Legislative Council
600 East Boulevard Avenue, Bismarck, ND 58505

North Dakota Legislative Management
Meeting Minutes
25.5087.03000

RETIREMENT COMMITTEE

Wednesday, February 7, 2024
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Jason Dockter, Chairman, called the meeting to order at 10:00 a.m.

Members present: Representatives Jason Dockter, Jorin Johnson, Mike Lefor*, Scott Louser, SuAnn Olson, Brandy Pyle, Austen Schauer, Greg Stemen; Senators Randy A. Burckhard, Dick Dever, Karen K. Krebsbach*, Dean Rummel, Shawn Vedaa, Mark F. Weber

Members absent: Representatives Mitch Ostlie, Bernie Satrom

Others present: Senator Brad Bekkedahl, Williston, member of the Legislative Management~~.~~
See Appendix A for additional persons present.
**Attended remotely*

It was moved by Senator Burckhard, seconded by Representative Schauer, and carried on a voice vote that the minutes of the November 15, 2023, meeting be approved as distributed.

PUBLIC EMPLOYEES RETIREMENT SYSTEM

Agency Update

Mr. Derrick Hohbein, Chief Operating and Financial Officer, Public Employees Retirement System, provided information (Appendix B) regarding the status of closing the main system defined benefit (DB) plan and an update on the transition to the new defined contribution (DC) plan. He noted:

- Communication is a critical component of transitioning to the new DC plan. Recent efforts include informational videos for state and political subdivision employers and communication to 250 employers facilitating the 1 percent employer contribution increase that successfully launched January 1, 2024~~;~~.
-
- The Public Employees Retirement System (PERS) intends to hire a marketing intern within approximately a week~~;~~.
- PERS is continuing biweekly meetings with staff and business system developers~~;~~.
- The Special Assistant Attorney General assigned to PERS granted approval for Ice Miller, the PERS federal compliance consultant, to review its recordkeeper contract and ensure IRS compliance~~;~~.
- The Administrative Rules Committee granted an extension to PERS to promulgate administrative rules to align with the transition to the new DC plan. The launch date of the DC plan must coincide with the quarterly effective date of administrative rules, which would be either October 1, 2024, or January 1, 2025~~;~~. ~~and~~
- A launch date of January 1, 2025, is more feasible than October 1, 2024, because it likely will take several months to test the new software program~~ testing likely will take several months~~.

POLITICAL SUBDIVISIONS

Counties

Mr. Aaron Birst, Executive Director, North Dakota Association of Counties, provided information regarding the ability of a political subdivision to participate in the new DC plan and the association's concerns with the current law. He noted:

- Concerns related to the transition to the new DC plan include what responsibility, if any, counties will incur ~~r~~from the unfunded liability of the main system DB plan~~;~~.
- Starting January 1, 2025, new employees will be required to participate in the DC plan.~~–~~ County participation in PERS has been optional, with the caveat that exiting the plan requires ~~the~~a county to pay ~~their~~its portion of unfunded liability ~~portion~~ based on an actuarial analysis. Counties would like the option to select a DC plan from the marketplace but may be limited by North Dakota Century Code Section 54-52-02.15(3), which provides "an eligible employee who begins employment with an employer shall participate in the defined contribution retirement plan." ~~Of the 53 counties,~~ Section 54-52-02.15(3) applies to the 51 counties that elected to participate in the DB plan~~; and~~.
- The North Dakota Association of Counties (NDACo) believes Section 54-52-02.15(3) may provide counties flexibility to choose a DC plan from the marketplace because requiring counties to participate in the DC plan was not contemplated during the last legislative session~~;~~.

Cities

Mr. Matt Gardner, Executive Director, North Dakota League of Cities, provided information regarding the ability of a political subdivision to participate in the new DC plan and concerns with the current law. He noted:

- The North Dakota League of Cities (NDLC) agrees with the remarks made by NDACo promoting local control and ~~permitting~~allowing a political subdivision to select a DC plan from the marketplace for new employees hired on or after after January 1, 2025~~;~~.
- The PERS contracts previously entered by the cities relate to the DB plan. Contracts entered after the DB plan closes must reflect the new law and relate to the new DC plan~~;~~.
- ~~Promulgation~~Adoption of Administrative Rules may provide an avenue to clarify that NDACo's and NDLC's position on the interpretation of Section 54-52-02.15(3) reflects legislative intent~~;~~.
- Cities are concerned participation in PERS precludes them from ~~management of~~managing forfeiture funds~~; and~~.
- 98 of the 355 incorporated cities participate in PERS and ~~are~~ likely are affected by Section 54-52-02.15(3).

