

April 26, 2023

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2015

That the House recede from its amendments as printed on pages 1851-1861 of the Senate Journal and pages 2163-2173 of the House Journal and that Engrossed Senate Bill No. 2015 be amended as follows:

Page 1, line 5, after the comma insert "sections 54-52-02.5, 54-52-02.9, 54-52-02.11, and 54-52-02.12 of the North Dakota Century Code as amended in sections 3, 4, 5, and 6 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, sections 54-52-02.15 and 54-52.2-09 of the North Dakota Century Code as created by sections 7 and 13 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, subsection 3 of section 54-52.6-01 and section 54-52.6-02 of the North Dakota Century Code as amended in sections 14 and 15 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, subsection 1 of section 54-52.6-02.1 and section 54-52.6-02.2 of the North Dakota Century Code as created by sections 16 and 17 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, subsection 2 of section 54-52.6-03 of the North Dakota Century Code as amended by section 18 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, section 54-52.6-09 of the North Dakota Century Code as amended in section 22 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, and section 37 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly,"

Page 1, line 6, remove "and"

Page 1, line 7, after "collections" insert ", and closure of the the public employees retirement system defined benefit plan"

Page 7, after line 30, insert:

**"SECTION 15. AMENDMENT.** Section 54-52-02.5 of the North Dakota Century Code as amended in section 3 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

**54-52-02.5. Newly elected and appointed state officials.**

1. After December 31, 1999, but before January 1, ~~2025~~2024, an individual elected or appointed to a state office for the first time must, from and after the date that individual qualifies and takes office, be a participating member of the public employees retirement system unless that person makes an election at any time during the first six months after the date the person takes office to participate in the defined contribution retirement plan established under chapter 54-52.6.
2. After December 31, ~~2024~~2023, an individual elected or appointed to a state office for the first time, from and after the date that individual qualifies and takes office, must be a participating member of the defined contribution retirement plan established under chapter 54-52.6, unless at the time of election or appointment the individual is a participating or deferred member under this chapter, in which case the official remains a participating member under this chapter.

3. As used in this section, the phrase "for the first time" means an individual appointed, who, after December 31, 1999, does not hold office as an appointed official at the time of that individual's appointment.

**SECTION 16. AMENDMENT.** Section 54-52-02.9 of the North Dakota Century Code as amended in section 4 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

**54-52-02.9. Participation by temporary employees.**

1. Before January 1, ~~2025~~2024, within one hundred eighty days of beginning employment, a temporary employee may elect to participate in the public employees retirement system under this chapter and receive credit for service after enrollment. Monthly, the temporary employee shall pay to the fund an amount equal to fourteen and twelve hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by one percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January ~~2025~~2024.
2. If the temporary employee first enrolled:
  - a. Before January 1, 2020, in addition the temporary employee shall pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2.
  - b. After December 31, 2019, the temporary employee shall pay to the fund an additional amount equal to one and fourteen hundredths percent times the temporary employee's present monthly salary.
3. A temporary employee who is a participating member under this chapter due to employment before January 1, ~~2025~~2024, who becomes a permanent employee after December 31, ~~2024~~2023, qualifies to participate in the defined benefit retirement plan under this chapter and receive credit for service after enrollment.
4. After December 31, ~~2024~~2023, and within one hundred eighty days of beginning employment, a temporary employee may elect to participate in the defined contribution retirement plan under chapter 54-52.6.
5. An employer may not pay the temporary employee's contributions. A temporary employee may continue to participate as a temporary employee in the public employees retirement system until termination of employment or reclassification of the temporary employee as a permanent employee. A temporary employee may not purchase any additional credit, including additional credit under section 54-52-17.4 or past service under section 54-52-02.6.

**SECTION 17. AMENDMENT.** Section 54-52-02.11 of the North Dakota Century Code as amended in section 5 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

**54-52-02.11. Participation requirements for nonstate elected officials.**

1. Before January 1, ~~2025~~2024, eligible elected officials of participating counties, at their individual option, may enroll in the defined benefit plan within the first six months of their term.
2. After December 31, ~~2024~~2023, eligible elected officials of participating counties, at their individual option, may enroll in the defined contribution retirement plan under chapter 54-52.6 within the first six months of their term.

