

2021 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1245

2021 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

HB 1245 (8:23 a.m.)
2/11/2021

Relating to public employee uniform group insurance plans; to provide for application; and to declare an emergency

Chairman Kasper opened the hearing at 8:23 a.m. **Vice Chairman B. Koppelman** took over.

Representatives	Roll Call
Representative Jim Kasper	P
Representative Ben Koppelman	P
Representative Pamela Anderson	P
Representative Jeff A. Hoverson	P
Representative Karen Karls	P
Representative Scott Louser	P
Representative Jeffery J. Magrum	P
Representative Mitch Ostlie	P
Representative Karen M. Rohr	P
Representative Austen Schauert	P
Representative Mary Schneider	P
Representative Vicky Steiner	P
Representative Greg Stemen	P
Representative Steve Vetter	P

Discussion Topics:

- Group Insurance Plan Contract Decision-Making

Chairman Kasper introduced and testified in favor.

Scott Miller, Executive Director, NDPERS, testified in opposition, #6215.

Chairman Kasper ended at 9:02 a.m.

Carmen Hart, Committee Clerk

TESTIMONY OF SCOTT MILLER

House Bill 1245 – Group 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 1245.

HB 1245 would insert the Legislative Budget Section into the decision-making process for all of the contracts we have under the uniform group insurance program in chapter 54-52.1, including health, dental, vision, and consultants. To see the result of this bill, we could use our recent health plan request for proposals (RFP) as an example. 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, among others, for awarding an initial contract:

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.

In fulfilling its administrative function of executing the provisions of NDCC chapter 54-52.1, the Board followed all the statutory requirements for the RFP process. The end result of that Legislatively-created process was that the Board determined that awarding the contract to Sanford Health Plan (SHP) on a modified fully-insured basis was in the best interests of the state and our participants.

Once that decision was made, we provided the Governor's office with not only the proposed premium increase, but a number of benefit improvements that would bring the

plan benefits closer to a non-grandfathered plan, and their cost. The Governor provided the premium information to the Legislative Assembly in his budget recommendation for each agency. The Legislative Assembly is now making the final determination regarding the plan premium as it considers each agency's budget. Only after the Legislative Assembly has made that final premium determination we will finalize the plan structure and the resulting premium with SHP.

House Bill 1245 would change that process. HB 1245 would require the Board to go through the above-described RFP process, but instead of making the final decision, the Board would send the RFP materials and a recommendation to the Budget Section for review and a final decision on which, if any, vendor to hire. As currently written, HB 1245 would require that new process for not only all of the initial bid award decisions, but also any renewal of any contract awarded under chapter 54-52.1. For this Committee's information, the NDPERS Board considered 30 different issues over the course of 20 different meetings in 2019-2020.

We do not have a concern with working the Budget Section review and decision into the decision-making timeline, other than for our Part D plan. The premium for the Part D plan is heavily dependent on the subsidy information provided by the federal Centers for Medicare and Medicaid Services (CMS). CMS typically does not publish the subsidy information until the end of July each year. Under our contract, our Part D provider must notify us of its proposed premium for the next year's renewal within two weeks of that publishing date. If the premium is acceptable, then under this bill we would forward that information on to the Budget Section for approval. That's not a problem, unless the Budget Section does not approve the renewal.

If we did not renew with the provider, we would have a very narrow timeline in order to complete an RFP process. Federal law requires us to provide our Part D participants with notice regarding a change in the Part D vendor for the next year by October 15th. If the Budget Section notified us on August 15th that it was not accepting the renewal, we'd have two months to initiate and complete the RFP process, make a recommendation, and have the Budget Section review that decision and affirm or decline to follow the recommendation. We are concerned that may be too ambitious.

We are also concerned about any possible impact the North Dakota Supreme Court decision in N.D. Legislative Assembly, et al. v. Burgum, 2018 ND 189, might have on this bill. In that case, the North Dakota Supreme Court held that certain actions taken by the Legislative Assembly violated the anti-delegation and separation of powers doctrines in the North Dakota Constitution. Because House Bill 1245 could be interpreted as delegating an executive function to a subset of the Legislative Assembly, as in the above case, we wanted to be sure the Legislative Assembly was aware of that concern as it considered this bill.

