

SENATE BILL NO. 2033

Introduced by

Legislative Council

(Employee Benefits Programs Committee)

1 A BILL for an Act to create and enact two new subsections to section 54-52-01, a new section
2 to chapter 54-52, and two new sections to chapter 54-52.6 of the North Dakota Century Code,
3 relating to participation by peace officers and correctional officers in the defined benefit
4 retirement plan and the defined contribution retirement plan; to amend and reenact
5 subsection 3 of section 54-52-01, section 54-52-02.1, subsection 3 of section 54-52-05,
6 subsection 3 of section 54-52-17, section 54-52.6-01, subsection 1 of section 54-52.6-02, and
7 section 54-52.6-03 of the North Dakota Century Code, relating to participation by peace officers
8 and correctional officers in the defined benefit retirement plan and the defined contribution
9 retirement plan; and to provide an appropriation.

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

11 **SECTION 1.** Two new subsections to section 54-52-01 of the North Dakota Century
12 Code are created and enacted as follows:

13 "Correctional officer" means a participating member who is certified by the
14 department of corrections and rehabilitation or the peace officer standards and
15 training board as a correctional officer and is employed by the department of
16 corrections and rehabilitation or a political subdivision.

17 "Peace officer" means a participating member who is a peace officer as defined in
18 section 12-63-01 and is employed as a peace officer.

19 **SECTION 2. AMENDMENT.** Subsection 3 of section 54-52-01 of the North Dakota
20 Century Code is amended and reenacted as follows:

21 3. "Eligible employee" means all permanent employees who meet all of the eligibility
22 requirements set by this chapter and who are eighteen years or more of age, and
23 includes appointive and elective officials who elect to remain members of the

1 retirement system; provided, that judges of the supreme and district courts eligible
2 under section 54-52-02.3 and appointed officials who elect to participate under
3 section 54-52-02.5 are eligible employees and shall participate in the public
4 employees retirement system. Eligible employee does not include nonclassified
5 state employees, peace officers, and correctional officers who elect to become
6 members of the retirement plan established under chapter 54-52.6 but does
7 include employees of the judicial branch and employees of the board of higher
8 education and state institutions under the jurisdiction of the board.

9 **SECTION 3. 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 and correctional officers separately from its other employees, and
15 permanent noncertified employees only in the case of school districts, enter into
16 agreements with the retirement board for the purpose of extending the benefits of
17 the public employees retirement system, as provided in this chapter, to those
18 employees. The agreement may, in accordance with this chapter, contain
19 provisions relating to benefits, contributions, effective date, modification,
20 administration, and other appropriate provisions as the retirement board and the
21 political subdivision agree upon, but the agreement must provide that:
- 22 a. The political subdivision will contribute on behalf of each eligible employee an
23 amount equal to that provided in section 54-52-06 or section 5 of this Act for
24 peace officers and correctional officers participating separately from other
25 political subdivision employees.
- 26 b. A portion of the moneys paid by the political subdivision may be used to pay
27 administrative expenses of the retirement board.
- 28 2. Notwithstanding any other provision of law, a political subdivision having an
29 existing police pension plan may merge that plan into the public employees
30 retirement system under rules adopted by and in a manner determined by the
31 board.

1 3. Notwithstanding any other provision of this chapter, ~~no~~ a political subdivision of this
2 state not currently participating in the public employees retirement system ~~on~~
3 ~~June 30, 1977~~, may thereafter not become a participant in the retirement system
4 until an actuarial study is performed under the direction of the board to calculate
5 the ~~cost of that portion of benefits to be paid by the retirement system to the~~
6 ~~employees of the political subdivision based on any prior service or on any service~~
7 ~~after June 30, 1977, and before the date of initial participation in the retirement~~
8 ~~system, or both; and the political subdivision has adopted a method, approved by~~
9 ~~the board, to pay the costs determined in this subsection over a period not to~~
10 ~~exceed twenty five years from June 30, 1977. No political subdivision may~~
11 ~~discontinue participation in the fund without first making such payment to the fund~~
12 ~~as may be necessary for the fund to pay the future benefits of the eligible~~
13 ~~employees of the political subdivision as determined on the basis of rules adopted~~
14 ~~by the board~~ required employer contribution. The required employer contribution
15 must be an amount determined sufficient to fund the normal cost and amortize any
16 past service liability over a period not to exceed thirty years as determined by the
17 board. Any fees incurred in performing the actuarial study must be paid for by the
18 political subdivision in a manner determined by the board.