**SECTION 18. AMENDMENT.** Section 54-52-02.12 of the North Dakota Century Code as amended in section 6 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

**54-52-02.12. Participation requirements for nonstate appointed officials.**

1. Nonstate appointed officials of participating employers appointed on or after August 1, 1999, but before January 1, ~~2025~~2024, who meet the participation requirements of this chapter must be enrolled in the defined benefit plan effective within the first month of taking office.
2. After December 31, ~~2024~~2023, nonstate appointed officials of participating employers who meet the participation requirements must be enrolled in the defined contribution retirement plan under chapter 54-52.6 effective within the first month of taking office.

**SECTION 19. AMENDMENT.** Section 54-52-02.15 of the North Dakota Century Code as created by section 7 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

**54-52-02.15. Public employees retirement system main plan - Closure to new hires - Multiple plan membership.**

1. Under this section "eligible employee" means a permanent employee who:
  - a. Meets all the eligibility requirements set by this chapter;
  - b. Is at least eighteen years of age;
  - c. Becomes a participating member after December 31, ~~2024~~2023; and
  - d. Is not eligible to participate in the law enforcement plan, judges' plan, highway patrol plan, teachers' fund for retirement plan, or alternative retirement program established under section 15-10-17 for university system employees.
2. Effective January 1, ~~2025~~2024, the public employees retirement system defined benefit main plan maintained for employees is closed to new eligible employees. However, an employee who becomes a participating or deferred member under this chapter before January 1, ~~2025~~2024, remains in the defined benefit retirement plan under this chapter, regardless of being rehired after December 31, ~~2024~~2023.
3. Except as otherwise provided under this section, effective January 1, ~~2025~~2024, an eligible employee who begins employment with an employer

shall participate in the defined contribution retirement plan under chapter 54-52.6 as provided under section 54-52.6-02.1.

4. This section does not impact an employee to the extent the employee is a participating member in one or more of the following enumerated plans: law enforcement plan, judges' plan, highway patrol plan, teachers' fund for retirement plan, or alternative retirement program established under section 15-10-17 for university system employees.
  - a. A participating or deferred member in the defined contribution retirement plan under chapter 54-52.6 who becomes eligible to participate in a plan enumerated under this subsection is eligible to participate in the retirement plan enumerated under this subsection.
  - b. A participating member of a retirement plan enumerated under this subsection who becomes an eligible employee is not eligible to participate in the defined benefit retirement plan under this chapter but instead participates in the defined contribution retirement plan under chapter 54-52.6. However, this subdivision does not apply to an individual who before January 1, ~~2025~~2024, is a participating or a deferred member under this chapter, as that individual continues to participate in the defined benefit retirement plan under this chapter.
5. The board shall adopt rules to implement this section.

**SECTION 20. AMENDMENT.** Section 54-52.2-09 of the North Dakota Century Code as created by section 13 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

**54-52.2-09. Employer match for members of defined contribution retirement plan.**

An employee who first participated in the defined contribution retirement plan under chapter 54-52.6 after December 31, ~~2024~~2023, who elects to contribute less than the optional three percent of wages or salary under subdivision b of subsection 1 of section 54-52.6-09, who participates in the deferred compensation program under this chapter, qualifies for employer matching of contributions made under this section. The employee may elect to contribute an amount of wages or salary which does not exceed any remaining balance of the optional three percent contribution and the employer shall match this contribution. This section does not limit the ability of an employee to contribute unmatched wages or salary under this chapter, subject to federal contribution limitations.

**SECTION 21. AMENDMENT.** Subsection 3 of section 54-52.6-01 of the North Dakota Century Code as amended in section 14 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

3. "Eligible employee", for employees who become participating members after December 31, ~~2024~~2023, has the same meaning as provided under section 54-52-02.15. For employees who elected to join the defined contribution retirement plan under this chapter before January 1, ~~2025~~2024, 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.

