

Sixty-ninth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2121

Introduced by

State and Local Government Committee

(North Dakota Public Employees Retirement System)

1 A BILL for an Act to amend and reenact subsection 23 of section 54-52-01, section 54-52-17,
2 subsection 2 of section 54-52-28, sections 54-52.1-03.1 and 54-52.2-06, subsection 8 of section
3 54-52.6-01, and subsection 1 of section 54-52.6-02.2 of the North Dakota Century Code,
4 relating to administering the public employees retirement system.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Subsection 23 of section 54-52-01 of the North Dakota Century
7 Code is amended and reenacted as follows:

8 23. "Temporary employee" means an employee who is not eligible to participate as a
9 permanent employee, who is at least eighteen years old and not actively contributing
10 to another employer-sponsored ~~pension~~retirement fund, and, if employed by a school
11 district, occupies a noncertified teacher's position.

12 **SECTION 2. AMENDMENT.** Section 54-52-17 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **54-52-17. Formulation of plan. (Retroactive application - [See note](#))**

15 Participating members shall receive benefits according to this section and according to
16 rules adopted by the board, not inconsistent with this chapter. ~~No person~~An individual is not
17 entitled to receive a prior service benefit if the ~~person~~individual was not continuously employed
18 by a governmental unit in North Dakota for a period of not less than two years immediately prior-
19 ~~to~~before eligibility for retirement.

20 1. Participating members shall receive credit for full-time employment or its equivalent
21 from the date they attain eligibility until their normal retirement date, postponed
22 retirement date, or early retirement date, as defined in this section. Part-time
23 employment will be recognized as full-time employment on a prorated basis as the
24 board may prescribe.

2. Retirement benefits are calculated from the participating member's final average salary, which is the average of the highest salary received by the member for any thirty-six months employed during the last one hundred twenty months of employment. For members who terminate employment on or after August 1, 2010, final average salary is the average of the highest salary received by the member for any thirty-six months employed during the last one hundred eighty months of employment. For members who terminate employment between July 31, 2005, and August 1, 2010, final average salary is the average of the highest salary received by the member for any thirty-six months employed during the period for which the board has appropriate and accurate salary records on the board's electronic database, but that period may not be more than the last one hundred eighty months of employment. For members who terminate employment after December 31, 2019, final average salary is the higher of the final average salary calculated on December 31, 2019, or the average salary earned in the three highest periods of twelve consecutive months employed during the last one hundred eighty months of employment. Months without earnings are excluded for the purpose of computing an average. If the participating member has worked for less than thirty-six months at the normal retirement date, the final average salary is the average salary for the total months of employment.
3. Retirement dates are defined as follows:
 - a. Normal retirement date, except for a national guard security officer or firefighter, a firefighter employed by a political subdivision, a peace officer employed by the state, or a peace officer or correctional officer employed by a political subdivision, is:
 - (1) The first day of the month next following the month in which the member attains the age of sixty-five years; or
 - (2) When the member has a combined total of years of service credit and years of age equal to eighty-five and has not received a retirement benefit under this chapter.
 - b. Normal retirement date for members first enrolled after December 31, 2015, except for a national guard security officer or firefighter, a firefighter employed by a political subdivision, a peace officer employed by the state, a peace officer or

correctional officer employed by a political subdivision, or a supreme court or district court judge, is:

- (1) The first day of the month next following the month in which the member attains the age of sixty-five years; or
- (2) When the member has a combined total of years of service credit and years of age equal to ninety and the member attains a minimum age of sixty and has not received a retirement benefit under this chapter.

c. Normal retirement date for a national guard security officer or firefighter is:

- (1) The first day of the month next following the month in which the national guard security officer or firefighter attains the age of fifty-five years and has completed at least three eligible years of employment; or
- (2) When the national guard security officer or firefighter has a combined total of years of service credit and years of age equal to eighty-five and has not received a retirement benefit under this chapter.

d. Normal retirement date for a peace officer, firefighter, or correctional officer employed by a political subdivision is:

- (1) The first day of the month next following the month in which the peace officer, firefighter, or correctional officer attains the age of fifty-five years and has completed at least three eligible years of employment; or
- (2) When the peace officer, firefighter, or correctional officer has a combined total of years of service credit and years of age equal to eighty-five and has not received a retirement benefit under this chapter.

e. (1) Normal retirement date for a peace officer employed by the bureau of criminal investigation is:

- (a) [1] For a member employed before August 1, 2023, the first day of the month next following the month in which the peace officer attains the age of fifty-five years and has completed at least three eligible years of employment; and
- [2] For a member employed after July 31, 2023, the first day of the month next following the month in which the peace officer attains

1 the age of fifty-five years and has completed at least ten eligible
2 years of employment; or

3 (b) When the peace officer has a combined total of years of service credit
4 and years of age equal to eighty-five and has not received a
5 retirement benefit under this chapter.

6 (2) Normal retirement date for a peace officer employed by the state, other than
7 a peace officer employed by the bureau of criminal investigation, is:

8 (a) The first day of the month next following the month in which the peace
9 officer attains the age of fifty-five years and has completed at least
10 three eligible years of employment; or

11 (b) When the peace officer has a combined total of years of service credit
12 and years of age equal to eighty-five and has not received a
13 retirement benefit under this chapter.

14 f. Postponed retirement date is the first day of the month next following the month
15 in which the member, on or after July 1, 1977, actually severs or has severed the
16 member's employment after reaching the normal retirement date.

17 g. (1) Early retirement date, except for a national guard security officer or
18 firefighter, a firefighter, peace officer, or correctional officer employed by a
19 political subdivision, or a peace officer employed by the state, is the first day
20 of the month next following the month in which the member attains the age
21 of fifty-five years and has completed three years of eligible employment.

22 (2) For a national guard security officer or firefighter, early retirement date is the
23 first day of the month next following the month in which the national guard
24 security officer or firefighter attains the age of fifty years and has completed
25 at least three years of eligible employment.

26 (3) For a peace officer employed by the state, other than a peace officer
27 employed by the bureau of criminal investigation, or a firefighter, peace
28 officer, or correctional officer employed by a political subdivision, early
29 retirement date is the first day of the month next following the month in
30 which the peace officer, firefighter, or correctional officer attains the age of
31 fifty years and has completed at least three years of eligible employment.

(4) For a peace officer employed by the bureau of criminal investigation, early retirement date is the first day of the month next following the month in which the peace officer attains the age of fifty years and has completed:

(a) If hired before August 1, 2023, at least three years of eligible employment; or

(b) If hired after July 31, 2023, at least ten years of eligible employment.

h. Disability retirement date is the first day of the month after a member becomes permanently and totally disabled, according to medical evidence called for under the rules of the board, and has completed at least one hundred eighty days of eligible employment. For supreme and district court judges, permanent and total disability is based solely on a judge's inability to perform judicial duties arising out of physical or mental impairment, as determined pursuant to rules adopted by the board or as provided by subdivision a of subsection 3 of section 27-23-03.

(1) A member is eligible to receive disability retirement benefits only if the member became disabled during the period of eligible employment and applies for disability retirement benefits within twelve months of the date the member terminates employment.

(2) A member is eligible to continue to receive disability benefits as long as the permanent and total disability continues and the member submits the necessary documentation and undergoes medical testing required by the board, or for as long as the member participates in a rehabilitation program required by the board, or both. If the board determines a member no longer meets the eligibility definition, the board may discontinue the disability retirement benefit. The board may pay the cost of any medical testing or rehabilitation services the board deems necessary and these payments are appropriated from the retirement fund for those purposes. A member's receipt of disability benefits under this section is limited to receipt from the fund to which the member was actively contributing at the time the member became disabled.