2021 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

HB 1245 (11:03 a.m.)
2/11/2021

Relating to public employee uniform group insurance plans; to provide for application; and to declare an emergency.

Chairman Kasper opened the meeting 11:02 a.m.

Representatives	Attendance
Representative Jim Kasper	P
Representative Ben Koppelman	P
Representative Pamela Anderson	P
Representative Jeff A. Hoverson	P
Representative Karen Karls	P
Representative Scott Louser	P
Representative Jeffery J. Magrum	P
Representative Mitch Ostlie	P
Representative Karen M. Rohr	P
Representative Austen Schauer	P
Representative Mary Schneider	P
Representative Vicky Steiner	P
Representative Greg Stemen	P
Representative Steve Vetter	P

Discussion Topics:

- Committee Work

Rep. Kasper presented amendment 21.0148.03002

Rep. Schauer moved to adopt amendment 21.0148.03002

Rep. Steiner second

Voice vote - motion carried

Rep. Steiner moved do pass as amended

Rep. Hoverson second

Representatives	Vote
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Pamela Anderson	N
Representative Jeff A. Hoverson	Y
Representative Karen Karls	N
Representative Scott Louser	Y
Representative Jeffery J. Magrum	Y
Representative Mitch Ostlie	Y
Representative Karen M. Rohr	Y
Representative Austen Schauer	Y
Representative Mary Schneider	Y
Representative Vicky Steiner	Y
Representative Greg Stemen	Y
Representative Steve Vetter	Y

Motion carried 12-2-0

Rep. Schauer will carry the bill

Chairman Kasper closed the meeting 11:13 a.m.

Carmen Hart, Committee Clerk by Anna Fiest

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2/11/21

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1245

Page 1, line 2, remove "54-52.1-04.7, 54-52.1-04.8,"

Page 1, line 3, after "plans" insert "for health benefits"

Page 1, line 3, after the first semicolon insert "and"

Page 1, line 3, remove "; and to declare an"

Page 1, line 4, remove "emergency"

Page 1, remove lines 6 through 23

Page 2, replace lines 1 through 27 with:

"SECTION 1. AMENDMENT. Section 54-52.1-04 of the North Dakota Century Code is amended and reenacted as follows:

54-52.1-04. Board to contract for insurance - Budget section approval.

1. The board shall receive bids for the providing of hospital benefits coverage, medical benefits coverage, life insurance benefits coverage for a specified term, and employee assistance program services; may receive bids separately for all or part of the prescription drug benefits coverage component of medical benefits coverage; and except as otherwise provided under this section shall accept one or more bids of and contract with the carriers the board determines best serve the interests of the state and the state's eligible employees. Solicitations must be made not 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 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.
 - f. The price and contract guarantees.

2. The board may reject any or all bids received under this section. If the board rejects all bids received, the board shall again solicit bids as provided in this section.
3. For a bid for hospital benefits coverage, medical benefits coverage, or prescription drug benefits coverage, the board may not accept one or more bids of a contract with the carriers unless the budget section has approved the bids.
- a. Under this subsection, after the board identifies which bids of carriers, if any, the board determines best serve the interests of the state and the state's eligible employees, the board shall forward a recommendation and all the bids to the budget section. The board may recommend rejection of one or more bids received under this section. Upon receipt of the board's recommendation, the budget section shall determine which bid, if any, will best serve the interests of eligible employees and the state. In identifying and determining which bid, if any, will best serve the interests of eligible employees and the state, the budget section shall give adequate consideration to the following factors:
- (1) The economy to be affected.
 - (2) The ease of administration.
 - (3) The adequacy of the coverages.
 - (4) The financial position of the carrier, with special emphasis on the solvency of the carrier.
 - (5) 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.
 - (6) The price and contract guarantees.
- b. The budget section may reject any or all bids received under this subsection. If the budget section rejects all bids received, the board again shall solicit bids as provided in this section. If the budget section does not reject all bids received, the board shall enter a contract with the bidder selected by the budget section under this section.
- c. In preparing a bid proposal and evaluating a bid under this subsection, the budget section may use the services of a consultant on a contract basis so the bids received may be compared uniformly and evaluated properly.
4. Under sections 54-52.1-04.1 and 54-52.1-04.2, following approval by the budget section, the board may contract for health benefits coverage through a health maintenance organization or establish a self-insurance health plan."

