing committee to which the bill is  
8           referred.
- 9           7. ~~Any legislation~~Legislation enacted in contravention of this section is invalid ~~and of no~~  
10          ~~force and effect,~~ and any benefits provided under ~~such~~the legislation must be reduced  
11          to the level current ~~prior to~~before enactment of the legislation.

12          **SECTION 2. AMENDMENT.** Section 54-52.1-04.16 of the North Dakota Century Code is  
13          amended and reenacted as follows:

14          **54-52.1-04.16. Prescription drug coverage - Performance audits.**

- 15          1. Except for Medicare part D, prescription drug coverage, the board may not enter or  
16          renew a contract for prescription drug coverage, whether contracting directly with a  
17          pharmacy benefits manager, providing prescription drug coverage through a  
18          self-insurance plan, or contracting with a carrier, unless the contract authorizes the  
19          board ~~during~~for the term of the contract to conduct a performance audit of the  
20          prescription drug coverage and any related pharmacy benefits management services.  
21          For each contract for prescription drug coverage, the board shall conduct a  
22          performance audit under this section. The contract must provide:
- 23          a. The board must have full access to data regarding:
- 24                  (1) The total dollars paid to the pharmacy benefits manager by the carrier and  
25                  from all other sources under the contract with the carrier and the board;
- 26                  (2) The total amount of dollars paid to the pharmacy benefits manager by the  
27                  carrier which were not subsequently paid to a licensed pharmacy in the  
28                  state; and
- 29                  (3) Payments made to all pharmacy providers.
- 30          b. The board must have full access to data regarding the average reimbursement,  
31          by drug ingredient cost, dispensing fee, administration fee, and any other fee

- 1                   paid by a pharmacy benefits manager to licensed pharmacies with which the  
2                   pharmacy benefits manager shares common ownership or control or is affiliated.
- 3           c.   The board must have full access to data regarding the average reimbursement,  
4           by drug ingredient cost, dispensing fee, administration fee, and any other fee  
5           paid by a pharmacy benefits manager to pharmacies licensed in the state.
- 6           d.   The board must have full access to data regarding any direct and indirect fees,  
7           charges, or recoupment, or any kind of assessments, effective rates, or other  
8           price concessions imposed by the pharmacy benefits manager on pharmacies  
9           licensed with which the pharmacy benefits manager shares common ownership  
10           or control or is affiliated.
- 11           e.   The board must have full access to data regarding any direct and indirect fees,  
12           charges, or recoupment, or any kind of assessments, effective rates, or other  
13           price concessions imposed by the pharmacy benefits manager, on pharmacies  
14           licensed in the state.
- 15           f.   ~~The contract must provide that~~That all drug rebates, financial incentives, fees,  
16           and discounts, from all sources, must be disclosed to the board.
- 17           g.   The board must have full access to data to determine whether spread pricing  
18           occurs, and if spread pricing occurs, full access to data regarding the spread  
19           pricing.
- 20           h.   The board must have full access to the contract and any subcontract by the  
21           carrier and the pharmacy benefits manager or other entity regarding the plan  
22           members.
- 23           i.   The board must have access to all documents necessary for the board to  
24           conduct the performance audit under this section.
- 25           j.   That failure to comply with the terms of the contract relating to access to data is a  
26           breach of the contract with the board. Upon a finding of breach of contract under  
27           this subdivision, the board is entitled to liquidated damages in the amount of  
28           twenty thousand dollars per violation.
- 29           2.   The board shall use an independent auditor who has no conflict of interest with the  
30           carrier, pharmacy benefits manager, or board. Data and documents provided by the  
31           pharmacy benefits manager to the board may not be redacted or altered by the

1 pharmacy benefits manager. The board's auditor, the insurance department, and the  
2 ~~employee benefits programs committee~~legislative management may access any  
3 information the board may access under this section. All information accessed by the  
4 board, board's auditor, insurance department, or ~~employee benefits programs-~~  
5 ~~committee~~legislative management which is a trade secret is a confidential record. The  
6 pharmacy benefits manager shall provide all data and documents necessary to enable  
7 the board to calculate any compensation the pharmacy benefits manager pays to the  
8 public employees retirement system if a program or contract guarantee was not  
9 properly implemented. The pharmacy benefits manager shall disclose to the board all  
10 retained manufacturer administrative fees. This subsection does not limit the  
11 information required to be disclosed to the board under subsection 1.

- 12 3. Except for Medicare part D, if the board contracts directly with a pharmacy benefits  
13 manager or provides prescription drug coverage through a self-insurance plan, the  
14 contract must provide the pharmacy benefits manager shall disclose to the board and  
15 the board's auditor all rebates and any other fees that provide the pharmacy benefits  
16 manager with sources of income under the contract, including under related contracts  
17 the pharmacy benefits manager has with third parties, such as drug manufacturers.
- 18 4. Anything the board has access to under this section, the insurance department and  
19 ~~employee benefits programs committee~~haslegislative management have access to.

20 **SECTION 3. PUBLIC EMPLOYEES RETIREMENT SYSTEM - STATE AUDITOR -**  
21 **PRESCRIPTION DRUG COVERAGE PERFORMANCE AUDIT - REPORT TO LEGISLATIVE**  
22 **MANAGEMENT.** In lieu of the requirement under section 54-52.1-04.16 that the public

23 employees retirement system contract to conduct a prescription drug coverage performance  
24 audit of the main public employees retirement system health benefit plan for the 2021-23  
25 contract, the state auditor shall contract in accordance with chapter 54-10 to conduct a  
26 prescription drug coverage performance audit of the main public employees retirement system  
27 health benefit plan during the 2023-24 interim, in the same manner as provided for under  
28 section 54-52.1-04.16, for contract years 2021-23. The retirement board, carrier, and pharmacy  
29 benefits manager shall provide the state auditor with access to information in the same manner  
30 as provided for a performance audit under section 54-52.1-06. The state auditor may pursue the  
31 liquidated damages for failure to provide the auditor access to data for the performance audit

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- 1 conducted under this section. Performance audit fees, not to exceed \$375,000, for performance
- 2 audits performed under this section must be on a flat fee or hourly basis and be paid by the
- 3 public employees retirement system board. The state auditor shall provide reports to the
- 4 legislative management regarding contracts to conduct the prescription drug coverage
- 5 performance audits, performance audit results, and audit reports issued.