4. The board shall calculate retirement benefits as follows:

- 1 a. Normal retirement benefits for all ~~retirees~~a retiree, except ~~a supreme and/or~~
2 district court ~~judges~~judge, peace ~~officers~~officer employed by the bureau of
3 criminal investigation, ~~and/or~~ other peace ~~officers~~officer employed by the state,
4 reaching normal retirement date ~~equal~~equals an annual amount, payable
5 monthly, comprised of a service benefit and a prior service benefit, as defined in
6 this chapter, which is determined as follows:
- 7 (1) For ~~members~~a member first enrolled:
- 8 (a) Before January 1, 2020, service benefit equals two percent of final
9 average salary multiplied by the number of years of service
10 employment.
- 11 (b) After December 31, 2019, service benefit equals one and seventy-five
12 hundredths percent of final average salary multiplied by the number of
13 years of service employment.
- 14 (2) Prior service benefit equals two percent of final average salary multiplied by
15 the number of years of prior service employment.
- 16 b. Normal retirement benefits for ~~all~~a supreme ~~and/or~~ district court ~~judges~~judge
17 under the public employees retirement system reaching normal retirement date
18 ~~equal~~equals an annual amount, payable monthly, comprised of a benefit as
19 defined in this chapter, determined as follows:
- 20 (1) Benefits must be calculated from the time of appointment or election to the
21 bench and must equal three and one-half percent of final average salary
22 multiplied by the first ten years of judicial service, two and eighty hundredths
23 percent of final average salary multiplied by the second ten years of judicial
24 service, and one and one-fourth percent of final average salary multiplied by
25 the number of years of judicial service exceeding twenty years.
- 26 (2) Service benefits must include, in addition, an amount equal to the percent
27 specified in subdivision a of final average salary multiplied by the number of
28 years of nonjudicial employee service and employment.
- 29 c. Normal retirement benefits for a peace officer employed by the bureau of criminal
30 investigation reaching the normal retirement date equals an annual amount,

payable monthly, comprised of a service benefit and a prior service benefit determined as follows:

(1) The first twenty years of credited service multiplied by three percent of final average salary.

(2) For years in excess of twenty years of credited service multiplied by one and seventy-five hundredths percent of final average salary.

d. Normal retirement benefits for a peace officer employed by the state, other than by the bureau of criminal investigation, reaching the normal retirement date equals an annual amount, payable monthly, comprised of a service benefit and a prior service benefit determined as follows:

(1) For ~~members~~ a member first enrolled:

(a) Before January 1, 2020, service benefit equals two percent of final average salary multiplied by the number of years of service employment.

(b) After December 31, 2019, service benefit equals one and seventy-five hundredths percent of final average salary multiplied by the number of years of service employment.

(2) Prior service benefit equals two percent of final average salary multiplied by the number of years of prior service employment.

e. Postponed retirement benefits are calculated as for single life benefits for those members who retired on or after July 1, 1977.

f. Early retirement benefits are calculated as for single life benefits accrued to the date of termination of employment, but must be actuarially reduced to account for benefit payments beginning before the normal retirement date, as determined under subsection 3. Except for a national guard security officer or firefighter, a firefighter, peace officer, or correctional officer employed by a political subdivision, a peace officer employed by the state, or a supreme court or district court judge, early retirement benefits for members first enrolled after December 31, 2015, are calculated for single life benefits accrued to the date of termination of employment, but must be reduced by fixed rate of eight percent per year to account for benefit payments beginning before the normal retirement

1 date. A retiree, other than a supreme or district court judge, or a peace officer
2 employed by the bureau of criminal investigation and hired after July 31, 2023, is
3 eligible for early retirement benefits only after having completed three years of
4 eligible employment. A supreme or district court judge retiree is eligible for early
5 retirement benefits only after having completed five years of eligible employment.
6 A peace officer employed by the bureau of criminal investigation and hired after
7 July 31, 2023, is eligible for early retirement benefits only after having completed
8 ten years of eligible employment.

9 g. Except for a supreme and/or district court judges~~judge~~, disability retirement
10 benefits are twenty-five percent of the member's final average salary. Disability
11 retirement benefits for a supreme and/or district court judges~~judge~~ are seventy
12 percent of final average salary reduced by the member's ~~primary~~any social
13 security benefits and by any workforce safety and insurance benefits paid to the
14 member. The minimum monthly disability retirement benefit under this section is
15 one hundred dollars.

