



LEGISLATIVE MANAGEMENT

Tuesday, October 17, 2023
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Mike Lefor, Chairman, called the meeting to order at 10:02 a.m.

Members present: Representatives Mike Lefor, Glenn Bosch, Josh Boschee*, Zachary Ista*, Dennis Johnson*, Ben Koppelman*, Emily O'Brien*, Paul J. Thomas*, Robin Weisz*; Senators Brad Bekkedahl*, Kyle Davison*, Kathy Hogan, David Hogue, Jerry Klein, Tim Mathern*, Janne Myrdal*, Donald Schaible

Members absent: None

Others present: Allen H. Knudson and Emily Thompson, Legislative Council, Bismarck
See [appendix](#) for additional persons present.

*Attended remotely

It was moved by Senator Schaible, seconded by Senator Klein, and carried on a voice vote that the minutes of the June 13, 2023, meeting be approved as distributed.

OPENING REMARKS

Chairman Lefor updated the committee on the status of the upcoming special session in response to the North Dakota Supreme Court's ruling in *Board of Trustees of The North Dakota Public Employees' Retirement System v. North Dakota Legislative Assembly*. He noted, on October 16, 2023, the Governor called a special session of the Legislative Assembly to convene on October 23, 2023, to reenact the nullified provisions contained in Senate Bill No. 2015 (2023). He noted the Legislative Council staff has split the nullified bill into seven appropriations bills and seven policy bills for consideration by the Legislative Management.

SUMMARY OF THE SUPREME COURT'S RULING

Chairman Lefor called on Mr. John Bjornson, Director, Legislative Council, to review the decision of the North Dakota Supreme Court in *Board of Trustees of The North Dakota Public Employees' Retirement System v. North Dakota Legislative Assembly* and the subsequent denial of a stay. He noted:

- In its ruling, the North Dakota Supreme Court focused on the single subject requirement found in Section 13 of Article IV of the Constitution of North Dakota.
- The Court invalidated Senate Bill No. 2015 (2023) because the Court did not know which provisions were primary and which were secondary and whether the bill would have been enacted absent the presence of any of the several sections.
- Although a majority of the Court initially had indicated a stay would be appropriate, the Court later determined it did not have the authority to grant a stay.
- The Court's opinion failed to provide a bright-line rule to determine what is constitutionally permissible under the single subject requirement for legislation.

Committee members discussed the rationale of the Governor's decision to call a special session under Section 7 of Article V of the Constitution of North Dakota rather than the Legislative Assembly reconvening the 2023 legislative session.

PRESENTATION OF PROPOSED BILL DRAFTS AND CORRESPONDING MEMORANDA

Mr. Bjornson presented a bill draft [\[23.1144.01000\]](#) and a corresponding memorandum entitled [Summary of Reenactment of Provisions Relating to Legislative Branch Appropriations and Duties - LC# 23.1144.01000](#).

Mr. Bjornson presented a bill draft [23.1142.01000] and a corresponding memorandum entitled [Summary of Reenactment of Provisions Relating to the Office of Management and Budget - LC# 23.1142.01000](#).

Mr. Bjornson presented a bill draft [23.1143.01000] and a corresponding memorandum entitled [Summary of Reenactment of Provisions Relating to 2021-23 Biennium Funding Needs - LC# 23.1143.01000](#).

Mr. Bjornson presented a bill draft [23.1145.01000] and a corresponding memorandum entitled [Summary of Reenactment of Provisions Relating to Board and Committee Administration - LC# 23.1145.01000](#).

Mr. Bjornson presented a bill draft [23.1146.01000] and a corresponding memorandum entitled [Summary of Reenactment of Provisions Relating to Facility-Related Grants - LC# 23.1146.01000](#).

Mr. Bjornson presented a bill draft [23.1147.01000] and a corresponding memorandum entitled [Summary of Reenactment of Provisions Relating to The Department of Commerce - LC# 23.1147.01000](#).

Mr. Bjornson presented a bill draft [23.1148.01000] and a corresponding memorandum entitled [Summary of Reenactment of Provisions Relating to an Appropriation for the Judicial Branch - LC# 23.1148.01000](#).

Mr. Bjornson presented a bill draft [23.1141.01000] and a corresponding memorandum entitled [Summary of Reenactment of Provisions Relating to K-12 Education Funding - LC# 23.1141.01000](#).

Mr. Bjornson presented a bill draft [23.1149.01000] and a corresponding memorandum entitled [Summary of Reenactment of Provisions Relating to Distribution of Controlled Substances - LC# 23.1149.01000](#). In response to questions, he noted:

- The retroactive application clause in Senate Bill No. 2015 (2023) could not be used in the proposed bill draft because the affected provision expired.
- The proposed change would become effective only upon filing of the enacted bill with the Secretary of State.
- Convictions under the expired law could be jeopardized due to the nullification of the provision in Senate Bill No. 2015 (2023).

Mr. Bjornson presented a bill draft [23.1152.01000] and a corresponding memorandum entitled [Summary of Reenactment of Provisions Relating to the Clean Sustainable Energy Authority - LC# 23.1152.01000](#).

