Adopted by the Industry, Business and Labor Committee

April 12, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1539

Page 1, line 1, remove "subsection 5 of section 15-39.1-05.2, sections"

Page 1, line 2, remove "15-39.1-10.11 and 15-39.1-35, subsection 5 of section 18-11-15, and"

Page 1, line 2, replace "39-03.1-29,"with "54-35-02.4 and"

Page 1, line 2, remove ", and 54-52.1-08.2"

Page 1, line 4, after "committee" insert "and the public employees prescription drug coverage performance audit"

Page 1, line 4, remove "and to repeal sections 54-35-02.3 and"

Page 1, remove line 5

Page 1, line 6, replace "committee" with "; to provide for a prescription drug coverage performance audit; and to provide for a legislative management report"

Page 1, remove lines 8 through 24

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 31

Page 4, replace lines 1 through 14, with:

"**SECTION 1. AMENDMENT.** Section 54-35-02.4 of the North Dakota Century Code is amended and reenacted as follows:

54-35-02.4. Employee benefits programs committee - Powers and duties.

1. ~~The~~During each interim, the employee benefits programs committee shall consider and report on ~~those~~the legislative ~~measures and~~ proposals over which ~~it~~the committee takes jurisdiction and which affect, actuarially or otherwise, the retirement programs of state employees or employees of any political subdivision, and health and retiree health plans of state employees or employees of any political subdivision. A majority of the members of the committee, acting through the chairman, has sole authority to determine whether a legislative proposal affects a program. The committee shall make a thorough review of ~~any measure or~~each proposal ~~which it~~the committee takes under its jurisdiction, including an actuarial ~~review~~report. The committee shall take jurisdiction over ~~any measure or~~a proposal that authorizes an automatic increase or other change in benefits beyond the ensuing biennium which would not require legislative approval. The committee ~~must~~shall include in the report of the committee a statement that the proposal would allow future changes without legislative involvement. The committee shall report ~~its~~the findings and recommendations of the committee, along with any necessary legislation, to the legislative management and to the legislative assembly.

2. To carry out ~~its~~the responsibilities of the committee, the committee, or ~~its~~the designee of the committee, may:

a. Enter contracts, including retainer agreements, with an actuary or actuarial firm for expert assistance and consultation. Each retirement, insurance, or retiree insurance program shall pay, from ~~its~~the program's retirement, insurance, or retiree health benefits fund, as appropriate, and without the need for a prior appropriation, the cost of ~~any~~an actuarial report required ~~by the committee~~under this section which relates to that program.

b. Call on personnel from state agencies or political subdivisions to furnish such information and render such assistance as the committee may from time to time may request.

c. Establish rules for ~~its~~the operation of the committee, including the submission and review of proposals and the establishing of standards for actuarial ~~review~~reports.

3. The committee may solicit draft measures and proposals from interested persons during the interim between legislative sessions, and ~~may~~ also may study measures and proposals referred to ~~it~~the committee by the legislative assembly or the legislative management.

4. A copy of the committee's report concerning ~~any~~a legislative measure ~~shall~~, if that measure is introduced for consideration by a legislative assembly, must be appended to the copy of that measure ~~which is referred to a standing committee~~.

5. ~~A~~If a legislative measure affecting a public employees retirement program, public employees health insurance program, or public employee retiree health insurance program ~~may not be~~is introduced in either house ~~unless it is accompanied by~~without a report from the committee, the chairman and vice chairman of the employee benefits programs committee shall request an actuarial report from the program affected and shall provide the report to the standing committee to which the measure is referred. ~~A majority of the members of the committee, acting through the~~During the legislative session, the employee benefits programs committee chairman~~, has~~ and vice chairman, working together, have sole authority to determine whether ~~any~~a legislative measure or amendment affects a program under this subsection and subsection 6.

6. ~~Any~~During a legislative session, if an amendment is made ~~during a legislative session~~ to a legislative measure ~~affecting~~which affects a public employees retirement program, public employees health insurance program, or public employee retiree health insurance program ~~may not be considered by a standing committee unless it is accompanied by a report from~~, the employee benefits programs committee chairman and vice chairman may request from the affected program an actuarial report on the amendment and shall provide the report to the standing committee to which the bill is referred.

7. ~~Any legislation~~Legislation enacted in contravention of this section is invalid ~~and of no force and effect~~, and any benefits provided under ~~such~~the legislation must be reduced to the level current ~~prior to~~before enactment of the legislation."

Page 4, line 19, after "coverage" insert ", whether contracting directly with a pharmacy benefits manager, providing prescription drug coverage through a self-insurance plan, or contracting with a carrier,"

Page 4, line 20, overstrike "during" and insert immediately thereafter "for"

Page 4, line 21, after the period insert "For each contract for prescription drug coverage, the board shall conduct a performance audit under this section."

Page 4, line 24, after "carrier" insert "and from all other sources under the contract with the carrier"

Page 4, line 31, after the second comma insert "administration fee,"

Page 5, line 4, after the second comma insert "administration fee,"

Page 5, line 7, after "assessments" insert ", effective rates, or other price concessions"

Page 5, line 11, after "assessments" insert ", effective rates, or other price concessions"

Page 5, line 13, overstrike "The contract must provide that" and insert immediately thereafter "That"

Page 5, line 14, after "discounts" insert ", from all sources,"

Page 5, after line 14, insert:

"g. The board must have full access to data to determine whether spread pricing occurs, and if spread pricing occurs, full access to data regarding the spread pricing.

h. The board must have full access to the contract and any subcontract by the carrier and the pharmacy benefits manager or other entity regarding the plan members.

i. The board must have access to all documents necessary for the board to conduct the performance audit under this section.

j. That failure to comply with the terms of the contract relating to access to data is a breach of the contract with the board. Upon a finding of breach of contract under this subdivision, the board is entitled to liquidated damages in the amount of twenty thousand dollars per violation."

Page 5, line 16, after the period insert "Data and documents provided by the pharmacy benefits manager to the board may not be redacted or altered by the pharmacy benefits manager."

Page 5, line 21, after the period insert "The pharmacy benefits manager shall provide all data and documents necessary to enable the board to calculate any compensation the pharmacy benefits manager pays to the public employees retirement system if a program or contract guarantee was not properly implemented. The pharmacy benefits manager shall disclose to the board all retained manufacturer administrative fees."

Page 6, replace lines 1 through 15 with:

"**SECTION 3. PUBLIC EMPLOYEES RETIREMENT SYSTEM - STATE AUDITOR - PRESCRIPTION DRUG COVERAGE PERFORMANCE AUDIT - REPORT TO LEGISLATIVE MANAGEMENT.** In lieu of the requirement under section

54-52.1-04.16 that the public employees retirement system contract to conduct a prescription drug coverage performance audit of the main public employees retirement system health benefit plan for the 2021-23 contract, the state auditor shall contract in accordance with chapter 54-10 to conduct a prescription drug coverage performance audit of the main public employees retirement system health benefit plan during the 2023-24 interim, in the same manner as provided for under section 54-52.1-04.16, for contract years 2021-23. The retirement board, carrier, and pharmacy benefits manager shall provide the state auditor with access to information in the same manner as provided for a performance audit under section 54-52.1-06. The state auditor may pursue the liquidated damages for failure to provide the auditor access to data for the performance audit conducted under this section. Performance audit fees, not to exceed $375,000, for performance audits performed under this section must be on a flat fee or hourly basis and be paid by the public employees retirement system board. The state auditor shall provide reports to the legislative management regarding contracts to conduct the prescription drug coverage performance audits, performance audit results, and audit reports issued."

Renumber accordingly