16 5. Upon termination of employment after completing three years of eligible employment,
17 except for a supreme and/or district court judges~~judge~~, who must complete five years
18 of eligible employment, or a peace officer employed by the bureau of criminal
19 investigation and hired after July 31, 2023, who must complete ten years of eligible
20 employment, but before normal retirement date, a member who does not elect to
21 receive early retirement benefits is eligible to receive deferred vested retirement
22 benefits payable commencing on the member's normal retirement date in one of the
23 optional forms provided in subsection 9. Members who have delayed or inadvertently
24 failed to apply for retirement benefits to commence on their normal retirement date
25 may choose to receive either a lump sum payment equal to the amount of missed
26 payments, or an actuarial increase to the form of benefit the member has selected,
27 which increase must reflect the missed payments.

28 6. If before retiring a member dies after completing three years of eligible employment,
29 except for a supreme and/or district court judges~~judge~~, who must have completed five
30 years of eligible employment, or a peace officer employed by the bureau of criminal
31 investigation and hired after July 31, 2023, who must complete ten years of eligible

1 employment, the board shall pay the member's account balance to the member's
2 designated beneficiary as provided in this subsection. If the member has designated
3 an alternate beneficiary with the surviving spouse's written consent, the board shall
4 pay the member's account balance to the named beneficiary. If the member has
5 named more than one primary beneficiary, the board shall pay the member's account
6 balance to the named primary beneficiaries in the percentages designated by the
7 member or, if the member has not designated a percentage for the beneficiaries, in
8 equal percentages. If one or more of the primary beneficiaries has predeceased the
9 member, the board shall pay the predeceased beneficiary's share to the remaining
10 primary beneficiaries. If any beneficiary survives the member, yet dies before
11 distribution of the beneficiary's share, the beneficiary must be treated as if the
12 beneficiary predeceased the member. If there are no remaining primary beneficiaries,
13 the board shall pay the member's account balance to the contingent beneficiaries in
14 the same manner. If there are no remaining designated beneficiaries, the board shall
15 pay the member's account balance to the member's estate. If the member has not
16 designated an alternate beneficiary or the surviving spouse is the beneficiary, the
17 surviving spouse of the member may select a form of payment as follows:

- 18 a. If the member was a supreme or district court judge, the surviving spouse may
19 select one of the following optional forms of payment:
- 20 (1) A lump sum payment of the member's retirement account as of the date of
21 death.
- 22 (2) Payments as calculated for the deceased member as if the member was of
23 normal retirement age at the date of death, payable until the spouse dies.
- 24 b. The surviving spouse of all other members may select one of the following
25 options:
- 26 (1) A lump sum payment of the member's retirement account as of the date of
27 death.
- 28 (2) Payment of a monthly retirement benefit equal to fifty percent of the
29 deceased member's accrued single life retirement benefits until the spouse
30 dies.

(3) If the member dies on or after the member's normal retirement date, the payment of a monthly retirement benefit equal to an amount that would have been paid to the surviving spouse if the member had retired on the day of the member's death and had selected a one hundred percent joint and survivor annuity, payable until the spouse dies. A surviving spouse who received a benefit under this subsection as of July 31, 1995, is entitled to the higher of that person's existing benefit or the equivalent of the accrued benefit available under the one hundred percent joint and survivor provision as if the deceased member were of normal retirement age, with the increase payable beginning August 1, 1995.

7. If a member not coming under the provisions of subsection 6 terminates employment because of death, permanent and total disability, or any voluntary or involuntary reason prior to retirement, the member or the member's designated beneficiary is entitled to the member's account balance at termination. The board automatically shall refund a member's account balance if the member has completed less than three years of eligible employment, has an account balance of less than one thousand dollars, and was not a supreme or district court judge or a peace officer employed by the bureau of criminal investigation and hired after July 31, 2023. If the member was a supreme or district court judge, the board automatically shall refund a member's account balance if the member completed less than five years of eligible employment and has an account balance of less than one thousand dollars. If the member was a peace officer employed by the bureau of criminal investigation and hired after July 31, 2023, the board automatically shall refund a member's account balance if the member completed less than ten years of eligible employment and has an account balance of less than one thousand dollars. A member may waive the refund if the member submits a written statement to the board, within thirty days after termination, requesting that the member's account balance remain in the fund.
8. The surviving spouse of a member receiving retirement benefits must be the member's primary beneficiary unless there is no surviving spouse or the surviving spouse designates an alternate beneficiary in writing. If a member receiving retirement benefits or the member's surviving spouse receiving retirement benefits dies before

