

TESTIMONY OF REBECCA FRICKE

House Bill 1371 – Pre-Medicare Plan Coverage for Retired Peace Officers

Good Morning, Mr. Chairman and members of the committee. My name is Rebecca Fricke and I am the Executive Director of the North Dakota Public Employees Retirement System, or NDPERS. I appreciate the committee taking the time to analyze House Bill 1371, which requires a subgroup of the NDPERS health insurance plan be available to eligible retired peace officers that are not yet eligible for Medicare. I am here today on behalf of the NDPERS Board to provide information in a neutral capacity so the policy makers are able to make an informed decision regarding the bill.

House Bill 1371 does the following:

- Creates a new subgroup for eligibility in the NDPERS health insurance plan specific to retired peace officers who are not eligible for Medicare.
 - Requires retired peace officer have worked 20 or more years of employment as a peace officer within the State or a political subdivision, working at least 32 hours per week for 20 or more weeks per year
 - Defines peace officer under provisions of NDCC 12-63-01
 - Does not require participation in NDPERS retirement programs to be eligible
 - Retired eligible peace officer cannot be charged any portion of premium

Our consultant, Deloitte Consulting, provided analysis which is attached to my testimony. A few overview points include:

- If passed, it is likely the size of the retired peace officer subgroup will increase over time, possibly resulting in additional premiums, which will need to be accounted for when developing overall rates.
- Overall financial health of the plan may also be affected by the increased costs associated with covering the new subgroup. The long-term sustainability of covering the full premium for retired peace officers will need to be evaluated.

- The current premiums being charged to the remaining pre-Medicare retirees (those that retired prior to July 1, 2015 and former legislators) was used in this analysis.
- There is not claims information available for the population of peace officers. Therefore, Deloitte assumed that this population will be consistent with the claims experience of the current pre-Medicare retiree population of NDPERS. If claim variations result in different premiums for this new subgroup, the cost estimates may differ.

Deloitte estimates that the bill would have a financial impact on the NDPERS health insurance plan and estimates an increase in premium of approximately 1.9%, or 16,720,000, in the 2025-2027 biennium. The financial impact was derived based upon information provided by NDPERS regarding the current number of actively employed peace officers and retired peace officers within the NDPERS Public Safety and Highway Patrol Plans. Additionally, data from the Bureau of Justice Statistics was used to estimate additional peace officers that may be eligible that are not part of the NDPERS retirement plans.

Another area I wanted to share with the Committee relates to previous legislation, House Bill 1058, that was passed during the 2013 legislative session. The legislation closed our pre-Medicare retiree plan to NDPERS members that retired after July 1, 2015. Therefore, current NDPERS retirees that are not yet eligible for Medicare are only eligible to stay on the health insurance plan if covered as an active employee and only for the 18 months of COBRA available to them. After COBRA expires, the retiree must obtain coverage outside of the NDPERS health insurance and then is able to return upon coming eligible for Medicare. The only exception to this is former legislators.

The driver of this previous legislation was due to an impact that having retirees on the pre-Medicare retiree plan had on the financial statements of the State. The rates for the pre-Medicare retiree population are set in statute under NDCC 54-52.1-02. These rates are not based upon the actuarial requirements of the group. These rates, while high, do not reflect the full cost of that subgroup. If the rates are set based upon the actuarial requirement for the pre-Medicare group, they would be even higher. The difference between the statutory rate and the actuarial rate is called an implicit subsidy in the plan. In 2013, the implicit subsidy for each retiree in this subgroup was \$95 per month.

Relating to the financial reporting of this implicit subsidy, the Governmental Accounting Standards Board (GASB) finalized statements 43 (GASB 43 for funded OPEB plans) and 45 (GASB 45 for employers) and are required reporting in its Annual Comprehensive Financial Report, or ACFR. The statements' objectives are to establish uniform standards of financial reporting by state and local governmental entities for

post-employment benefit plans other than pension benefits, which are referred to as OPEB plans. This included post-employment health care benefits such as the one provided to North Dakota pre-Medicare retirees at that time. Pursuant to these requirements, the State must report the present value of this implicit subsidy as an unfunded liability on the State's ACFR. In 2013, the amount of the implicit subsidy that had to be reported was \$65.2 million. Again, the amount per contract that was considered an implicit subsidy was \$95 per month per pre-Medicare retiree contract.

