

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1146

Introduced by

Representatives Lefor, Dockter, Schauer, Stemen, M. Ruby

Senators Davison, Dever, Hogue

1 A BILL for an Act to amend and reenact sections 54-52-02.1, 54-52-06, 54-52.6-01,
2 54-52.6-02.2, 54-52.6-05, and 54-52.6-09.5 of the North Dakota Century Code, relating to
3 employer eligibility to participate in the public employees retirement system defined contribution
4 retirement plan, employer contribution requirements for the defined benefit and defined
5 contribution retirement plans, and employee eligibility to elect to transfer to the defined
6 contribution retirement plan; ~~and~~ to provide for retroactive application; and to declare an
7 emergency.

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

9 **SECTION 1. AMENDMENT.** Section 54-52-02.1 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **54-52-02.1. Political subdivisions authorized to join public employees retirement**
12 **system.**

13 1. A political subdivision may, on behalf of its permanent employees, on behalf of its
14 peace officers, firefighters, and correctional officers separately from its other
15 employees, and permanent noncertified employees only in the case of school districts,
16 enter agreements with the retirement board for the purpose of extending the benefits
17 of the public employees retirement system, as provided in this chapter or chapter
18 54-52.6, to those employees. The agreement may, in accordance with this chapter and
19 chapter 54-52.6, contain provisions relating to benefits, contributions, effective date,

modification, administration, and other appropriate provisions as the retirement board and the political subdivision agree upon, but the agreement must provide:

a. The political subdivision will contribute on behalf of each eligible employee an amount equal to that provided in section 54-52-06 or 54-52-06.3 for peace officers, firefighters, and correctional officers participating separately from other political subdivision employees.

b. A portion of the moneys paid by the political subdivision may be used to pay administrative expenses of the retirement board.

2. Notwithstanding any other provision of law, a political subdivision having an existing police or firefighter pension plan may merge that plan into the public employees retirement system under rules adopted by and in a manner determined by the board.

3. Notwithstanding any other provision of this chapter, a political subdivision of this state not currently participating in the public employees retirement system may not become a participant in the retirement system until an actuarial study is performed under the direction of the board to calculate the required employer contribution for any past service liability and the required employer contribution must be an amount determined sufficient to amortize and fund any past service liability over a period not to exceed thirty years as determined by the board. Any fees incurred in performing the actuarial study must be paid for by the political subdivision in a manner determined by the board.

SECTION 2. AMENDMENT. Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06. Employer's contribution to retirement plan - Report to the employee benefits programs committee. (Effective through December 31, 2025)

1. Each governmental unit shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Governmental unit contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the reporting period of January 2013; with an additional increase of one percent, beginning with the monthly reporting period of January 2014; and with an additional increase of

one percent, beginning with the monthly reporting period of January 2024. For a participating member who first enrolls after December 31, 2019, the governmental unit shall contribute an additional amount equal to one and fourteen-hundredths percent of the monthly salary or wage of the participating member.

2. For those members who elect to exercise their rights under section 54-52-17.14, 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 section 54-52-17.14 a lump sum, into the retirement fund from the governmental unit's funds appropriated for payroll and salary or any other funds available for these purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, or failing to otherwise comply with the board's established wage reporting or payroll reporting process requirements, 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 of a month 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 the contributions became due, penalty and interest to be paid on delinquent contributions may be waived.

3. 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 if the employee would have been eligible to become vested had the employee participated and if the employee elects to join the public employees retirement system. Employer contributions may not be assessed for eligible service that an employee has waived pursuant to subsection 1 of section 54-52-05.

- 1 4. Annually, the board shall report to the employee benefits programs committee the
2 contributions necessary, as determined by the actuarial study, to maintain the fund's
3 actuarial soundness.