the total amount of benefits paid to either or both equals the amount of the member's account balance at retirement, the difference must be paid to the named beneficiary of the recipient or, if there is no named beneficiary, to the recipient's estate. A benefit payment owed to the member, surviving spouse, or alternate beneficiary which was not paid before the death of the member, surviving spouse, or alternate beneficiary must be paid to the named beneficiary of the recipient or, if there is no named beneficiary, to the recipient's estate.

9. a. The board shall adopt rules providing for the receipt of retirement benefits in the following optional forms:

a. (1) Single life.

b. (2) An actuarially equivalent joint and survivor option, with fifty percent or one hundred percent options.

c. (3) Actuarially equivalent life with ten-year or twenty-year certain options.

d. (4) An actuarially equivalent partial lump sum distribution option with a twelve-month maximum lump sum distribution.

e. (5) An actuarially equivalent graduated benefit option with either a one percent or two percent increase to be applied the first day of January of each year.

b. Except for a supreme ~~and/or~~ district court ~~judges~~judge, unless a member specifically requests that the member receive benefits according to one of these options at the time of applying for retirement, all retirement benefits must be in the form of a single life benefit. For a supreme ~~and/or~~ district court ~~judges~~judge, unless a member specifically requests that the member receive benefits according to one of these options at the time of applying for retirement, all retirement benefits must be in the form of a lifetime monthly pension with fifty percent of the benefit continuing for the life of the surviving spouse, if any.

10. The fund may accept rollovers from other eligible plans under rules adopted by the board for the purchase of additional service credit, but only to the extent the transfer is a rollover contribution that meets the requirement of section 408 of the Internal Revenue Code.

11. The board may accept trustee-to-trustee transfers as permitted by Internal Revenue Code section 403(b)(13) and section 457(e)(17) from an Internal Revenue Code

1 section 403(b) annuity or Internal Revenue Code section 457 deferred compensation
2 plan for the purchase of permissive service credit, as defined in Internal Revenue
3 Code section 415(n)(3)(A) or as repayment of a cashout from a governmental plan
4 under Internal Revenue Code section 415(k)(3).

- 5 12. The board may establish individual retirement accounts and individual retirement
6 annuities as permitted under section 408(q) of the Internal Revenue Code to allow
7 employees to make voluntary employee contributions. The board may adopt rules to
8 implement and administer the accounts and annuities under this section.

9 **SECTION 3. AMENDMENT.** Subsection 2 of section 54-52-28 of the North Dakota Century
10 Code is amended and reenacted as follows:

- 11 2. The minimum distribution rules under section 401(a)(9) of the Internal Revenue Code,
12 including the incidental death benefit requirements under section 401(a)(9)(G), and the
13 regulations issued under that provision to the extent applicable to governmental plans,
14 as amended. Accordingly, benefits must be distributed or begin to be distributed no
15 later than a member's required beginning date, and the required minimum distribution
16 rules override any inconsistent provision of this chapter. ~~For a member who attains~~
17 ~~age seventy and one-half before January 1, 2020, the member's required beginning~~
18 ~~date is April first of the calendar year following the later of the calendar year in which~~
19 ~~the member attains age seventy and one-half or terminates employment. For a~~
20 ~~member who attains age seventy and one-half after December 31, 2019, the~~
21 ~~member's required beginning date is April first of the calendar year following the later~~
22 ~~of the calendar year in which the member attains age seventy-two or terminates~~
23 ~~employment.~~

24 **SECTION 4. AMENDMENT.** Section 54-52.1-03.1 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **54-52.1-03.1. Certain political subdivisions authorized to join uniform group**
27 **insurance program - Employer contribution.**