In response to questions from committee members, Ms. Rebecca Fricke, Interim Executive Director, Public Employees Retirement System, noted:

- ~~Permitting~~Allowing political subdivisions to choose a new DC plan outside of PERS would be an unanticipated event delaying the implementation of the new DC plan~~;~~.
- The fiscal analysis conducted during the 2023 legislative session contemplated the population of participating employers remaining the same. ~~Promulgating~~Implementing this change as an Administrative Rule would deprive policymakers of the full benefit of the fiscal analysis ~~afforded~~provided during a legislative session~~; and~~.
- The language ~~found~~ in Section 54-52-02.15(3) is mandatory, not permissive, as demonstrated by the use of the ~~term~~word "shall'.

Schools

Ms. Alexis Baxley, Executive Director, North Dakota School Board Association, provided information (Appendix C) regarding potential challenges schools may encounter while incorporating changes related to the transition to the new DC plan, including information technology and timing concerns. She noted:

- 109 of 168 operational school districts, and 22 separate public education entities, participate in PERS.
- 4 of the 10 largest employers in PERS are school districts~~;~~.
- Schools, particularly those with limited staff, will appreciate ample notice of the effective date of the new DC plan~~; and~~.
- Training provided by PERS will be critical to successfully transitioning to the new DC plan.

Mr. Darin Scherr, Business and Operations Manager, Bismarck Public School District, provided information (Appendix D) regarding potential challenges schools may encounter while incorporating changes related to the transition to the new DC plan, including information technology and timing concerns. He noted:

- ~~Following the finalization of~~After PERS finalizes software programming, school accounting software vendors also will ~~require adequate~~need time to ~~also~~ make programming changes and provide training for school staff~~; and~~.

- ~~Along with~~In addition to providing education related to the new software, Bismarck Public Schools intends to provide education related to retirement in general.

Dr. Robert Lech, Superintendent, Jamestown Public School District, provided information (Appendix E) regarding potential challenges schools may encounter while incorporating changes related to the transition to the new DC plan, including information technology and timing concerns. He noted:

- Transitions similar to the new DC plan launch take approximately 3 years. The 18-month transition PERS is completing is extraordinary. An expedited transition with an effective date prior to January 1, 2025, likely would ~~likely~~ cause problems for vendors and employers~~; and~~.
- PERS and the Teachers' Fund for Retirement should collaborate and take advantage of opportunities for shared efficiencies, including onboarding for school districts.

In response to a question from a committee member, Dr. Lech noted:

- The transition to the new DC plan will have a limited impact on teacher recruitment and retention~~; and~~.
- Education is necessary to improve retirement literacy of employees. Retirement education in K-12 also may be beneficial.

ACTUARIAL VALUATION UPDATE

Ms. Bonnie Wurst, Senior Consultant, Gabriel, Roeder, Smith & Company Holdings, Inc., provided information (Appendix F) regarding the potential effect of contributing additional funding to the main system DB plan, closing the plan ~~at~~on a different date, changing the plan's amortization period, and other information in response to questions previously asked by the committee. She noted:

- 10 transfers of $200 million per biennium to the main system DB plan would offset the loss of employee contributions on a present value basis. The transfers also would ~~also~~ fully fund the plan by approximately 2044, compared with 2056 in the baseline scenario, and provide an overall savings to the state~~;~~.
- Closing the plan June 30, 2024, rather than December 31, 2024, would have an actuarial impact of less than ~~one~~1 percent of the 30-year total cost. However, there are significant benefits to providing additional time for implementation ~~of~~ the new plan ~~is significantly beneficial;~~.
- ~~There are more~~More active and inactive members are employed by political subdivisions than by the state. However, more beneficiaries are state employees. The average pay and years of service of state employees is significantly higher than ~~the~~that of political subdivision employees. ~~This indicates greater liability for the~~ As a result, the state has a greater liability that ~~despite~~ political subdivisions despite political subdivisions having more employees~~;~~.
- A one-time transfer of $100 million, $200 million, or $300 million increases the funded portion of the plan in 2025 by increments of approximately 1.75 percent per $100 million~~;~~.
- An amortization period less than 30 years would require a higher actuarially determined employer contribution (ADEC) and larger contributions to the fund earlier. However, between 2024 to 2056, ~~it~~the shorter amortization period would reduce the total ADECs ~~contributions~~ and result in the plan being fully funded sooner.