4 **Employer's contribution to retirement plan - Report to the employee benefits**
5 **programs committee. (Effective after December 31, 2025)**

- 6 1. a. As determined by actuarial valuations, each state governmental unit that receives
7 budgetary approval from the legislative assembly shall contribute to the defined
8 benefit plan an amount on a level percent of compensation basis for all main
9 system defined benefit retirement plan employees and all defined contribution
10 retirement plan employees sufficient under the actuarial valuation to meet both
11 the normal cost plus the actuarially determined amount required to amortize the
12 unfunded accrued liability of the main plan over a closed period of thirty and
13 one-half years, beginning January 1, 2026, and continuing through June 30,
14 2056. By November fifteenth of each even-numbered year the board shall publish
15 the contribution rate required under this subsection. The board shall calculate this
16 rate based on the July first actuarial report of that year.
- 17 b. Each participating political subdivision shall contribute an amount equal to eight
18 and twelve-hundredths percent of the monthly salary or wage of a participating
19 member.
- 20 c. For a participating member who first enrolls after December 31, 2019, a
21 participating political subdivision shall contribute an additional amount equal to
22 one and fourteen-hundredths percent of the monthly salary or wage of the
23 participating member.
- 24 2. For those members who elect to exercise their rights under section 54-52-17.14, the
25 employing governmental unit, or in the case of a member not presently under covered
26 employment the most recent employing governmental unit, shall pay the associated
27 employer contribution. If the employee's contribution is paid by the governmental unit
28 under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition,
29 an amount equal to the required employee's contribution. Each governmental unit
30 shall pay the contribution monthly, or in the case of an election made pursuant to
31 section 54-52-17.14 a lump sum, into the retirement fund from the governmental unit's

1 funds appropriated for payroll and salary or any other funds available for these
2 purposes. Any governmental unit failing to pay the contributions monthly, or in the
3 case of an election made pursuant to section 54-52-17.14 a lump sum, or failing to
4 otherwise comply with the board's established wage reporting or payroll reporting
5 process requirements, is subject to a civil penalty of fifty dollars and, as interest, one
6 percent of the amount due for each month of delay or fraction of a month after the
7 payment became due. In lieu of assessing a civil penalty or one percent per month, or
8 both, interest at the actuarial rate of return may be assessed for each month the
9 contributions are delinquent. If contributions are paid within ninety days of the date the
10 contributions became due, penalty and interest to be paid on delinquent contributions
11 may be waived.

12 3. An employer is required to submit contributions for any past eligible employee who
13 was employed after July 1, 1977, for which contributions were not made if the
14 employee would have been eligible to become vested had the employee participated
15 and if the employee elects to join the public employees retirement system. Employer
16 contributions may not be assessed for eligible service that an employee has waived
17 pursuant to subsection 1 of section 54-52-05.

18 4. Annually, the board shall report to the employee benefits programs committee the
19 contributions necessary, as determined by the actuarial study, to maintain the fund's
20 actuarial soundness.

21 **SECTION 3. AMENDMENT.** Section 54-52.6-01 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **54-52.6-01. Definition of terms.**

24 As used in this chapter, unless the context otherwise requires:

- 25 1. "Board" means the public employees retirement system board.
26 2. "Deferred member" means ~~a person~~ an individual who elected to receive deferred
27 vested retirement benefits under chapter 54-52.
28 3. "Eligible employee", for employees who become participating members after
29 December 31, 2024, has the same meaning as provided under section 54-52-02.15.
30 For employees who elected to join the defined contribution retirement plan under this
31 chapter before January 1, 2025, the term includes a permanent state employee,

except an employee of the judicial branch or an employee of the board of higher education and state institutions under the jurisdiction of the board of higher education, who is at least eighteen years of age and who is in a position not classified by the North Dakota human resource management services.

4. "Employee" means ~~any person~~ an individual employed by the state, whose compensation is paid out of state funds, or funds controlled or administered by the state or paid by the federal government through any of its executive or administrative officials.
5. "Employer" means the state of North Dakota, except the highway patrol for members of the retirement plan created under chapter 39-03.1, or a participating political subdivision of the state.
6. "Participating member" means an eligible employee who elects to participate in the defined contribution retirement plan established under this chapter.
7. "Permanent employee" means a state employee whose services are not limited in duration and who is filling an approved and regularly funded position and is employed twenty hours or more per week and at least five months each year.
8. "Wages" and "salaries" means earnings in eligible employment under this chapter reported as salary on a federal income tax withholding statement plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as payments for unused sick leave, personal leave, vacation leave paid in a lump sum, overtime, housing allowances, transportation expenses, early retirement, incentive pay, severance pay, medical insurance, workforce safety and insurance benefits, disability insurance premiums or benefits, or salary received by a member in lieu of previously employer-provided fringe benefits under an agreement between an employee and a participating employer. Bonuses may be considered as salary under this section if reported and annualized pursuant to rules adopted by the board.