2/11/21

Page 3, remove lines 27 through 31

Page 4, remove lines 1 through 12

Page 4, line 16, remove "approved by the"

Page 4, line 17, remove "budget section, must be"

Page 5, line 1, after "under" insert "subsection 3 of"

Page 5, line 12, remove "The board may not enter a contract for"

Page 5, remove lines 13 and 14

Page 5, line 23, overstrike "The" and insert immediately thereafter "Under this subsection, the"

Page 5, remove line 31

Renumber accordingly

CF
2/11/21

REPORT OF STANDING COMMITTEE

HB 1245: Government and Veterans Affairs Committee (Rep. Kasper, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1245 was placed on the Sixth order on the calendar.

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3. For a bid for hospital benefits coverage, medical benefits coverage, or prescription drug benefits coverage, the board may not accept one or more bids of a contract with the carriers unless the budget section has approved the bids.
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 - (5) 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.
 - (6) The price and contract guarantees.
 - b. The budget section may reject any or all bids received under this subsection. If the budget section rejects all bids received, the board again shall solicit bids as provided in this section. If the budget section does not reject all bids received, the board shall enter a contract with the bidder selected by the budget section under this section.
 - c. In preparing a bid proposal and evaluating a bid under this subsection, the budget section may use the services of a consultant on a contract basis so the bids received may be compared uniformly and evaluated properly.
4. Under sections 54-52.1-04.1 and 54-52.1-04.2, following approval by the budget section, the board may contract for health benefits coverage through a health maintenance organization or establish a self-insurance health plan."

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Renumber accordingly

2021 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1245

2021 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Room JW216, State Capitol

HB 1245
3/18/2021

Relating to public employees inform group insurance plans for health benefits; provide for application.

Chair Vedaa opened the hearing at 10:00 AM with Sen Vedaa, Meyer, Elkin, K Roers, Weber, Wobbema, and Marcellais present.

Discussion Topics:

- Budget Section responsibility
- 2-year renewal – PERS health plan
- Competing bids
- Separation of powers doctrine

Rep Kasper introduced the bill #10015

Scott Miller – Ex Dir ND PERS testified opposed #9919

Nick Archuleta – President ND United testified opposed #9977

Additional written testimony:

Rebecca Fricke- opposed #9865

Derrick Hobein – opposed #9787

Adjourned at 10:38 AM

Pam Dever, Committee Clerk

I have attached Deloitte's analysis of the current version of HB 1233. As you can see, they maintain that the audit requirements within HB 1233 remain so broad that they will encompass parts or all of five different "typical" PBM audits. They provided information on what they believe is an accurate range of the market price for each of those types of audits. As with our initial fiscal note, we took the minimum from that range for each of the audits and added them together to get the \$375,000 figure. Since you did take out the audit requirements for our Part D providers, we eliminated the cost of auditing two additional providers. So the fiscal note went from \$1,125,000 to \$375,000.

You had also asked for information on the State's health plan premium spend, and the specific premium paid, for the past five bienniums. That information is below:

NDPERS State Health Plan Premiums

<u>Biennium</u>	<u>Monthly State Premium</u>	<u>Biennium Total Premium</u>
2019-21*	\$1,426.74	\$495,238,575 * Estimated
2017-19	\$1,240.82	\$429,581,811
2015-17	\$1,130.22	\$411,419,294
2013-15	\$981.68	\$361,669,564
2011-13	\$886.62	\$323,497,493
2009-11	\$825.66	\$298,066,563

You had also asked for some information on our deferred compensation and flex-comp programs, which is below.

Deferred Compensation Participating Employer Count

City	51
County	30
District Health Unit	15
Other Political Subdivisions	38
School District	31
State	98
	263

Note that only 227 of these employers have employees that are currently participating. Because of that, we only included the 227 count in our earlier information to you during the committee meeting last week.

TESTIMONY OF SCOTT MILLER

House Bill 1245 – 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 1245.

HB 1245 would insert the Legislature's Budget Section 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, among others, for awarding an initial contract:

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.