With the passing of HB 1058 in 2013, the eligible population of the pre-Medicare plan was reduced as new retirees could not enroll if they retired after July 1, 2015 and eventually, the majority of the existing retiree population aged out of the subgroup as they became eligible for Medicare. Therefore, this implicit subsidy was reduced to the point that in 2019, the amount was considered incidental and was no longer required to be reported on the State's financial reporting statements. NDPERS also no longer needed to retain a consultant to calculate the implicit subsidy for reporting on these statements.

I mention this as NDPERS has confirmed with Ice Miller (analysis also attached to testimony), our federal tax consultant, that should HB 1371 pass, opening the pre-Medicare plan to retired eligible peace officers, an implicit subsidy would result for each retired peace officer that became part of the plan. However, rather than the \$95 per contract per month subsidy of our previous pre-Medicare population that resulted in the closing of the plan, the entire premium being paid will be considered an implicit subsidy since the retired peace officer may not be charged any portion of premium. For example, if it is determined that the current pre-Medicare retiree premium is to be used, this would be \$1,194.24 for single coverage, \$2,385.22 for family of 2 coverage and \$2,980.72 for family of 3 or more coverage. Note these are monthly premiums. It is anticipated that based on the claims experience of the group, the premium necessary to be paid (not by retiree) would be higher than these subsidized premiums, which may result in an even higher implicit subsidy.

Given this and should this bill pass, the State will again need to begin reporting the implicit subsidy as an unfunded liability on the State's financial statement or ACFR. In addition, NDPERS would need to retain a consultant to evaluate the implicit subsidy and calculate the amount as an unfunded liability that the State needs to report. Given one has not been retained since 2019, at this time we are unsure the cost of this type of consultant and would need to go through a competitive request for proposal process to retain one. It is unknown what the cost of this process would be, or the amount that NDPERS would need to pay a consultant to perform the calculation.

Mr. Chairman, I appreciate the committee taking the time to learn more about the impact this bill will have to the State. This concludes my testimony, and I'd be happy to answer any questions the committee may have.

Memo

Date: January 21, 2025

To: Rebecca Fricke - Executive Director, North Dakota Public Employees Retirement System
Representative Austen Schauer - Chair, Legislative Employee Benefits Programs Committee, North Dakota State Government

From: Tim Egan, Dan Plante, Ford Edgerton, and Karno Sarkar - Deloitte Consulting LLP

Subject: **FINANCIAL REVIEW OF PROPOSED BILL 25.0558.02000**

Deloitte Consulting LLP (Deloitte ¹) was engaged to review the proposed legislation and the potential financial impact to the Uniform Group Insurance Program (Program) administered by the North Dakota Public Employees Retirement System (NDPERS), as well as other considerations that may contribute to the evaluation of the legislation.

The information included in the review relies on data provided by NDPERS, as well as publicly available data and industry studies. From the data provided by NDPERS, some of these data sources were developed by NDPERS, while others were prepared or created by third parties and delivered to NDPERS.

As part of the review, all data were reviewed for reasonableness, but an audit was not performed on the data. To the extent the data contain errors or anomalies that were unknown at the time the data were provided, the analysis may be affected by those issues.

OVERVIEW OF PROPOSED BILL

The Bill amends and reenacts section 54-52.1-02 of the North Dakota Century Code relating to the formation of the Uniform Group Insurance Program into subgroups. The amendment revises the population of the Uniform Group to include retired peace officers and specifies that retired peace officers are exempt from the existing medical and hospital benefits coverage group. The amendment then creates a new subgroup for peace officers who retired after July 1, 2015.

The new subgroup is made up of retired peace officers who have 20 or more years of employment as a peace officer, are not eligible for Medicare, and are determined by their employer to be eligible for retirement. These peace officers are eligible to receive medical and hospital benefits coverage through the Uniform Group Insurance Program and cannot be charged any amount of premium.

The amendment further defines a peace officer to be a retiree who was a peace officer under section 12-63-01. Regardless of participation in a Public Employees Retirement System program, this individual must have been employed in a permanent position as a peace officer by North Dakota, or by a political subdivision of North Dakota. Additionally, the individual must satisfy the following employment length terms: thirty-two hours or more per week, twenty or more weeks per year, and twenty or more years as a peace officer.