Mr. Bjornson presented a bill draft [23.1150.01000] and a corresponding memorandum entitled [Summary of Reenactment of Provisions Relating to Joint Water Resource Boards and the Water Infrastructure Revolving Loan Fund - LC# 23.1150.01000](#).

Mr. Bjornson presented a bill draft [23.1151.01000] and a corresponding memorandum entitled [Summary of Reenactment of Provisions Relating to the Infrastructure Revolving Loan Fund - LC# 23.1151.01000](#).

Mr. Bjornson presented a bill draft [23.1138.01000] and a corresponding memorandum entitled [Summary of Reenactment of Provisions Relating to the Effective Date for the Public Employees Retirement System Defined Contribution Plan Transition - LC# 23.1138.01000](#).

Mr. Bjornson presented a bill draft [23.1153.01000] and a corresponding memorandum entitled [Summary of Reenactment of Provisions Relating to the Public Employees Retirement System Board Membership and Duties - LC# 23.1153.01000](#).

Mr. Bjornson noted:

- Three sections of Senate Bill No. 2015 (2023), which Governor Burgum vetoed, are not included in the proposed bill drafts.
- Grants from the disaster fund for emergency snow removal services were not included in the proposed bill drafts because the grant funds were no longer needed.

In response to questions from the committee, Mr. Bjornson noted:

- The cost of the special session was not included in the 2023 budget.
- The bills presented do not contain any provision that was not contained in Senate Bill No. 2015 (2023).

In response to questions from committee members, Mr. Allen H. Knudson, Legislative Budget Analyst and Auditor, Legislative Council, said an appropriation to defray the expenses of the special session could be adopted during the special session or the 2025 legislative session.

LEGISLATIVE SPECIAL SESSION

Chairman Lefor noted several concerns from legislators relating to time efficiency. He proposed the Legislative Management serve as the Delayed Bills Committee and Joint Rules Committee during the special session. Senator Hogue noted the Legislative Management is the appropriate gatekeeper regarding proposed bills given the time constraints for the special session.

Committee members noted:

- There should be appropriate representation from both chambers on standing committees.
- The committee structure must be sufficient to manage any additional bills approved for introduction.
- The special session should focus on fixing Senate Bill No. 2015 (2023).
- If the Governor is allowed to introduce bills, legislators also should be allowed to introduce bills.

Chairman Lefor noted:

- The Legislative Assembly has until the end of October to fix Senate Bill No. 2015 (2023) or the employees of the Office of Management and Budget may not receive a paycheck.
- Although not all the standing committees will be needed, each legislator will have an opportunity to participate in the legislative process.

It was moved by Representative O'Brien and seconded by Senator Schaible that any additional proposed bills would be limited to technical corrections to Senate Bill No. 2015 (2023) and must be approved by the Legislative Management.

Chairman Lefor noted legislative leaders negotiated in good faith with the Governor to review specific proposed items for the special session. Committee members expressed concerns with limiting introduction of bills while agreeing proposed bills should have a standard relating to urgency. Committee members noted:

- The primary purpose of the special session is to correct issues relating to Senate Bill No. 2015 (2023).
- If additional bills are introduced, the special session may not be finished within a week.

Chairman Lefor noted:

- The Governor holds the power to call a special session.
- A reconvened session would be problematic due to the requirement of a two-thirds majority vote for any laws passed to become effective immediately.

Representative O'Brien withdrew her motion and Senator Schaible withdrew his second.

It was moved by Senator Schaible, seconded by Senator Hogan, and carried on a roll call vote that proposed bill drafts or concepts for bills for the special session must be submitted to the Legislative Council by 5:00 p.m. on Thursday, October 19th.

Senators Hogue, Davison, Hogan, Klein, Myrdal, and Schaible and Representatives Lefor, Bosch, Ista, O'Brien, Thomas, and Weisz voted "aye." Senator Mathern and Representatives Boschee and Koppelman voted "nay."

HOUSE AND JOINT RULES AMENDMENTS

Ms. Emily Thompson, Legal Division Director, Legislative Council, presented House and Joint Rules [23.9617.01000], Senate and Joint Rules [23.9618.01000], and a corresponding memorandum entitled [Explanation of Proposed Legislative Rule Changes](#).

A committee member noted, standing committee members should be appointed by the Legislative Management rather than the majority leaders.

It was moved by Senator Klein, seconded by Senator Schaible, and carried on a roll call vote that the proposed rules amendments be recommended for adoption.

Senators Hogue, Davison, Hogan, Klein, Myrdal, and Schaible and Representatives Lefor, Bosch, O'Brien, Thomas, and Weisz voted "aye." Senator Mathern and Representatives Boschee, Ista, and Koppleman voted "nay."

ARRANGEMENTS FOR SPECIAL SESSION

Mr. Bjornson provided an update regarding the arrangements for special session. He noted:

- Additional session employees including a desk force will be required. Arrangements have been made to fill the necessary positions, including a journal reporter in the House of Representatives and four committee clerks.
- Committee rooms are being prepared; however, due to the heating and cooling system project, heating or cooling will not be available in the chambers.
- The Legislative Council will begin scheduling committee hearings for the first day of session.

No further business appearing, Chairman Lefor adjourned the meeting at 2:03 p.m.

John Bjornson
Director

ATTACH:1