**SECTION 22. AMENDMENT.** Section 54-52.6-02 of the North Dakota Century Code as amended in section 15 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

**54-52.6-02. Election through December 31, ~~2024~~2023.**

1. The board shall provide an opportunity for each eligible employee who is a member of the public employees retirement system on September 30, 2001, and who has not made a written election under this section to transfer to the defined contribution retirement plan before October 1, 2001, to elect in writing to terminate membership in the public employees retirement system and elect to become a participating member under this chapter. Except as provided in section 54-52.6-03, an election made by an eligible employee under this section is irrevocable. The board shall accept written elections under this section from eligible employees during the period beginning on July 1, 1999, and ending 12:01 a.m. December 14, 2001. An eligible employee who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. An eligible employee who makes and files a written election under this section ceases to be a member of the public employees retirement system effective twelve midnight December 31, 2001; becomes a participating member in the defined contribution retirement plan under this chapter effective 12:01 a.m. January 1, 2002; and waives all of that person's rights to a pension, annuity, retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective December 31, 2001. This section does not affect an individual's right to health benefits or retiree health benefits under chapter 54-52.1. An eligible employee who is first employed and entered upon the payroll of that person's employer after September 30, 2001, and before January 1, ~~2025~~2024, may make an election to participate in the defined contribution retirement plan established under this chapter at any time during the first six months after the date of employment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window.
2. If an individual who is a deferred member of the public employees retirement system on September 30, 2001, is re-employed before January 1, ~~2025~~2024, and by virtue of that employment is again eligible for membership in the public employees retirement system under chapter 54-52, the individual may elect in writing to remain a member of the public employees retirement system or if eligible to participate in the defined contribution retirement plan established under this chapter to terminate membership in the public employees retirement system and become a participating member in the defined contribution retirement plan established under this chapter. An election made by a deferred member under this section is irrevocable. The board shall accept written elections under this section from a deferred member during the period beginning on

the date of the individual's re-employment and ending upon the expiration of six months after the date of that re-employment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window. A deferred member who makes and files a written election to remain a member of the public employees retirement system retains all rights and is subject to all conditions as a member of that retirement system. A deferred member who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. A deferred member who makes and files a written election to terminate membership in the public employees retirement system ceases to be a member of the public employees retirement system effective on the last day of the payroll period that includes the date of the election; becomes a participating member in the defined contribution retirement plan under this chapter effective the first day of the payroll immediately following the date of the election; and waives all of that person's rights to a pension, an annuity, a retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective the last day of the payroll that includes the date of the election. This section does not affect any right to health benefits or retiree health benefits to which the deferred member may otherwise be entitled.

3. An eligible employee who elects under this section to participate in the retirement plan established under this chapter must remain a participant even if that employee returns to the classified service or becomes employed by a political subdivision that participates in the public employees retirement system. The contribution amount must be as provided in this chapter, regardless of the position in which the employee is employed. Notwithstanding the irrevocability provisions of this chapter, if a member who elects to participate in the retirement plan established under this chapter becomes a supreme or district court judge, becomes a member of the highway patrol, becomes employed in a position subject to teachers' fund for retirement membership, or becomes an employee of the board of higher education or state institution under the jurisdiction of the board of higher education who is eligible to participate in an alternative retirement program established under subsection 6 of section 15-10-17, the member's status as a member of the defined contribution retirement plan is suspended, and the member becomes a new member of the retirement plan for which that member's new position is eligible. The member's account balance remains in the defined contribution retirement plan, but no new contributions may be made to that account. The member's service credit and salary history that were forfeited as a result of the member's transfer to the defined contribution retirement plan remain forfeited, and service credit accumulation in the new retirement plan begins from the first day of employment in the new position. If the member later returns to employment that is eligible for the defined contribution retirement plan, the member's suspension must be terminated, the member again becomes a member of the defined contribution retirement plan, and the member's account resumes accepting contributions. At the member's option, and pursuant to rules adopted by the board, the member may

- transfer any available balance as determined by the provisions of the alternate retirement plan into the member's account under this chapter.
4. After consultation with its actuary, the board shall determine the method by which a participating member or deferred member may make a written election under this section. If the participating member or deferred member is married at the time of the election, the election is not effective unless the election is signed by the individual's spouse. However, the board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.
  5. 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, then the portion that will cause the disqualification does not apply.
  6. A participating member under this section who becomes a temporary employee may still participate in the defined contribution retirement plan upon filing an election with the board within one hundred eighty days of transferring to temporary employee status. The participating member may not become a member of the defined benefit plan as a temporary employee.
    - a. The temporary employee electing to participate in the defined contribution retirement plan shall pay into the plan as provided under section 54-52.6-09.6.
    - b. An employer may not pay the temporary employee's contributions.
    - c. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee.
  7. A former participating member under this section who has accepted a retirement distribution pursuant to section 54-52.6-13 and who subsequently becomes employed by an entity different from the employer with which the member was employed at the time the member retired but which does participate in any state-sponsored retirement plan may, before re-enrolling in the defined contribution retirement plan, elect to permanently waive future participation in the defined contribution retirement plan, whatever plan in which the new employing entity participates, and the retiree health program and maintain that member's retirement status. Neither the member nor the employer are required to make any future retirement contributions on behalf of that employee.
  8. After December 31, ~~2024~~2023, an eligible employee is no longer allowed to elect participation under this section.