IMPLICATIONS OF BILL

The intent of the proposed Bill is to give retirees that have at least twenty years of employment as a peace officer the ability to join the Uniform Group Insurance Program's pre-Medicare plan and not pay premiums towards coverage.

Currently, retired peace officers already in the Program are part of the pre-Medicare plan, and they are subject to the same premiums as the rest of the Program's members. This Bill will move retired peace officers who retired after July 1, 2015, and meet the criteria into their own subgroup. The new subgroup is exempt from the statutorily set premium and will need to have it estimated based on their claims experience. However, the premium set will be entirely covered by the Uniform Group Insurance Program. Like the pre-Medicare plan, this new subgroup will also be fully insured, and so the program will cover all the costs.

Retired peace officers who meet the criteria and are already in the Program will have their premiums covered completely by the Uniform Group Insurance Program. Retired peace officers who meet the criteria and are not in the Program will be able to join, and their premiums will also be covered by the Program.

With premium costs being fully covered, there will likely be an increase in the size of the retired peace officer subgroup. Therefore, a potential increase in the size of the retired peace officer population will result in additional premiums, which will have to be accounted for when developing the overall rates.

The overall financial health of the Program may also be affected by the increased costs associated with covering the new subgroup. The long-term sustainability of covering the full costs for retired peace officers will need to be evaluated, and the Program may need to assess the potential impact on the financial reserves and consider adjustments to funding strategies.

ESTIMATED FINANCIAL IMPACT

Based on the analysis, it is anticipated that the proposed legislation will have a financial impact on the Uniform Group Insurance Program. It is estimated that the financial impact of the proposed legislation is approximately \$16,720,000 (approximately 1.9% of the total premium) in the 2025-2027 biennium ending 6/30/2027.

It is estimated that there are currently 1,535 actively employed peace officers and 269 total retired peace officers within the NDPERS Public Safety and Highway Patrol retirement plans. Our analysis uses these two groups to determine the distribution of peace officer characteristics in North Dakota. Some of the additional primary modeling considerations include but are not limited to: total peace officer population within North Dakota, retirement dates of the retired peace officers within the NDPERS Public Safety and Highway Patrol retirement plans, number of peace officers not within the Program who may transfer into the Program, proportion of current active peace officers who may retire in the biennium, division into coverage tier according to the current distribution of peace officer characteristics in the Program, and the source for the law enforcement population in North Dakota.

Peace Officer Population

According to the Bureau of Justice Statistics (BJS), there were approximately 2,637 full-time state and local law enforcement employees in North Dakota in 2018.^[1] To estimate the employees for 2025, the US Census data for 2018-2024 was used for the US and North Dakota populations in 2025. The Bureau of Labor Statistics (BLS) data from 2023 was utilized to estimate the ratio of North Dakota law enforcement over the entire North Dakota population. The BJS estimate of full-

time state and local law enforcement employees was trended forward using the change in the BLS ratios over time to arrive at approximately 3,276 in 2025.^[2-9]

The ratio of North Dakota law enforcement over the entire North Dakota population from 2023 was assumed to remain stable across 2024-2025. Additionally, the BJS estimates a standard error of seventy-five individuals in its 2018 estimate of the full-time law enforcement employee population in North Dakota, which could affect these estimates.

Within the current distribution of peace officer characteristics in the Program, the population of eligible retired peace officers is approximately 15.5% of the population of active peace officers. When applying this assumption to the 2025 estimated full-time law enforcement population, it is estimated there are approximately 508 eligible retired peace officers in 2025.

Retirement Dates

The retirement dates for the retired peace officers within the NDPERS Public Safety and Highway Patrol retirement plans were calculated assuming that all retirees began employment at 21 (since the employee start dates were not available). This results in approximately 76.5% of the eligible retired peace officers being eligible for the new subgroup. Using this proportion, approximately 388 of the eligible retired peace officers in North Dakota in 2025 qualified for the new subgroup.

Migration into the Program

While all individuals within the Program will likely be moved to this new subgroup, it is assumed that only 50% of eligible retired peace officers not within the Program will transfer over from their current coverage. This results in a final approximation of 285 retired peace officers in the new subgroup who will have their premiums fully covered in 2025.