19 **SECTION 4. AMENDMENT.** Subsection 3 of section 54-52-05 of the North Dakota
20 Century Code is amended and reenacted as follows:

21 3. Each employer, at its option, may pay the employee contributions required by
22 subsection 2 and sections 54-52-06.1 ~~and~~, 54-52-06.2, and section 5 of this Act.
23 The amount paid must be paid by the employer in lieu of contributions by the
24 employee. If the state determines not to pay the contributions, the amount that
25 would have been paid must continue to be deducted from the employee's
26 compensation. If contributions are paid by the employer, they must be treated as
27 employer contributions in determining tax treatment under this code and the federal
28 Internal Revenue Code. If contributions are paid by the employer, they may not be
29 included as gross income of the employee in determining tax treatment under this
30 code and the Internal Revenue Code until they are distributed or made available.
31 The employer shall pay these employee contributions from the same source of

1 funds used in paying compensation to the employee or from the levy authorized by
2 subsection 5 of section 57-15-28.1. The employer shall pay these contributions by
3 effecting an equal cash reduction in the gross salary of the employee or by an
4 offset against future salary increases or by a contribution of a reduction in gross
5 salary and offset against future salary increases. If employee contributions are
6 paid by the employer, they must be treated for the purposes of this chapter in the
7 same manner and to the same extent as employee contributions made prior to the
8 date on which employee contributions were assumed by the employer. An
9 employer exercising its option under this subsection shall report its choice to the
10 board, in writing, by June fifteenth of each odd-numbered year.

11 **SECTION 5.** A new section to chapter 54-52 of the North Dakota Century Code is
12 created and enacted as follows:

13 **Contribution by peace officers and correctional officers - Employer contribution.**

14 Each peace officer or correctional officer who is a member of the public employees retirement
15 system is assessed and shall pay monthly four percent of the employee's monthly salary. The
16 assessment must be deducted and retained out of the employee's salary in equal monthly
17 installments. The peace officer's or correctional officer's employer shall contribute an amount
18 determined by the board to be actuarially required to support the level of benefits specified in
19 section 54-52-17. The employer's contribution must be paid from funds appropriated for salary
20 or from any other funds available for such purposes. If the peace officer's or correctional
21 officer's assessment is paid by the employer under subsection 3 of section 54-52-05, the
22 employer shall contribute, in addition, an amount equal to the required peace officer's or
23 correctional officer's assessment.

24 **SECTION 6. AMENDMENT.** Subsection 3 of section 54-52-17 of the North Dakota
25 Century Code is amended and reenacted as follows:

26 3. Retirement dates are defined as follows:

27 a. Normal retirement date, except for a national guard security officer or
28 firefighter or a peace officer or correctional officer, is:

29 (1) The first day of the month next following the month in which the
30 member attains the age of sixty-five years; or

- 1 (2) When the member has a combined total of years of service credit and
2 years of age equal to eighty-five and has not received a retirement
3 benefit under this chapter.
- 4 b. Normal retirement date for a national guard security officer or firefighter is the
5 first day of the month next following the month in which the national guard
6 security officer or firefighter attains the age of fifty-five years and has
7 completed at least three consecutive years of employment as a national guard
8 security officer or firefighter immediately preceding retirement.
- 9 c. Normal retirement date for a peace officer or correctional officer is:
- 10 (1) The first day of the month next following the month in which the peace
11 officer or correctional officer attains the age of fifty-five years and has
12 completed at least three consecutive years of employment as a peace
13 officer or correctional officer immediately preceding retirement; or
- 14 (2) When the peace officer or correctional officer has a combined total of
15 years of service credit and years of age equal to eighty-five and has not
16 received a retirement benefit under this chapter.
- 17 d. Postponed retirement date is the first day of the month next following the
18 month in which the member, on or after July 1, 1977, actually severs or has
19 severed the member's employment after reaching the normal retirement date.
- 20 e. Early retirement date, except for a national guard security officer or firefighter
21 or a peace officer or correctional officer, is the first day of the month next
22 following the month in which the member attains the age of fifty-five years and
23 has completed three years of eligible employment. For a national guard
24 security officer or firefighter, early retirement date is the first day of the month
25 next following the month in which the national guard security officer or
26 firefighter attains the age of fifty years and has completed at least three years
27 of eligible employment. For a peace officer or correctional officer, early
28 retirement date is the first day of the month next following the month in which
29 the peace officer or correctional officer attains the age of fifty years and has
30 completed at least three years of eligible employment.

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

- 10 (1) Became disabled during the period of eligible employment; and
11 (2) Applies for disability retirement benefits within twelve months of the
12 date the member terminates employment.

13 A member is eligible to continue to receive disability benefits as long as the
14 permanent and total disability continues and the member submits the
15 necessary documentation and undergoes medical testing required by the
16 board, or for as long as the member participates in a rehabilitation program
17 required by the board, or both. If the board determines that a member no
18 longer meets the eligibility definition, the board may discontinue the disability
19 retirement benefit. The board may pay the cost of any medical testing or
20 rehabilitation services it deems necessary and these payments are
21 appropriated from the retirement fund for those purposes.