28 If eligible under federal law, a political subdivision may extend the benefits of the uniform
29 group insurance program under this chapter to its permanent employees, subject to minimum
30 requirements established by the board and a minimum period of participation of sixty months. If
31 the political subdivision withdraws from participation in the uniform group insurance program,

1 before completing sixty months of participation, unless federal or state laws or rules are
2 modified or interpreted in a way that makes participation by the political subdivision in the
3 uniform group insurance program no longer allowable or appropriate, the political subdivision
4 shall make payment to the board in an amount equal to any expenses incurred in the uniform
5 group insurance program that exceed income received on behalf of the political subdivision's
6 employees as determined under rules adopted by the board. The Garrison Diversion
7 Conservancy District, ~~and district~~ shall participate in the uniform group insurance program under
8 the same terms and conditions as state agencies. District health units required to participate in
9 the public employees retirement system under section 54-52-02, which were participating in the
10 uniform group insurance program at the time the Affordable Care Act was enacted, shall
11 participate in the uniform group insurance program under the same terms and conditions as
12 state agencies. A retiree who has accepted a retirement allowance from a participating political
13 subdivision's retirement plan may elect to participate in the uniform group under this chapter
14 without meeting minimum requirements at age sixty-five, when the employee's spouse reaches
15 age sixty-five, upon the receipt of a benefit, when the political subdivision joins the uniform
16 group insurance plan if the retiree was a member of the former plan, or when the spouse
17 terminates employment. If a retiree or surviving spouse does not elect to participate at the times
18 specified in this section, the retiree or surviving spouse must meet the minimum requirements
19 established by the board. Each retiree or surviving spouse shall pay directly to the board the
20 premiums in effect for the coverage then being provided. The board may require documentation
21 that the retiree has accepted a retirement allowance from an eligible retirement plan other than
22 the public employees retirement system.

23 **SECTION 5. AMENDMENT.** Section 54-52.2-06 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **54-52.2-06. Deferred compensation program - Benefits - Taxation - Exemption from**
26 **judicial process - Assignment.**

27 The deferred compensation program established by this chapter shall exist and serve in
28 addition to retirement, pension, or benefit systems established by the state, county, city, town, or
29 other political subdivision, and no deferral of income under the deferred compensation program
30 shall effect a reduction of any retirement, pension, or other benefit provided by law. However,
31 with the exception of Roth contributions, any sum deferred under the deferred compensation

1 program is not subject to taxation until distribution is actually made to the employee. Any unpaid
2 benefits under the deferred compensation program established by this chapter are not subject
3 to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other
4 process of law whatsoever, except as provided by section 54-52.2-03.3. Neither the employee,
5 the employee's beneficiary, nor any designee of the employee or the employee's beneficiary
6 has the right to commute, sell, assign, transfer, or otherwise convey the right to receive
7 payments under this chapter.

8 **SECTION 6. AMENDMENT.** Subsection 8 of section 54-52.6-01 of the North Dakota
9 Century Code is amended and reenacted as follows:

- 10 8. "Wages" and "salaries" means earnings in eligible employment under this chapter
11 reported as salary on a federal income tax withholding statement plus any salary
12 reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or
13 457. "Salary" does not include fringe benefits such as payments for unused sick leave,
14 personal leave, vacation leave paid in a lump sum, overtime, housing allowances,
15 transportation expenses, early retirement, incentive pay, severance pay, medical
16 insurance, workforce safety and insurance benefits, disability insurance premiums or
17 benefits, or salary received by a member in lieu of previously employer-provided fringe
18 benefits under an agreement between an employee and a participating employer.
19 Bonuses may be considered as salary under this section if reported ~~and annualized~~
20 pursuant to rules adopted by the board.

21 **SECTION 7. AMENDMENT.** Subsection 1 of section 54-52.6-02.2 of the North Dakota
22 Century Code is amended and reenacted as follows:

- 23 1. As used in this section, "eligible employee" means a permanent state employee who
24 on December 31, 2024, is a participating member of the public employees retirement
25 system main system plan under chapter ~~54-42~~54-52, who has been a participating
26 member under chapter 54-52 for no more than five years, and who is at least eighteen
27 years of age.