

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.