

## **TESTIMONY OF SCOTT MILLER**

### **House Bill 1209 – Set PERS Main and Defined Contribution Plan Contribution Rates at the Actuarially Determined Contribution Rate**

Good Afternoon, 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 favor of House Bill 1209.

I believe the intent behind House Bill 1209 is an excellent one – this would tie the contribution rate to the Main PERS Plan and the Defined Contribution Plan to the Actuarially Determined Contribution (ADC) rate, which is that rate necessary to get the Main PERS Plan to 100% funding within 20 years. The Bill would also create a stabilization fund in the future on which the Main PERS Plan could rely in the event our funding again became an issue. But while the intent is excellent, there are some amendments that need to be made to make the bill workable and consistent with the Internal Revenue Code.

Section 1 sets the contribution rate paid by temporary employees to the combined employee and employer rates that are set later in statute. Since temporary employees are required to pay both the employee and employer contributions, this is consistent with statute.

Section 2 sets the employer contribution rate at the rate “determined by actuarial valuations” to get the Main PERS Plan to 100% funded “over a closed period of either twenty years, or a period less than twenty years as established by the board taking into account the recommendation of the plan's actuary.” I would recommend changing the “determined by actuarial valuations” language to something that requires the NDPERS Board to set the contribution rate as of a certain date prior to the next legislative session pursuant to information contained within the annual actuarial valuations. As the Bill is currently written, there is no mechanism for transferring the information from the valuations to the employers or a date on which the contribution rate should be changed. Further, setting a date certain gives the Office of Management and Budget the opportunity to put those contributions in agencies’ respective budgets, and the Legislative Assembly the ability to review and approve those budget expenditures.

Section 3 provides for the creation of a stabilization fund on which the Board could potentially draw for future funding problems. There are a few things I would suggest

changing to clarify the section and ensure it complies with Internal Revenue Code requirements. Alternatively, I would suggest deleting this section.

First, section 3 of the bill uses the phrase “valuation assets”. We are unclear what that phrase is intended to mean, as it is not a phrase that is typically used in an actuarial valuation. I would suggest changing the phrase to “actuarial value of assets” or “market value of assets”, depending on what is intended in this section. Most likely the intent is to use “actuarial value of assets”.

Second, we presume this phrase, “the board shall account for fifty percent of the excess valuation assets in a stabilization reserve account”, is intended to require the Board to transfer fifty percent of either the actuarial value of assets or market value of assets above the 120% funding level from the PERS trust fund to a separate “stabilization reserve account”. Making that absolutely clear and requiring that transfer on the 1<sup>st</sup> of the January following the valuation date would be helpful clarifications.

However, the transfer itself would violate the Internal Revenue Code (IRC). As reflected in NDCC section 54-52-14.3, the IRC requires that all monies deposited into the trust fund be used for the “exclusive benefit of the members, retirees, and beneficiaries of that system, including the payment of system administrative costs.” NDCC section 54-52-14.3. Once the monies are deposited in the trust fund, they are the property of the members and beneficiaries of the system, and can only be used to pay benefits and reasonable administrative costs. The Board cannot remove trust fund money to fund the stabilization fund without violating the IRC and potentially disqualifying the retirement plan. Accordingly, a different funding mechanism for the stabilization fund is required. Alternatively, given that 100% funding is still at least 20 years away, this section could be removed and the topic considered in a later legislative session.

Section 4 makes the rate applicable to the Defined Contribution plan. I do not see any issues with that section.

I have provided Representative Ruby with proposed amendments that should accomplish the clarifications I noted above.

That concludes my testimony.