In response to a question from a committee member, Ms. Wurst noted:

- ~~From a broad perspective~~Broadly speaking, employers exiting the plan has a detrimental impact on the existing plan's funding~~;~~.
- A DB plan that is not closing and is funded above 80 percent indicates the plan is better suited to weather the plan's associated risks. However, once a DB plan is closed, ~~it needs to~~the plan must be funded at 100 percent to pay liabilities. Because the state is planning to contribute to the ADEC, the plan is financially healthy~~; and~~.
- The assumed rate of return on DB plan investments is 6.5 percent.

LEGISLATIVE COUNCIL

Potential Legislation

Mr. Levi Kinnischtzke, Senior Fiscal Analyst, Legislative Council, presented ~~information regarding~~ a summary of potential changes to the DB plan and the new DC plan, as requested by the committee during the November 15, 2023, meeting. He noted suggestions from presenters at the prior meeting included:

- Amending Sections 54-52.2-09 and 54-52.6-09 to provide all public employees in North Dakota be enrolled in a 7 percent employee contribution rate with an option to opt-out of up to 3 percent of the contribution, rather than being enrolled in a 4 percent rate with an option to contribute up to an additional 3 percent~~;~~.
- Repealing ~~subsection 3 of~~ Sections 54-52.6-05(3) and Section 54-52.6-05.1 related to requiring in-plan lifetime annuities in the new DC plan because it limits the investment options of the plan~~;~~.
- Amending Section 54-52.6-10 to allow employees participating in the new DC plan to be 100 percent vested immediately rather than having a 2- to 4-year vesting schedule~~; and~~.
- Consideration of modifying the new DC plan to include new programs offered nationally such as student loan matching, emergency savings options, and financial wellness.

PUBLIC EMPLOYEES RETIREMENT SYSTEM

Challenges and Concerns

Mr. Hohbein provided information (Appendix G) regarding challenges and concerns with the suggested changes to the main system DB plan and the new DC plan, and any other suggested changes. He noted:

- A political subdivision is unable to join the new DC plan if it is not already in the DB plan~~;~~.
- Political subdivisions should be on the PERS deferred compensation 457 plan to take full advantage of the new DC plan~~;~~.
- Without a vesting schedule, PERS would require a different funding mechanism to administer the plan~~;~~.
- PERS is seeking additional clarification regarding the legislative intent in Section 54-52-02, specifically ~~what~~which entities are considered to be a state agency for benefit qualification purposes~~; and~~.
- PERS intends to submit a bill ~~for~~during the 2025 legislative session with technical corrections related to Sections 54-52.6-01(8) and 54-52.6-02.2.

It was moved by Senator Weber, seconded by Representative Schauer, and carried on a roll call vote to request approval from the ~~c~~Chairman of the Legislative Management to form a subcommittee to make recommendations to the full committee regarding the concerns PERS wishes to have addressed. Representatives Dockter, Lefor, Louser, Olson, Pyle, and Schauer and Senators Burckhard, Dever, Krebsbach, Rummel, and Weber voted "aye." Representative Johnson voted "nay."

It was moved by Representative Louser, seconded by Senator Burckhard, and carried on a roll call vote that the committee recommend the PERS board seek an Attorney General opinion to interpret the use of the word "shall" in Section 54-52-02.15. Representatives Dockter, Johnson, Lefor, Louser, Olson, Pyle, and Schauer and Senators Burckhard, Dever, Krebsbach, Rummel, and Weber voted "aye." Senator Dever voted "nay."

No further business appearing, Chairman Dockter adjourned the meeting at 3:15 p.m.

____

Liz Fordahl
Counsel

____

Levi Kinnischtzke
Senior Fiscal Analyst

ATTACH:7