House Bill 1245 amends the RFP statutes to provide, "the board may not accept one or more bids of a contract with the carriers unless the budget section has approved the bids"; and, "[u]pon receipt of the board's recommendation, the budget section shall

determine which bid, if any, will best serve the interests of eligible employees and the state.” Thus, HB 1245 removes the decision-making from the NDPERS Board and gives it to the Legislature’s Budget Section.

Transferring the executive function of executing those statutory provisions to a Legislative committee is arguably a violation of the North Dakota Constitution, specifically the Separation of Powers doctrine and potentially the Anti-Delegation doctrine. In N.D. Legislative Assembly, et al. v. Burgum, 2018 ND 189 (“Legislature v. Burgum”), the North Dakota Supreme Court examined a delegation very similar to that which is proposed in HB 1245.

In that case, the Supreme Court considered the Governor’s veto of a provision found within House Bill 1020, passed during the 2017 Legislative Session. House Bill 1020 was the Water Commission’s budget, and contained a grant of authority to the Water Commission that was similarly subject to Budget Section approval: “The funding designated in this section is for the specific purposes identified; however, the state water commission may transfer funding among these items, subject to budget section approval and upon notification to the legislative management’s water topics overview committee.” Id. at 15 (emphasis added). The Governor vetoed the “subject to” phrase underlined in the quote.

The North Dakota Supreme Court held that the veto of that phrase was ineffective. However, the Court went on to state that the phrase itself was unconstitutional for two different reasons.

The Court first looked at whether the legislative delegation of responsibility to the Budget Section was a violation of the anti-delegation doctrine. That doctrine states that “[t]he Legislative Assembly may not delegate to another body the power to make law—to legislate—but it may bestow authority to execute the laws it enacts.” Id. at 20 (citing Ralston Purina Co. v. Hagemester, 188 N.W.2d 405, 411 (N.D. 1971)). The Supreme Court determined that the Legislative Assembly attempted to do so in granting the Budget Section the above authority, and declared the provision unconstitutional. Id. at 22-23.

The Supreme Court went on to examine whether the delegation was also a violation of the separation of powers doctrine. The separation of powers doctrine recognizes the three separate but equal branches of government – the legislative, the executive, and the judicial. Id. at 17-18. Each of those branches is “supreme in its own sphere”. Id. (citing State ex rel. Spaeth v. Meiers, 403 N.W.2d 392, 394 (N.D. 1987)).

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.” Id. 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, the budget section.” Id. at 26.

The application of Legislature v. Burgum to HB 1245 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 1245 removes that executive decision-making process from an executive entity, the NDPERS Board, and gives it to a subset of the Legislative Assembly, the Budget Section: “the board may not accept one or more bids of a contract with the carriers unless the budget section has approved the bids”; and, “[u]pon receipt of the board’s recommendation, the budget section shall determine which bid, if any, will best serve the interests of eligible employees and the state.” That language is nearly identical to the language held unconstitutional in Legislature v. Burgum: “the state water commission may transfer funding among these items, subject to budget section approval”. 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, the budget section.” Id. at 26.

One argument that has been 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.

Take our most recent health plan RFP as an example. Just last year the Board went through the incredibly complex process of issuing an RFP, evaluating the proposals, and making an appropriate decision. In fulfilling its administrative function of executing the provisions of NDCC chapter 54-52.1, the Board followed all the statutory requirements for the RFP process. The end result of that Legislatively-created process was that the Board determined that awarding the contract to Sanford Health Plan (SHP) on a modified fully-insured basis was in the best interests of the state and our participants.

Once that decision was made, we provided the Governor's office with not only the proposed premium increase, but a number of benefit improvement possibilities that would bring the plan benefits closer to a non-grandfathered plan, and their cost. The Governor provided the premium information to the Legislative Assembly in his budget recommendation for each agency. The Legislative Assembly is now making the final determination regarding the plan premium as it considers each agency's budget. Only after the Legislative Assembly has made that final premium determination through each agency's appropriated budget will we finalize the plan structure and the resulting premium with SHP. Importantly, it is the Legislative Assembly, and not the NDPERS Board, that is making that final appropriation decision.

An even more clear example 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 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)
605 - 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)

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.

