

HOUSE BILL NO. 1098

Introduced by

Government and Veterans Affairs Committee

(At the request of the Public Employees Retirement System)

A BILL for an Act to amend and reenact subsection 1 of section 54-52-01, subdivision a of subsection 1 of section 54-52-02.1, and sections 54-52-05, 54-52-06, 54-52-06.1, 54-52-06.2, 54-52-08, 54-52-11.1, 54-52.6-09, and 54-52.6-10 of the North Dakota Century Code, relating to employer and employee contributions under the defined benefit contribution retirement plan and the defined contribution retirement plan; and to repeal section 54-52.6-16 of the North Dakota Century Code, relating to income tax treatment of employee assessments under the defined contribution retirement plan.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 54-52-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Account balance" means the total contributions made by the employee, vested employer contributions under section 54-52-11.1, the portion of the governmental unit's contribution included in the employee's account balance pursuant to subsection 1 of section 54-52-06, section 54-52-06.1, or section 54-52-06.2, the vested portion of the vesting fund as of June 30, 1977, and interest credited thereon at the rate established by the board.

SECTION 2. AMENDMENT. Subdivision a of subsection 1 of section 54-52-02.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. The political subdivision will contribute on behalf of each eligible employee an amount equal to that provided by one of the options in section 54-52-06. The option the political subdivision chooses must be specified in the agreement.

SECTION 3. AMENDMENT. Section 54-52-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-52-05. Membership and assessments –~~Employer payment of employee~~
contributions.**

1. Every eligible governmental unit employee concurring in the plan must so state in writing and all future eligible employees are participating members. An employee who was not enrolled in the retirement system when eligible to participate must be enrolled immediately upon notice of the employee's eligibility, unless the employee waives in writing the employee's right to participate for the previous time of eligibility, to avoid contributing to the fund for past service.
2. Each member whose employer elects to contribute under subsection 2 of section 54-52-06 must be assessed and required to pay monthly four percent of the monthly salary or wage paid to the member, and ~~such~~ the assessment must be deducted and retained out of ~~such~~ salary in equal monthly installments commencing with the first month of employment.
- ~~3. Each employer, at its option, may pay the employee contributions required by subsection 2 and sections 54-52-06.1 and 54-52-06.2. The amount paid must be paid by the employer in lieu of contributions by the employee. If the state determines not to pay the contributions, the amount that would have been paid must continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the employer, they may not be included as gross income of the employee in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee or from the levy authorized by subsection 5 of section 57-15-28.1. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a contribution of a reduction in gross salary and offset against future salary increases. If employee contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made prior to the date~~

~~on which employee contributions were assumed by the employer. An employer exercising its option under this subsection shall report its choice to the board, in writing, by June fifteenth of each odd-numbered year.~~

SECTION 4. AMENDMENT. Section 54-52-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52-06. Employer's contribution to retirement plan. Each governmental unit at its option, except for the state which must contribute under subsection 1, shall contribute an amount equal to ~~four~~ one of the following:

1. Eight and twelve-hundredths percent of the monthly salary or wage of a participating member. Four percent of the participating member's monthly salary or wage contributed by the governmental unit under this subsection must be included in the member's account balance.
2. Four and twelve-hundredths percent of the monthly salary or wage of a participating member.

For those members who elect to exercise their rights under subsection 5 of section 54-52-17.4, the employing governmental unit, or in the case of a member not presently under covered employment the most recent employing governmental unit, shall pay the associated employer contribution. ~~If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution.~~ Each governmental unit shall pay the contribution monthly, or in the case of an election made pursuant to subsection 5 of section 54-52-17.4 a lump sum, into the retirement fund from its funds appropriated for payroll and salary or any other funds available for these purposes. ~~Any~~ A governmental unit failing to pay the contributions monthly, or in the case of an election made pursuant to subsection 5 of section 54-52-17.4 a lump sum, is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date they became due, penalty and interest to be paid on delinquent contributions may be waived. An employer is required to submit contributions for any past eligible employee who was employed after July 1, 1977, for which contributions were not made

1 if the employee would have been eligible to become vested had the employee participated and
2 if the employee elects to join the public employees retirement system. Employer contributions
3 may not be assessed for eligible service that an employee has waived pursuant to subsection 1
4 of section 54-52-05. The board shall report to each session of the legislative assembly the
5 contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial
6 soundness.

7 **SECTION 5. AMENDMENT.** Section 54-52-06.1 of the 1999 Supplement to the North
8 Dakota Century Code is amended and reenacted as follows:

9 **54-52-06.1. Contribution by supreme and district court judges - Employer**
10 **contribution.** Each judge of the supreme or district court who is a member of the public
11 employees retirement system must be assessed and required to pay monthly ~~five~~ one percent
12 of the judge's monthly salary. The assessment must be deducted and retained out of the
13 judge's salary in equal monthly installments. The state shall contribute an amount equal to
14 ~~fourteen~~ eighteen and fifty-two one-hundredths percent of the monthly salary of a supreme or
15 district court judge who is a participating member of the system, which ~~matching~~ contribution
16 must be paid from its funds appropriated for salary, or from any other funds available for such
17 purposes. ~~If the judge's contribution is paid by the state under subsection 3 of section~~
18 ~~54-52-05, the state shall contribute, in addition, an amount equal to the required judge's~~
19 ~~contribution.~~ Four percent of the judge's monthly salary contributed by the state under this
20 section must be included in the judge's account balance.