22 **SECTION 7. AMENDMENT.** Section 54-52.6-01 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **54-52.6-01. Definition of terms.** As used in this chapter, unless the context otherwise
25 requires:

- 26 1. "Board" means the public employees retirement system board.
27 2. "Correctional officer" means a participating member who is certified by the
28 department of corrections and rehabilitation or the peace officer standards and
29 training board as a correctional officer and is employed by the department of
30 corrections and rehabilitation or a political subdivision as a correctional officer.

- 1 3. "Deferred member" means a person who elected to receive deferred vested
2 retirement benefits under chapter 54-52.
- 3 ~~3.~~ 4. "Eligible employee" means a permanent state employee, except an employee of
4 the judicial branch or an employee of the board of higher education and state
5 institutions under the jurisdiction of the board, who is eighteen years or more of
6 age and who is in a position not classified by the central personnel division. The
7 term also means a peace officer or correctional officer employed by the state of
8 North Dakota who elects to become a participating member and a peace officer
9 and correctional officer employed by a political subdivision that elects to participate
10 on behalf of its peace officers and correctional officers separately from its other
11 employees in the defined contribution retirement plan established under this
12 chapter.
- 13 ~~4.~~ 5. "Employee" means any person employed by the state, whose compensation is
14 paid out of state funds, or funds controlled or administered by the state or paid by
15 the federal government through any of its executive or administrative officials. The
16 term also means a peace officer and correctional officer employed by a political
17 subdivision that elects to participate in the defined contribution retirement plan
18 established under this chapter.
- 19 ~~5.~~ 6. "Employer" means the state of North Dakota and a political subdivision that elects
20 to participate on behalf of its peace officer and correctional officer employees.
- 21 ~~6.~~ 7. "Participating member" means an eligible employee who elects to participate in the
22 defined contribution retirement plan established under this chapter.
- 23 8. "Peace officer" means a participating member who is a peace officer as defined by
24 section 12-63-01 and is employed as a peace officer.
- 25 ~~7.~~ 9. "Permanent employee" means ~~a state~~ an employee whose services are not limited
26 in duration and who is filling an approved and regularly funded position and is
27 employed twenty hours or more per week and at least five months each year.
- 28 ~~8.~~ 10. "Wages" and "salaries" means earnings in eligible employment under this chapter
29 reported as salary on a federal income tax withholding statement plus any salary
30 reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h),
31 or 457. "Salary" does not include fringe benefits such as payments for unused sick

1 leave, personal leave, vacation leave paid in a lump sum, overtime, housing
2 allowances, transportation expenses, early retirement, incentive pay, severance
3 pay, medical insurance, workers' compensation benefits, disability insurance
4 premiums or benefits, or salary received by a member in lieu of previously
5 employer-provided fringe benefits under an agreement between an employee and
6 a participating employer. Bonuses may be considered as salary under this section
7 if reported and annualized pursuant to rules adopted by the board.

8 **SECTION 8. AMENDMENT.** Subsection 1 of section 54-52.6-02 of the North Dakota
9 Century Code is amended and reenacted as follows:

10 1. The board shall provide an opportunity for each ~~eligible employee~~ peace officer or
11 correctional officer who is a member of the public employees retirement system on
12 September 30, ~~2004~~ 2003, and who has not made a written election under this
13 section to transfer to the defined contribution retirement plan before October 1,
14 ~~2004~~ 2003, to elect in writing to terminate membership in the public employees
15 retirement system and elect to become a participating member under this chapter.
16 Except as provided in section 54-52.6-03, an election made by ~~an eligible~~
17 ~~employee~~ a peace officer or correctional officer under this section is irrevocable.
18 The board shall accept written elections under this section from ~~eligible employees~~
19 peace officers and correctional officers during the period beginning on July 1,
20 1999, and ending 12:01 a.m. December ~~14, 2004~~ 12, 2003. ~~An eligible employee~~
21 A peace officer or correctional officer who does not make a written election or who
22 does not file the election during the period specified in this section continues to be
23 a member of the public employees retirement system. ~~An eligible employee~~ A
24 peace officer or correctional officer who makes and files a written election under
25 this section ceases to be a member of the public employees retirement system
26 effective twelve midnight December 31, ~~2004~~ 2003; becomes a participating
27 member in the defined contribution retirement plan under this chapter effective
28 12:01 a.m. January 1, ~~2002~~ 2004; and waives all of that person's rights to a
29 pension, annuity, retirement allowance, insurance benefit, or any other benefit
30 under the public employees retirement system effective December 31, ~~2004~~ 2003.
31 This section does not affect a person's right to health benefits or retiree health

1 benefits under chapter 54-52.1. An eligible employee who is first employed and
2 entered upon the payroll of that person's employer after September 30, 2001, and
3 a peace officer or correctional officer who is first employed and entered upon the
4 payroll of that person's employer after September 30, 2003, may make an election
5 to participate in the defined contribution retirement plan established under this
6 chapter at any time during the first six months after the date of employment. If the
7 board, in its sole discretion, determines that the employee was not adequately
8 notified of the employee's option to participate in the defined contribution
9 retirement plan, the board may provide the employee a reasonable time within
10 which to make that election, which may extend beyond the original six-month
11 decision window.