**SECTION 23. AMENDMENT.** Subsection 1 of section 54-52.6-02.1 of the North Dakota Century Code as created by section 16 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

1. Except as otherwise provided under section 54-52-02.5 or 54-52-02.15 or this chapter, effective January 1, ~~2025~~2024, an eligible employee who is

first enrolled shall participate in the defined contribution retirement plan under this chapter.

**SECTION 24. AMENDMENT.** Section 54-52.6-02.2 of the North Dakota Century Code as created by section 17 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

**54-52.6-02.2. Election after December 31, ~~2024~~2023 - Additional employer contribution.**

1. As used in this section, "eligible employee" means a permanent state employee who on December 31, ~~2024~~2023, is a participating member of the public employees retirement system main system plan under chapter 54-42, 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~~2024, through March 31, ~~2025~~2024, 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~~2024, 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~~2025, and extending no further than January ~~2028~~2027.

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 25. AMENDMENT.** Subsection 2 of section 54-52.6-03 of the North Dakota Century Code as amended by section 18 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

2. The board shall calculate the amount to be transferred for persons employed after September 30, 2001, and before January 1, ~~2025~~2024, using only the formula contained in subdivision b of subsection 1.

**SECTION 26. AMENDMENT.** Section 54-52.6-09 of the North Dakota Century Code as amended in section 22 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

**54-52.6-09. Contributions - Penalty.**

1. a. A participating member who first joined the defined contribution retirement plan before January 1, ~~2025~~2024, and an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2, shall contribute monthly seven percent of the monthly salary or wage paid to the participant.
  - b. A participating member who first joined the defined contribution retirement plan after December 31, ~~2024~~2023, except for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2, shall contribute monthly four percent of the monthly salary or wage paid to the participant. In addition, the participating member may elect to contribute monthly up to an additional three percent of the monthly salary or wage paid to the participant.
  - c. 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. a. For a participating member who first joined the defined contribution retirement plan before January 1, ~~2025~~2024, and for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2, the employer shall contribute an amount equal to seven and twelve-hundredths percent of the monthly salary or wage of the participating member.
  - b. For a participating member who first joined the defined contribution retirement plan after December 31, ~~2024~~2023, except for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2, the employer shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or

- wage of a participating member, plus up to an additional three percent as an employer matching contribution calculated based on the participating member's election under subdivision b of subsection 1.
- c. For a participating member first enrolled after December 31, 2019, the employer contribution includes an additional increase of one and fourteen-hundredths percent.
  - d. 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. Monthly, the employer shall pay such contribution into the participating member's account from the employer's funds appropriated for payroll and salary or any other funds available for such purposes.
  - e. If the employer fails to pay the contributions monthly, or fails to otherwise comply with the board's established wage reporting or payroll reporting process requirements, the employer 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. 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 reporting its choice to the board in writing.

**SECTION 27. AMENDMENT.** Section 37 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

**SECTION 37. EFFECTIVE DATE.** Sections 9, 31, 33, 34, and 35 of this Act become effective August 1, 2023; sections 1 through 8, sections 11

through 22, sections 24 through 30, and section 32 of this Act become effective January 1, ~~2025~~2024; and sections 10, 23, and 36 of this Act become effective January 1, 2026.

**SECTION 28. PUBLIC EMPLOYEES RETIREMENT SYSTEM - RETIREMENT PLAN TRANSITION EDUCATION.** During the 2023-25 biennium, the public employees retirement system shall conduct an informational campaign to educate current and prospective state employees of the transition from the defined benefit retirement plan to the defined contribution retirement plan."

Renumber accordingly