21 **SECTION 6. AMENDMENT.** Section 54-52-06.2 of the 1999 Supplement to the North
22 Dakota Century Code is amended and reenacted as follows:

23 **54-52-06.2. Contribution ~~by~~ for national guard security officers or firefighters –**
24 **~~Employer contribution.~~** ~~Each national guard security officer or firefighter who is a member of~~
25 ~~the public employees retirement system is assessed and shall pay monthly four percent of the~~
26 ~~employee's monthly salary. The assessment must be deducted and retained out of the~~
27 ~~employee's salary in equal monthly installments.~~ The national guard security officer's or
28 firefighter's employer shall contribute an amount determined by the board to be actuarially
29 required to support the level of benefits specified in section 54-52-17. Four percent of the
30 participating member's monthly salary or wage contributed by the employer under this section
31 must be included in the member's account balance. The employer's contribution must be paid

1 from funds appropriated for salary or from any other funds available for such purposes. ~~If the~~
2 ~~security officer's or firefighter's assessment is paid by the employer under subsection 3 of~~
3 ~~section 54-52-05, the employer shall contribute, in addition, an amount equal to the required~~
4 ~~national guard security officer's or firefighter's assessment.~~

5 **SECTION 7. AMENDMENT.** Section 54-52-08 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **54-52-08. State income tax deductions.** For the purposes of state income tax, ~~the~~
8 any assessment imposed by this chapter on ~~the~~ an employee must be treated in accordance
9 with existing state statutes on state income tax.

10 **SECTION 8. AMENDMENT.** Section 54-52-11.1 of the 1999 Supplement to the North
11 Dakota Century Code is amended and reenacted as follows:

12 **54-52-11.1. Vesting of employer contributions.** Except for supreme and district court
13 judges, who are not eligible for benefits under this section, and in addition to that portion of the
14 employer's contribution that is made part of the member's account balance pursuant to either
15 subsection 1 of section 54-52-06, section 54-52-06.1, or section 54-52-06.2, a member's
16 account balance includes vested employer contributions equal to the member's contributions to
17 the deferred compensation plan for public employees under chapter 54-52.2, or member
18 contributions to other participating employer supplemental Internal Revenue Code section 457
19 or 403(b) retirement programs as approved by the board, with the minimum member
20 contribution being twenty-five dollars. However, the vested employer contribution may not
21 exceed:

- 22 1. For months one through twelve of service credit, twenty-five dollars or one percent
23 of the member's monthly salary, whichever is greater.
- 24 2. For months thirteen through twenty-four of service credit, twenty-five dollars or two
25 percent of the member's monthly salary, whichever is greater.
- 26 3. For months twenty-five through thirty-six of service credit, twenty-five dollars or
27 three percent of the member's monthly salary, whichever is greater.
- 28 4. For service exceeding thirty-six months, twenty-five dollars or four percent of the
29 member's monthly salary, whichever is greater.
- 30 5. The vested employer contribution may not exceed four percent of the member's
31 monthly salary.

Vested employer contributions must be credited monthly to the member's account balance.

SECTION 9. AMENDMENT. Section 54-52.6-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52.6-09. Contributions - Penalty.

~~1. Each participating member shall contribute monthly four percent of the monthly salary or wage paid to the participant, and this assessment must be deducted from the participant's salary in equal monthly installments commencing with the first month of participation in the defined contribution retirement plan established under this chapter.~~

2. The employer shall contribute an amount equal to ~~four~~ eight and twelve hundredths percent of the monthly salary or wage of a participating member. ~~If the employee's contribution is paid by the employer under subsection 3, the employer shall contribute, in addition, an amount equal to the required employee's contribution.~~ The employer shall pay monthly such contribution into the participating member's account from its funds appropriated for payroll and salary or any other funds available for such purposes. If the employer fails to pay the contributions monthly, it is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due.

~~3. Each employer, at its option, may pay the employee contributions required by this section for all compensation earned after December 31, 1999. The amount paid must be paid by the employer in lieu of contributions by the employee. If the employer decides not to pay the contributions, the amount that would have been paid will continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the employer may not be included as gross income of the employee in determining tax treatment under this code and the federal Internal Revenue Code until they are distributed or made available. The employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee. The employer shall pay these~~

~~contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a combination of a reduction in gross salary and offset against future salary increases. Employee contributions paid by the employer must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made before the date on which employee contributions were assumed by the employer. An employer shall exercise its option under this subsection by December 1, 1999, and shall report its choice to the board in writing. The option chosen may not be revoked for the remainder of the biennium. Thereafter, the option choice must be forwarded to the board, in writing, by June fifteenth of each odd-numbered year.~~

SECTION 10. AMENDMENT. Section 54-52.6-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52.6-10. Vesting. A participating member is immediately one hundred percent vested in ~~that member's contributions made~~ four percent of the participating member's monthly salary or wage contributed by the employer to that member's account under this chapter. A participating member vests in the remaining employer contributions made on that member's behalf to an account under this chapter according to the following schedule:

1. Upon completion of two years of service, fifty percent.
2. Upon completion of three years of service, seventy-five percent.
3. Upon completion of four years of service, one hundred percent.

A participating member who was a member or deferred member of the public employees retirement system under chapter 54-52 who makes an election to participate in the defined contribution retirement plan pursuant to this chapter, must be credited with the years of service accrued under the public employees retirement system on the effective date of participation in the defined contribution retirement plan for the purpose of meeting vesting requirements for benefits under this section. Any forfeiture as a result of the failure of a participating member to vest in the employer contribution must be deposited in the administrative expenses account.

SECTION 11. REPEAL. Section 54-52.6-16 of the North Dakota Century Code is repealed.