SECTION 4. AMENDMENT. Section 54-52.6-02.2 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-02.2. Election after December 31, 2024 - Additional employer contribution.

1. As used in this section, "eligible employee" means a permanent state employee of a state entity that as of January 1, 2025, receives budgetary approval from the legislative assembly, who on December 31, 2024, is a participating member of the public employees retirement system main system plan under chapter ~~54-42~~54-52, who has been a participating member under chapter 54-52 for no more than five years, and who is at least eighteen years of age.
2. The board shall provide a three-month election period, from January 1, 2025, through March 31, 2025, for an eligible employee to transfer to the defined contribution plan under this chapter pursuant to the rules and policies adopted by the board.
 - a. An election under this section made by a member of the public employees retirement system under chapter 54-52 to transfer to the defined contribution retirement plan under this chapter is irrevocable.
 - b. For an eligible employee who elects to transfer from the public employees retirement system under chapter 54-52 to the defined contribution retirement plan under this chapter, the board shall transfer a lump sum amount from the public employees retirement system fund to the member's account in the defined contribution retirement plan under this chapter. However, if the eligible employee terminates employment before receiving the lump sum transfer under this section, the election made is ineffective and the eligible employee remains a member of the public employees retirement system under chapter 54-52 and retains all the rights and privileges under that chapter.
 - c. The board shall calculate the lump sum amount to be transferred based on the actuarial present value of the eligible employee's accumulated benefit obligation under the public employees retirement system based on the assumption the eligible employee will retire under the earlier applicable normal retirement age, plus interest from January 1, 2025, to the date of transfer, at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election.
 - d. This section does not affect an eligible individual's right to health benefits under chapter 54-52.1.

3. The state employer of an eligible employee who elects under this section to participate in the defined contribution retirement plan under this chapter shall pay an additional annual contribution of three thousand three hundred and thirty-three dollars for up to three years. Under this subsection, the employer shall pay the additional contribution each year the eligible employee continues permanent employment with the state, beginning January 2026, and extending no further than January 2028.

4. If the board receives notification from the internal revenue service that this section or any portion of this section will cause the public employees retirement system or the retirement plan established under this chapter to be disqualified for tax purposes under the Internal Revenue Code, that portion that will cause the disqualification does not apply.

SECTION 5. AMENDMENT. Section 54-52.6-05 of the North Dakota Century Code is amended and reenacted as follows:

54-52.6-05. Direction of investments.

1. Each participating member shall direct the investment of the individual's accumulated employer and employee contributions and earnings to one or more investment choices within available categories of investment provided by the board.
2. The board shall provide an investment menu of investment options. In establishing the investment options, the board shall:
 - a. Include predetermined investment portfolio options constructed to reflect different risk profiles that automatically reallocate and rebalance contributions as a participating member ages.
 - b. Allow a participating member to construct an investment portfolio using some or all of the investment options.
3. The board shall provide a diversified menu of mutual funds and ~~in-plan~~ lifetime annuity options that must include in-plan and out-of-plan options, either fixed, variable, or a combination of both. In selecting an annuity provider the board shall comply with section 54-52.6-05.1.

SECTION 6. AMENDMENT. Section 54-52.6-09.5 of the North Dakota Century Code is amended and reenacted as follows:

1 **54-52.6-09.5. Employer contribution for defined benefit plan. (Effective after**
2 **December 31, 2025)**

3 In addition to the employer contribution under section 54-52.6-09, a state employer that
4 receives budgetary approval from the legislative assembly shall contribute to the defined benefit
5 retirement plan under chapter 54-52, an amount equal to the contribution rate calculated under
6 section 54-52-06 less the amount of the required employer contribution under sections
7 54-52.2-09 and 54-52.6-09. If a state employer uses federal funds to pay any or all of an
8 employee's wages, the employer shall use state funds to pay this additional contribution.

9 **SECTION 7. RETROACTIVE APPLICATION.** Section 4 of this Act applies retroactively to
10 January 1, 2025.

11 **SECTION 8. EMERGENCY.** Section 4 of this Act is declared to be an emergency measure.