3
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unded salary budgets

Aeronautics Commission		20,000	20,000
Workforce Safety and Insurance		30,000	30,000
Department of Commerce	26,625		26,625
Game and Fish Department		340,000	340,000
Total	\$1,040,017	\$1,250,814	\$2,290,831

Amount
\$187,000
21,768
929,297
300,000
100,000
578,097
5,278,396
250,000
185,196
100,000
28,620
37,206
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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.

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.

EMPLOYEE ASSISTANCE PROGRAM

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As you can see, 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.

In addition to the significant constitutional issues I have addressed, we are also seriously concerned about how this bill would affect our Part D plan, which is the pharmacy benefit plan for our Medicare retiree participants. The premium for the Part D plan is heavily dependent on the subsidy information provided by the federal Centers for Medicare and Medicaid Services (CMS). CMS typically does not publish the subsidy information until the end of July each year. Under our contract, our Part D provider must notify us of its proposed premium for the next year's renewal within two weeks of that publishing date. If the premium is acceptable, then under this bill we would have to forward that information on to the Budget Section for approval. That's not a problem, aside from the constitutional issues, unless the Budget Section does not approve the renewal.

If we did not renew with the provider, we would have a very narrow timeline in order to complete an RFP process. Federal law requires us to provide our Part D participants with notice regarding a change in the Part D vendor for the next year by October 15th. If the Budget Section notified us on August 15th – which is an exceedingly quick turnaround – that it was not accepting the renewal, we'd have two months to initiate and complete the RFP process, make a recommendation, and then take it back to the Budget Section to review that decision and affirm or decline to follow the recommendation. We are concerned that may be too ambitious. If we are not able to complete that work in time, our retirees would most likely lose their Part D coverage. And, of course, if the Budget Section did not approve that decision, our retirees would certainly lose their Part D coverage.

The original version of HB 1245 included every contract under chapter 54-52.1, including dental, vision, life, and our consultants, which the Sponsor has amended out. Because of the significant issues we may face with our Part D plan, if HB 1245 proceeds, we would request that the Part D plan also be amended out of the Budget Section approval requirements. There is just too much risk to our retirees.

In summary, the constitutional issues with HB 1245 and the very real possibility of the bill seriously harming our retirees' access to pharmacy benefits weigh heavily against House Bill 1245. The Legislative Assembly already clearly has control of the purse strings on the health plan. This bill will introduce uncertainty and potential litigation where it is most harmful. We encourage a "do not pass" on House Bill 1245.



#9977

Great Public Schools

Great Public Service

**Testimony on HB 1245
Senate Government and Veterans Affairs Committee
March 18, 2021**

Chairman Vedaa and members of the Committee, for the record my name is Nick Archuleta, and I am proud to serve as president of North Dakota United. I rise today to oppose HB 1245 and to urge a Do Not Pass recommendation for this bill.

Mr. Chairman, HB 1245 puts an unnecessary layer of bureaucracy into a process that has historically worked quite well. In so doing, this bill usurps the authority vested in the PERS Board of Directors and puts it in the hands of the Budget Section. Should HB 1245 pass, it will be the budget section, and not the PERS Board, with the final authority to accept bids for hospital benefits coverage, medical benefits coverage, and prescription drug benefits coverage.

Members of the Committee, I understand the argument that since the legislature has the authority to allocate state funds, it should have authority on the front end of programs that require an expenditure of those funds. However, the legislature already exerts its influence over the RFP process. It is the body that has created the rules and statutes that govern the authority of the PERS Board. In addition, the legislature mandates that two seats on the PERS Board are occupied by legislators.

Finally, Mr. Chairman, we believe that there are ample safeguards in place and that the legislature already has the oversight necessary to ensure that PERS operates effectively and as fiscally responsible as possible. North Dakota United members have always trusted the PERS Board act in the best interests of the employees who utilize its health insurance. That trust has proven time and again to be well placed.

On behalf of our members, I urge a Do Not Pass recommendation for HB 1245.

TESTIMONY OF REBECCA FRICKE

House Bill 1245 – Group Insurance Plan Contract Decision-Making

Good morning, my name is Rebecca Fricke. I am the Chief Benefits Officer of the North Dakota Public Employees Retirement System, or NDPERS. I appear before you today in opposition to House Bill 1245. I am available should there be any questions related to the impact of the bill on any of the NDPERS benefits.