Retirement in the Biennium

Because the Program will be covering all premiums, it is assumed that all actively employed peace officers will join the Program upon retirement. We assumed that only 5% of the actively employed peace officer population who have twenty or more years of service will retire each year. Therefore, it is estimated that 27 actively employed peace officers will retire and join the new subgroup in 2025. Removing the 27 actively employed peace officers who retire in 2025 from the eligible actively employed population and including actively employed peace officers who, after one year, have twenty or more years of service, it is estimated that 29 additional actively employed peace officers will retire and join in 2026. Incorporating the newly-retired peace officers to those anticipated to transfer to the Program yields a final estimate of approximately 312 in 2025 and approximately 341 in 2026.

Coverage Tier

We are assuming that the distributions for the final approximations of these two groups (current retirees and active employees who will retire) are consistent with the current distribution of peace officer characteristics in the Program. For the purpose of applying premiums, the current distribution is applied to the final approximations from the BJS population statistic.

Premiums

Our analysis utilizes anticipated 2025-2027 non-Medicare retiree premium rates by tier as an estimate for the peace officer retiree premiums in conjunction with the estimated enrollment assumptions noted earlier to develop the financial estimate. The fiscal impact to the upcoming biennium is estimated to be approximately \$16,720,000 (1.9% of total premium) for the 2025-2027 biennium.

Other Sources

Estimates for the full-time law enforcement population in North Dakota vary based on alternate data sources. For example, data available by the North Dakota Attorney General indicate approximately 28% less total law enforcement officers, whereas the Bureau of Labor Statistics indicates approximately 19% more officers.

However, the North Dakota Attorney General's estimate uses the Uniform Crime Reporting report, which may not contain all peace officers in North Dakota such as university law enforcement, transit police, or other special jurisdiction agencies. Similarly, the Bureau of Labor Statistics includes all protective service occupations and requires self-selection of subgroups to include in the estimate. Potentially, not all employees within the selected subgroups will be peace officers, which could result in an overestimate of the total peace officer population within North Dakota.

Other Considerations

The preceding analysis was completed using the current population of peace officers within the Uniform Group Insurance Program to estimate the statewide peace officer retiree distribution by plan tier. However, if the actual coverage distribution of retiree peace officers differs from that in the Program, actual costs may differ from the current estimate.

Throughout the analysis, it is assumed that no members are phased out during the biennium, either due to mortality or election, because of the relatively short time period.

Additionally, there is currently no claims information available for the population of peace officers. Therefore, it is assumed that claims experience will be consistent with the existing population of non-Medicare retirees within the Program. Furthermore, if claims variations result in different premiums for the new subgroup, the cost estimates may differ.

Finally, this analysis assumes that all law enforcement employees are peace officers. The cost estimates could change if the actual number of peace officers differs from the number of reported law enforcement officers.

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^[1] Bureau of Justice Statistics, Census of State and Local Law Enforcement Agencies, 2018 – Statistical Tables, <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cs11ea18st.pdf>

^[2] U.S. Census Bureau, "Population, Population Change, and Estimated Components of Population Change: April 1, 2010 to July 1, 2019 (NST-EST2019-alldata)," State Population Totals and Components of Change: 2010-2019, < <https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-total.html>>, accessed on January 14, 2025.

^[3] U.S. Census Bureau, "Annual Population Estimates, Estimated Components of Resident Population Change, and Rates of the Components of Resident Population Change for the United States, States, District of Columbia, and Puerto Rico: April 1, 2020 to July 1, 2024 (NST-EST2024-ALLDATA)," State Population Totals and Components of Change: 2020-2024, < <https://www.census.gov/data/tables/time-series/demo/popest/2020s-state-total.html>>, accessed on January 14, 2025.

^[4] U.S. Bureau of Labor Statistics, "May 2018 State," Occupational Employment and Wage Statistics (OEWS) Tables, < <https://www.bls.gov/oes/tables.htm> >, accessed on January 14, 2025.

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^[5] U.S. Bureau of Labor Statistics, "May 2019 State," Occupational Employment and Wage Statistics (OEWS) Tables, < <https://www.bls.gov/oes/tables.htm> >, accessed on January 14, 2025.

^[6] U.S. Bureau of Labor Statistics, "May 2020 State," Occupational Employment and Wage Statistics (OEWS) Tables, < <https://www.bls.gov/oes/tables.htm> >, accessed on January 14, 2025.