12 **SECTION 9.** A new section to chapter 54-52.6 of the North Dakota Century Code is
13 created and enacted as follows:

14 **Political subdivisions authorized to join defined contribution retirement plan.**

- 15 1. A political subdivision, on behalf of its peace officers and correctional officers, may
16 enter an agreement with the retirement board for the purpose of extending the
17 benefits of the defined contribution retirement plan, as provided in this chapter, to
18 those employees. The agreement may contain, in accordance with this chapter,
19 provisions relating to contributions, effective date, modification, administration, and
20 other appropriate provisions as the retirement board and the political subdivision
21 may agree, but the agreement must provide that:
- 22 a. The political subdivision will contribute on behalf of each eligible employee an
23 amount equal to that provided in section 5 of this Act.
- 24 b. A portion of the moneys paid by the political subdivision may be used to pay
25 administrative expenses of the retirement board.
- 26 2. A political subdivision that merges an existing police pension plan into the public
27 employees retirement system must provide an opportunity for its members to elect
28 to participate in the defined contribution retirement plan under rules adopted by
29 and in a manner determined by the board.

30 **SECTION 10. AMENDMENT.** Section 54-52.6-03 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **54-52.6-03. Transfer of accumulated fund balances.** For an individual who elects to
2 terminate membership in the public employees retirement system under chapter 54-52, the
3 board shall transfer a lump sum amount from the retirement fund to the participating member's
4 account in the defined contribution retirement plan under this chapter. However, if the
5 individual terminates employment prior to receiving the lump sum transfer under this section,
6 the election made under section 54-52.6-02 is ineffective and the individual remains a member
7 of the public employees retirement system under chapter 54-52 and retains all the rights and
8 benefits provided under that chapter. The board shall calculate the amount to be transferred for
9 persons employed before October 1, ~~2004~~ 2003, using the two following formulas, and shall
10 transfer the greater of the two amounts obtained:

- 11 1. The actuarial present value of the individual's accumulated benefit obligation under
12 the public employees retirement system based on the assumption that the
13 individual will retire under the earliest applicable normal retirement age, plus
14 interest from January 1, ~~2004~~ 2004, to the date of transfer, at the rate of one-half of
15 one percent less than the actuarial interest assumption at the time of the election;
16 or
- 17 2. The actual employer contribution made, less vested employer contributions made
18 pursuant to section 54-52-11.1, plus compound interest at the rate of one-half of
19 one percent less than the actuarial interest assumption at the time of the election
20 plus the employee account balance.

21 The board shall calculate the amount to be transferred for persons employed after
22 September 30, ~~2004~~ 2003, using only the formula contained in subsection 2.

23 **SECTION 11.** A new section to chapter 54-52.6 of the North Dakota Century Code is
24 created and enacted as follows:

25 **Contribution by peace officers and correctional officers - Employer contribution.**

26 Each peace officer and correctional officer who participates in the defined contribution
27 retirement plan established under this chapter is assessed and shall pay monthly four percent
28 of the employee's monthly salary or wage paid to the participant. The assessment must be
29 deducted and retained out of the employee's salary in equal monthly installments. The peace
30 officer's or correctional officer's employer shall contribute an amount equal to that paid by the
31 employer under section 5 of this Act for peace officer and correctional officer members of the

1 public employees retirement system defined benefit retirement plan. The employer's
2 contribution must be paid from funds appropriated for salary or from any other funds available
3 for such purposes. If the peace officer's or correctional officer's assessment is paid by the
4 employer under subsection 3 of section 54-52.6-09, the employer shall contribute, in addition,
5 an amount equal to the required peace officer's or correctional officer's assessment.

6 **SECTION 12. APPROPRIATION.** The funds provided in this section, or so much of the
7 funds as may be necessary, are appropriated out of any moneys in the general fund in the state
8 treasury, not otherwise appropriated, and from other funds derived from federal funds and other
9 income, to the following departments for the purpose of defraying the cost of participation by
10 peace officers and correctional officers in the defined benefit retirement plan and the defined
11 contribution retirement plan, for the biennium beginning July 1, 2003, and ending June 30,
12 2005, as follows:

	GENERAL	OTHER
	FUND	FUNDS
15 Attorney general	\$95,833	\$30,263
16 Highway patrol	7,807	2,465
17 Department of corrections	774,886	42,746
18 and rehabilitation		
19 Game and fish department	_____	<u>107,136</u>
20 Total	\$878,526	\$182,610