TESTIMONY OF DERRICK HOHBEIN
House Bill 1245 – Group Insurance Plan Contract
Decision-Making

Good morning, my name is Derrick Hohbein. I am the Chief Operating/Financial Officer of the North Dakota Public Employees Retirement System, or NDPERS. I appear before you today in opposition to House Bill 1245. I am available should there be any questions related to the impact of the bill on any of the NDPERS benefits.

2021 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Room JW216, State Capitol

HB 1245
3/26/2021

A BILL relating to public employee uniform group insurance plans for health benefits; and to provide for application.
--

Chair Vedaa called to order at 9:40 AM with Sen Vedaa, Meyer, Elkin, K Roers, Weber, Wobbema, and Marcellais present.

Discussion Topics:

- Committee Work
- Amendment 21.0148.04002

Sen Veeda brought the amendment forward #10848

Scott Miller – ND PERS Ex. Dir. asked to come to podium - testified - opposed amendment

Adjourned at 9:45 AM

Pam Dever, Committee Clerk

21.0148.04002
Title.

Prepared by the Legislative Council staff for
Senator Vedaa

March 22, 2021

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1245

Page 2, line 11, after the underscored comma insert "excluding Medicare part D prescription drug coverage."

Page 2, line 16, after "section" insert ", including a report on the factors the board considered and how the board reached its recommendation"

Page 2, line 17, replace "Upon" with "As authorized under section 54-35-02.9, upon"

Page 3, line 5, replace "section" with "subsection"

Page 3, line 9, after "4." insert "When the board requests bids for hospital benefits coverage, medical benefits coverage, or prescription drug benefits coverage, excluding Medicare part D for prescription drug coverage, the board shall include a request for a bid for a self-insurance health plan."

Page 5, after line 22, insert:

- "d. In making a recommendation to the budget section under this subsection, the board shall provide a recommendation that includes a report on the factors the board considered and how the board reached its recommendation.
- e. Renewal of a contract for Medicare part D prescription drug coverage is not subject to budget section approval under this subsection."

Renumber accordingly

2021 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Room JW216, State Capitol

HB 1245
4/1/2021

Relating to public employee uniform group insurance plans for health benefits; provide for application.

Chair Vedaa called to order at 10:24 AM with Sen Vedaa, Meyer, Elkin, K Roers, Weber, Wobbema, and Marcellais present.

Discussion Topics:

- Committee Work

Sen Elkin moved amendment 21.0148.04002

Sen Wobbema seconded

Voice Vote Taken – Motion Passed

Sen Elkin moved a Do Pass as Amended

Sen Weber seconded

Roll Call Vote: 3 -- YES 4 -- NO -0-ab Motion Failed

Senators	Vote
Senator Shawn Vedaa	Y
Senator Scott Meyer	N
Senator Jay R. Elkin	Y
Senator Richard Marcellais	N
Senator Kristin Roers	N
Senator Mark F. Webber	Y
Senator Michael A. Wobbema	N

Sen Wobbema moved a **Do Not Pass as amended**

Sen Meyer seconded

Roll Call Vote: 4 -- YES 3 -- NO -0-ab Motion Passed

Senators	Vote
Senator Shawn Vedaa	N
Senator Scott Meyer	Y
Senator Jay R. Elkin	N
Senator Richard Marcellais	Y
Senator Kristin Roers	Y
Senator Mark F. Webber	N
Senator Michael A. Wobbema	Y

Sen Wobbema will carry the bill

Adjourned at 10:32 AM

Pam Dever, Committee Clerk

March 22, 2021

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1501
411

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1245

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- e. Renewal of a contract for Medicare part D prescription drug coverage is not subject to budget section approval under this subsection."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1245, as engrossed: Government and Veterans Affairs Committee (Sen. Vedaa, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1245 was placed on the Sixth order on the calendar.

Page 2, line 11, after the underscored comma insert "excluding Medicare part D prescription drug coverage."

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- e. Renewal of a contract for Medicare part D prescription drug coverage is not subject to budget section approval under this subsection."

Renumber accordingly