^[7] U.S. Bureau of Labor Statistics, "May 2021 State," Occupational Employment and Wage Statistics (OEWS) Tables, < <https://www.bls.gov/oes/tables.htm> >, accessed on January 14, 2025.

^[8] U.S. Bureau of Labor Statistics, "May 2022 State," Occupational Employment and Wage Statistics (OEWS) Tables, < <https://www.bls.gov/oes/tables.htm> >, accessed on January 14, 2025.

^[9] U.S. Bureau of Labor Statistics, "May 2023 State," Occupational Employment and Wage Statistics (OEWS) Tables, < <https://www.bls.gov/oes/tables.htm> >, accessed on January 14, 2025.

MEMORANDUM

TO: Rebecca Frick, North Dakota ERS
FROM: Christopher S. Sears, Ice Miller LLP
DATE: January 21, 2025
RE: Bill Draft 558

This memorandum is given to you in confidence and with the attorney-client privilege. We have not delivered or mailed any copies of this memorandum to anyone else, other than those individuals noted in this memorandum. You should disclose the contents of this memorandum only to those employees, officers, or trustees who need to know the contents in order to make informed decisions on the matters discussed herein.

You asked us to review Bill Draft 558 (attached), which is a bill that would require the North Dakota Public Employees Retirement System ("NDPERS") to provide health insurance coverage to peace officers within the State who retire with 20 years of employment. Under the Bill Draft, a peace officer would not have to be enrolled in NDPERS to be eligible for this benefit. Eligible peace officers will not be charged any premium for the coverage. You asked for our observations on whether the addition of this benefit would require reporting under the Governmental Accounting Standards Board ("GASB") guidelines and whether we see other issues from a federal tax and compliance standpoint.

GASB. I asked our actuary, Eric Dawes, to take a look at the Bill Draft and provide his thoughts on your question related to whether the Bill Draft would result in an implicit or explicit subsidy that would need to be reported for GASB purposes. In short, it is his view that it will. It appears that since 2015, the need to report any implicit subsidy has diminished because the pool of individuals who remained eligible for the pre-Medicare health care coverage has diminished significantly. However, with the addition of an entire class of individuals who will be newly eligible – and who will not be responsible for any portion of the premium – a new implicit subsidy will exist that will need to be reported. Your e-mail further asks for the potential impact of this. We believe that this additional question would need to be addressed by the plan's health care actuary based on the population that could enter the plan and the current costs under the plan.

Trust Document Compliance. We do not have a copy of any trust document that might exist that is the funding vehicle for retiree health care coverage. To the extent there is one, it should be reviewed to ensure that its language is broad enough to support paying for the cost of health care coverage for the peace officers (*e.g.*, ensure that the language is not limited to certain departments of State government or certain classes of employees that would not include peace

officers). You will also need to ensure that the trust is not limited to paying for health care costs for individuals who are receiving a retirement benefit from NDPERS.

Non-Discrimination for Self-Funded Health Plans. There could be a theoretical nondiscrimination issue, but it probably does not exist. Under Internal Revenue Code Section 105(h), a self-funded health plan (even one sponsored by a governmental entity) may not discriminate in favor of highly compensated individuals. Generally, a highly compensated individual is one who is in the top 25% of employees in terms of compensation. If there is a disproportionate amount of highly compensated individuals to whom coverage is offered compared to the employer's non-highly compensated workforce, then the highly compensated individuals could be taxed on their health care claims. It would also be necessary to look at the classes of employees covered to ensure providing the coverage to peace officers with no premium obligation would not violate nondiscrimination rules. We would assume that, when looking at the State's entire retiree population and the amount of highly compensated individuals who are not going to be offered the coverage, the nondiscrimination rules would likely not be implicated, but they should be considered.

Governmental Plan Status. The final issue we might raise relates to maintaining the governmental status of the health plan. Would all of the peace officers clearly be employed by a governmental entity? In other words, would any of the peace officers be employed by any quasi-governmental or non-governmental entities? If any are not clearly employed by an obvious governmental entity, it would be important to look at the entities that employ them to ensure that including the employees would not compromise the governmental status of the health plan.

Conclusion. Other than these points, we do not see any other material federal issues related to offering retiree health coverage to peace offers as proposed in the attached Bill Draft. If you would like to discuss our observations or have questions, please do not hesitate to let me know.