

TESTIMONY OF SCOTT MILLER

Senate Bill 2300 – Long-Term Temporary Employee and Contract Worker Benefits

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 a neutral position regarding Senate Bill 2300.

This Bill requires the state to transition temporary and contract employees to full-time equivalent positions if they are employed in that capacity for 24 months. The state would have to provide full-time benefits, and apparently give retroactive retirement credit for the previous 24 months.

We have concerns with both our retirement plan and our group insurance plan. First, granting retroactive retirement service credit to temporary employees and contract workers would negatively affect the retirement plan funding, which is already a problem. There is nothing in the bill regarding payment for that service credit, so every person granted that credit will be an actuarial loss to our system.

Further, while temporary employees now have the ability to voluntarily participate in our retirement plan, contract workers cannot. Under the Internal Revenue Code (IRC), only people who meet the definition of “employee” can be a part of the retirement plan. Contract workers cannot, by definition, be employees. As such, they cannot participate in our retirement plan under the IRC. This bill would create some issues for us as far as being able to remain a qualified retirement plan under the IRC.

From the health plan perspective, “full-time” temporary is not defined and could conflict if it is below our NDCC definition for eligibility for health plan (which mirrors the federal government requirements). Also, where it talks about eligibility for “benefits”, we are unclear whether this is meant to include dental, vision, deferred compensation and flexcomp, and would conflict with our NDCC for eligibility as it relates to all these plans as only permanent employees are eligible to participate (not temporary), other than flexcomp. Flexcomp may conflict with Section 125 of IRC, which we are looking into. It does conflict with our flexcomp plan document.

Finally, allowing contract workers that are by definition not governmental employees to participate in our health plan may cause our health plan to lose its status as a “governmental plan”. If we were to lose that status, a host of ERISA requirements would immediately apply.